

Consultation

Crime (Prejudice and Public Disorder) Law

The purpose of this consultation

This consultation is intended to seek opinions about what should be included in the draft Crime (Prejudice and Public Disorder) (Jersey) Law. The draft Law is attached for consideration, and this paper addresses the key elements of that draft Law and outlines what they are intended to do and why. The consultation is in four parts.

The first two parts concern crimes of prejudice, focusing on those described in the draft Law -

- Firstly, it describes what crimes of prejudice are, and how the draft Law will address them. It explains that it will provide appropriate penalties for such acts by providing in law that where crimes are committed out of prejudice they can be sentenced in a way that reflects the intent behind them.
- Secondly, having seen what the draft will do, it considers whether there is a compelling need for such legislation, and the potential problems of introducing it, including the dangers of leaving some groups out, and the potential for the legislation to creep outside of its original remit. It also looks at how the term 'crimes of prejudice' was selected from the range of terms in use across other jurisdictions.

The third and fourth parts address the 'public disorder' element-

- Thirdly it considers some 'public order offences', which refer to the act of committing violence or creating disorder in public and include things like rioting. The draft Law would repeal the existing customary versions of those offences, as these have fallen behind the times. There is a question over whether the currently planned new offence regarding threats to kill should be extended to include other serious threats.

- Fourthly it considers whether the fining powers of Centeniers at Parish Hall Enquiries should be extended from merely dealing with statutory offences to cover customary offences as well.

Each of the four sections ends with a short series of questions for respondents to consider. These are by no means the only questions raised by the draft Law but they are simply the ones on which we would like specific feedback. Respondents should feel free to make comment on any part of the draft Law, or on the points made in this consultation more widely.

This draft Law is part of a broader package of measures intended to modernise Jersey's approach to managing criminal offences, and to bring processes up to international standards. The recent Bail, Criminal Procedure and Sexual Offences Laws have all been aimed at providing Jersey with a world leading criminal justice system, and this draft Law forms part of this modernisation and enhancement process.

CONSULTATION PROCESS

This consultation report is divided into sections, each looking at a different aspect of the Law. There are a few key questions which you may wish to answer at the end of each section. You can also provide any additional comments that you want or submit any further information.

Public consultation	14 th October to 6 th December 2019
Publication of feedback report summarising the responses to consultation	10 th January 2020
Analysis of consultation feedback	7 th February 2020

The next step will be to make the changes necessary to the Law in light of the consultation feedback and to ring the draft Law to the States in due course.

You can comment by mail or post using the details below-

Email: CPPD@gov.je
Post: Strategic Policy, Planning and Performance Department
Government of Jersey
19-21 Broad Street
St Helier
JE2 3RR

Closing date for comments:

6th December 2019

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- Yes, anonymously
- Yes, attributed

If yes, name to attribute comments to:

Email address:

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SECTION 1: CRIMES OF PREJUDICE AND THE DRAFT LAW

1. What are crimes of prejudice?

“Crimes of prejudice” describes a range of criminal activity that is also commonly referred to as hate crime. The reasons for referring to “crimes of prejudice” as opposed to “hate crime” are addressed later in the report.

The UK criminal justice system defines such crimes as including *‘any criminal offence which is perceived, by the victim or any other person, to be motivated by hostility or prejudice towards someone based on a personal characteristic.’* In the UK, only crimes that are motivated by hostility towards people with particular personal characteristics are recorded as crimes of prejudice. These characteristics are -

- race or ethnicity
- religion or beliefs
- sexual orientation
- disability
- transgender identity.¹

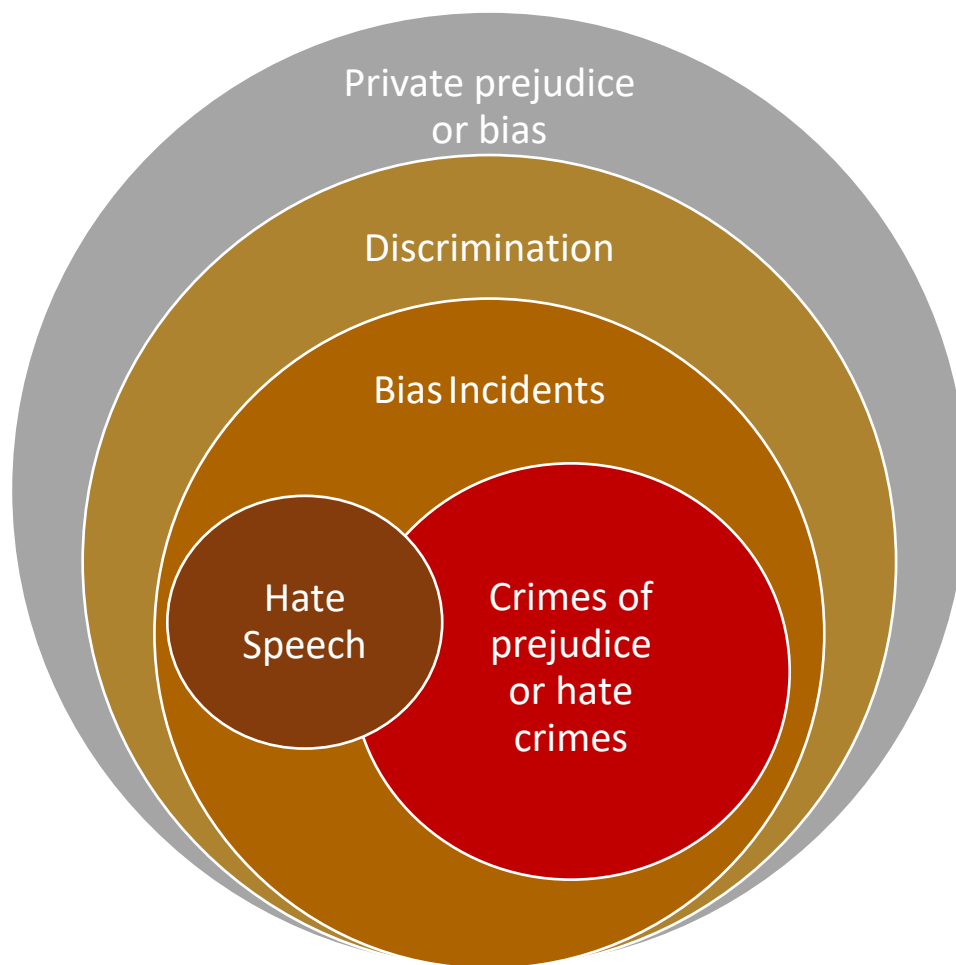
Crimes of prejudice can take many forms including-

- physical attacks – such as physical assault, damage to property, offensive graffiti, neighbour disputes and arson
- threat of attack – including offensive letters, abusive or obscene telephone calls, groups hanging around to intimidate and unfounded, malicious complaints
- verbal abuse or insults - offensive leaflets and posters, abusive gestures, dumping of rubbish outside homes or through letterboxes, and bullying at school or in the workplace.²

Crimes of prejudice are not the same thing as hate speech, discrimination, incidents of bias or simple dislike. These are shown graphically primarily to help the reader understand these crimes in context and see what is and is not covered by the draft Law. However, some care must be taken with these definitions as they are used differently by different authorities.

¹ Hate Crime, England and Wales 2015/16- Statistical Bulletin 11/16, Corcoran and Smith, October 2016

² UK Home Office, 2005



Private prejudice or bias

It is not and will not be a crime for a person to be prejudiced or biased against a particular group of people, whether or not that is based on some recognised characteristic, nor can any action be taken against that person for their privately held beliefs, even if those beliefs are extreme or reprehensible.

Discrimination

If a person acts to discriminate against a particular group of people in some way, they may find that they are in breach of the Discrimination Law, if that discrimination is based on the characteristics recognised by that Law (race, sex, sexual orientation, transgender status, pregnancy or maternity, age and disability).³ 'Disability' was added to the protected characteristics in September 2018 following an amendment to the Law.⁴

³ Discrimination (Jersey) Law, Schedule 1

⁴ [P.20/2018](#), draft Discrimination (Disability) (Jersey) Regulations 201-, Minister for Social Security.

Bias Incidents

A bias incident, sometimes referred to as a hate incident, is some action arising from the hostility of the perpetrator against the victim based on some characteristic of the victim. A bias incident does not necessarily involve criminal activity or direct violence (although it can), and examples include-

- verbal abuse like name-calling and offensive jokes
- some degree of harassment
- bullying or intimidation by children, adults, neighbours or strangers
- hoax calls, abusive phone or text messages, hate mail
- online abuse
- displaying or circulating discriminatory literature or posters
- throwing rubbish into a garden
- malicious complaints for example over parking, smells or noise.⁵

Hate speech

This is “*speech that attacks, threatens, or insults a person or group on the basis of national origin, ethnicity, colour, religion, gender, gender identity, sexual orientation, or disability*”⁶, although this is really only an indicative description as the definition of the characteristics that can attract ‘hate’ are different across jurisdictions. There is a significant overlap with bias incidents, and also with crimes of prejudice/hate crime where those crimes consist of verbal or written abuse or threats or the distribution of written material to stir up hatred.

Crimes of Prejudice

In essence, crimes of prejudice are expressions of prejudice that are also criminal offences. One way of distinguishing such crime from other discrimination is that it “*involves conduct that is criminal irrespective of the expression of prejudice.*”⁷ However, most jurisdictions with such legislation also develop a category of offences that have an element of prejudice as a core component.

⁵ National Association of Citizens Advice Bureaux, <https://www.citizensadvice.org.uk/wales/law-and-courts/discrimination/hate-crime/what-are-hate-incidents-and-hate-crime/>

⁶ Random House Dictionary, Random House 2018

⁷ ‘Hate Crime Laws In Australia: Are They Achieving Their Goals?’ Mason, University of Sydney

Where existing criminal conduct is 'aggravated' by prejudice, this means that criminal offences that happen or are made worse by the feelings of the perpetrator towards the victim based on some characteristic of the victim can be crimes of prejudice. For instance, if a person is punched in a nightclub because the attacker is angry that they are gay, it would be a crime of prejudice. Where a person who happens to be gay is punched in an argument over some other issue, it would not be a crime of prejudice unless there was some factor in the assault that was specifically about their sexuality.

Where new offences are created, they cannot be committed without some element of prejudice.

1.1 How is such crime treated elsewhere?

Many jurisdictions worldwide now have crimes of prejudice or hate crime legislation, including 27 European states, plus the US, Canada, Australia, New Zealand, Brazil and Chile. Jersey has not yet introduced such legislation and the customary law does not provide equivalent offences to those found in statute in comparable jurisdictions.

Although there is great variation in the way that such crime is treated in other jurisdictions, their laws have two common elements-

- (a) they aim to specifically and publicly target crime that is motivated by, grounded in or aggravated by prejudice; and
- (b) they largely seek to do this by imposing heavier penalties than those applicable to similar crimes which lack that element of prejudice.

1.2 What is the draft Law for?

This draft Law will be the primary tool to deal with crimes of prejudice in Jersey. This consultation is focused on ensuring that the draft Law is fit for purpose, as this will underpin all further work in this area.

More specifically, the objective of the draft Law is to discourage these crimes by enabling the criminal justice system to apply suitable punishment for offenders. Even though crimes of prejudice are not generally seen to be a very significant problem for Jersey, having such laws in place is critical for the following reasons-

- It will make clear that such crimes are not acceptable in modern society and, it is hoped, reduce the occurrences of these offences.
- It will make it clear to communities that may be victims of such crimes that society recognises those offences for what they are, which should improve community relations, strengthen society and build trust.
- It will demonstrate commitment to global efforts to punish and reduce such offences, and allow Jersey to comply with international obligations to which we are already committed and those to which we might wish to enter into in future.

Notwithstanding the above, experience from other jurisdictions strongly suggests that simply legislating against this crime is not enough, as even with legislation in place there can be significant issues of under reporting based on a lack of trust in the system. The recent information campaign by the States of Jersey Police is part of an ongoing engagement campaign intended to address this by highlighting prejudice/hate crime and related issues.

There is also a possibility that crimes of prejudice, like sexual abuse in recent decades, is a hidden problem, and the recognition of a new category of offence might spur a higher rate of reporting. As we have learned from Independent Jersey Care Inquiry, criminality against vulnerable groups can be hidden in plain sight and there is anecdotal evidence that crimes of this nature go unreported, as expressed by some police officers in the Jersey Evening Post in October 2018⁸.

The draft Law is intended to provide better protection from crimes of prejudice by making it clear that where an offence is motivated by prejudice, this will be an aggravating factor when sentencing the offender (i.e. the sentence could be more severe). In addition, the Law creates some new offences that are inherently based on prejudice.

1.3 New offences

Articles 3 to 7 and 11 of the draft Law create several new offences. The behaviour targeted by these offences is generally referred to as 'stirring up prejudice'.

⁸ JEP 22nd October 2018, <https://jerseyeveningpost.com/news/2018/10/22/race-hate-crime-massively-under-reported-in-jersey/>

These offences share common characteristics. In all cases, for an offence to be committed, the words, actions or material in question must be threatening, abusive or insulting and the intention or effect must be to stir up prejudice.

In all cases, no offence is committed if a person honestly does not mean to threaten, abuse or insult another, or if they have no reason to suspect that material that they possess or display is threatening, abusive or insulting.

Where a person is convicted of an offence relating to written or recorded material, it can be confiscated by the court and kept by the police or destroyed.

It is important to note that a definition of “prejudice” for these purposes is set out in Article 1 of the draft Law. For these purposes prejudice has a technical meaning that means “*hostility towards a person based on religion or any characteristic listed in Schedule 1 to the Discrimination (Jersey) Law 2013 (other than paragraphs 3, 6 and 7) as a characteristic protected from discrimination under that Law*”. This means that the stirring up prejudice offences only capture hostility.

It should be noted that at the current time, the position in England and Wales is that disability is not included in the scope of these offences. This appears to result in part because the offences in that jurisdiction were developed before disability was included in the scope of discrimination protection. However, in a local context there is no compelling reason not to include disability.

None of these offences are intended to prohibit or restrict discussion or criticism of religions or beliefs. To provide further assurance in this regard, Article 13 of the Law includes an interpretive provision that is intended to limit the application of the new offences to the expression of views on a religion or belief systems and its practices. People will still be free to dislike, ridicule, or even insult the religious beliefs of others, or to try to convince them to embrace, convert or abandon religion. Likewise, discussion or criticism of sexual conduct or practices or of views on the institution of marriage will not be limited by the draft Law.

- **Article 3: Use of words or behaviour, or display of written material.**

Article 3 would make it an offence to use threatening, abusive or insulting words, display that type of written material or threaten, abuse or insult a person by behaviour. This does not need to be in public, but the offence cannot be committed by a person in their own or someone else’s home, unless they are in the sight or hearing of people outside, or honestly believe that no one outside will hear or see the behaviour. This is an attempt to balance the rights of an individual

to be free from threats and abuse with the rights of an individual to express their opinions in private as they see fit.

- **Article 4: Publishing or distributing written material**

Publishing or distributing written material that is threatening, abusive or insulting with the intention or effect of stirring up prejudice will be an offence pursuant to Article 4 of the draft Law

- **Article 5: Distributing, showing or playing a recording**

Distributing, showing or playing a recording that is threatening, abusive or insulting with the intention or effect of stirring up prejudice will be an offence.

- **Article 6: Broadcasting or including programme in programme service**

This offence concerns 'programme services', which means a television, radio or digital programme, or sounds or visual images sent through a telecommunication system. It is a fairly wide-ranging offence that can cover the person providing the programme service, the producer or director and any person who uses offending words or behaviour in the programme.

- **Article 7: Public theatrical performance**

This offence is broadly similar to broadcasting, and can be committed by actors and/or the director. It does not apply to rehearsals with no audience, and directors are not responsible for ad-libbing by actors.

- **Article 11: Possession of inflammatory material**

Possessing written material or a recording that is threatening, abusive or insulting is an offence, but only where the material is possessed with the intention of displaying, publishing, or distributing it with the effect or intention of stirring up hatred.

1.4 Sentencing changes

The draft Law provides for increased sentences for existing crimes where they are motivated wholly or partly by prejudice. Where a court finds that a defendant had that motivation, then it will be treated as an 'aggravating factor' in deciding the sentence.

Sentences for all offences are set by a court after considering the seriousness of the offence and any aggravating or mitigating factors. Other aggravating factors for offending generally may include the degree of premeditation or planning in relation to the offence, or any abuse of a position of trust.

Where these factors are present an offender is said to be more 'culpable' and has a greater moral or legal responsibility for the offence. This means that they are likely to receive a longer sentence.

The exact degree of additional punishment is not set in the draft Law, and it will be up to the court to consider the seriousness of the offence and the degree to which prejudice was a motivating factor, alongside any other aggravation or mitigation.

In addition, where the court has found prejudice to be the motivation for the offence, it must state so publicly, and this will be reflected on the perpetrator's criminal record. This public pronouncement is an integral part of the offender's punishment.

Question 1

- **Overall, do you support the development of legislation to tackle crimes of prejudice (hate crimes)?**

Question 2

- **Do you think that the statutory aggravation model is the appropriate method of addressing crimes of prejudice in Jersey?**

Question 3

- **Do you agree that the test for the new stirring up hatred offences should be that the conduct is 'threatening, abusive or insulting and the intention or effect must be to stir up prejudice'?**

Question 4

- **Do you agree that 'stirring up' offences should be introduced?**

Question 5

- **Do you think that where the court has found prejudice to be the motivation for an offence, it should be required to state so publicly?**

(The questions are set out again together at the end of the consultation paper. If you are responding by post it may be easier to write your answers there.)

SECTION 2: RATIONALE AND TERMINOLOGY

2. Rationale for legislating for crimes of prejudice, and preferred term

Codifying these crimes as a distinct area of criminal activity is the international norm, and a number of international agreements rely on a state having done so. However, such legislation is not without its critics and there are legitimate concerns with different approaches to enacting legislation that the Government needs to be mindful of.

The Law as drafted creates offences for behavior that is intended to stir up prejudice or ensure that where an offence is motivated by prejudice this is a factor in sentencing. These types of offending behavior are referred to in this paper as crimes of prejudice, reflecting the terminology in the draft Law. In many other countries, they are also widely referred to as 'hate crime'⁹.

2.1 Should Jersey make specific provision for crimes of prejudice in law?

The argument for the legislation

Crimes of prejudice differ from other crimes committed against individuals as it not only has an effect on the victim but also the people who share the characteristics of the victim. For instance if there were a series of attacks on people from a particular ethnic community, then the other members of that community will not only live in greater fear of violence but will feel victimised as a group.

If society does not recognise the status of those attacks as motivated by prejudice, but simply treats them as normal public order issues, then the community under attack may not only feel ill-served by the justice system but also potentially distanced from a society that appears blind to the fact that racially motivated attacks are being conducted against them.

The effect of these crime is best summarised by the Hate Crime and Discrimination Policy Manual of the Province of Ontario (Canada), which identifies the following aspects of these crimes (note that as in many jurisdictions, Ontario refers to 'hate crime', but the arguments are identical)-

"Impact on the Individual"

⁹ This is certainly a widely used term and over 30 jurisdictions worldwide have "hate crime" legislation in place. It is not the only alternative term in common usage, although it appears to be the most prevalent.

Hate crimes have a tremendous impact on the individuals who are victimized. In addition to the psychological and emotional harm caused by hate crime, and its repercussions on the identity and feelings of self-worth of the victim, the degree of violence involved in hate-motivated offences is normally much more extreme than in non-hate crimes.

Impact on the Target Group

Hate crime has a general terrorizing effect on the target group to which the victim belongs, because its occurrence makes them all feel vulnerable to victimization.

Impact on Other Vulnerable Groups

Hate crimes have a negative impact on other vulnerable groups that share minority status or identify with the targeted group, especially if the hate motivation is based on an ideology or doctrine that covers a number of the groups that live within the community.

Impact on the Community as a Whole

This, perhaps, is the greatest evil of hate crime. Hate crime can end up dividing people in society. In a multicultural society like Canada, where all groups are to live together in harmony and equality, hate crime is an anathema.”¹⁰

The psychological effects of these crimes on affected communities is well established, and they represent only the most severe manifestation of general prejudice. There is a well-established link between prejudice and depression, both on the personal and societal level.¹¹

Studies in the US, including a criminal victimization experience survey of gay people have found that-

- Crimes of prejudice are less likely than other crimes to be reported to police.
- Compared with other recent crime victims, lesbian and gay victims showed significantly more symptoms of depression, anger, anxiety, and posttraumatic stress.
- They also displayed significantly more crime-related fears and beliefs, lower sense of mastery, and more attributions of their personal setbacks to prejudice than did non-prejudice crime victims and non-victims.¹²

¹⁰ Attorney General Crown Policy Manual - Hate Crime and Discrimination - March 2005, Province of Ontario <https://www.attorneygeneral.jus.gov.on.ca/english/crim/cpm/2005/HateCrimeDiscrimination.pdf>

¹¹ Stereotypes, Prejudice, and Depression - The Integrated Perspective Cox, Abramson, Devine, September 2012.

¹² 'Psychological sequelae of hate-crime victimization among lesbian, gay, and bisexual adults', Herek, Gillis, and Cogan, Journal of Consulting and Clinical Psychology, Vol 67(6), Dec 1999, 945-951.

Issues and concerns

It is important to recognise that critics argue that what such legislation says to society is that the victimisation of some groups is more harmful than others, and that some victims are somehow less deserving of similar protection under the law. In these circumstances the symbolic message of legislation may be a negative one.

James B Jacobs, Professor of Constitutional Law and the Courts at New York University School of Law, and a consistent critic of special prejudice crime legislation, has said (in the context of US States defining attacks on Police Officers as hate crimes) that -

“Hate crime laws are all about expressive politics and not at all necessary for effective and fair law enforcement. Proof is often not easy to come by because offenders usually have mixed and confused motives, and if the crime is committed without epithets or a confession, motivation is difficult to establish beyond a reasonable doubt. (Though adding a hate crime count to an indictment for assault or other crime strengthens the prosecutor’s hand in plea bargaining.)...Soon, if not already, so many crimes will be eligible for hate crime treatment that those victims who are not covered will, perhaps rightly, feel discriminated against.”¹³

The need to identify what characteristics are and are not protected is problematic and controversial and could be seen as an act of discrimination in itself. On the other hand, if all identifiable groups are included in legislative protections then hate crime laws will simply be reflect the generic criminal law.

For instance, in Washington State, the malicious harassment statute provides protections for people attacked over race, colour, religion, ancestry, national origin, gender, sexual orientation or mental, physical or sensory handicap.¹⁴ This is broadly equivalent to the protected characteristics in most jurisdictions but the protections are expanded by the Municipal Code in Seattle, where a misdemeanour malicious harassment offence extends those protections to include gender identity, homelessness, marital status, political ideology, age and parental status.¹⁵

This demonstrates the risk of allowing the characteristics to ‘creep’, and the difficulties of arguing with a potentially maligned and vulnerable group (homeless people, for instance) that their victimization is of less consequence than those groups covered by the legislation.

In addition, the underpinning concepts of hate and prejudice crime legislation have been questioned. The objections are summarised in an analysis from Portsmouth University (which relies in part on the

¹³ Jacobs. J.B., Time Magazine, August 2016 <http://time.com/4429332/police-officer-hate-crime/>. (The argument is US-centric in its reference to plea bargaining but the points are universal).

¹⁴ Revised Code of Washington, RCW 9A.36.080 Malicious harassment—Definition and criminal penalty.

¹⁵ E. Bush, Seattle Times, Dec 2016

argument put forward by James B Jacobs as above). Firstly, there is concern around the extent to which the intent of the offence drives the sentencing policy-

Under such legislation, offences with a 'bias motive' attract higher penalties than those without and, significantly, given that the crime is already illegal under other pre-existing legislation, hate crime laws punish the offender's motivation in addition to punishing the offence committed. In this sense, then, hate crime may be viewed as a 'thought crime' as it is only the offender's motivation that separates it from any other crime.

Secondly, the wisdom of the message that the introduction of hate crime legislation sends to society has been questioned-

The 'moral, educational and general deterrent message' contained within hate legislation is also questioned by Jacobs and Potter¹⁶. They argue that generic criminal law already sends a strong message about which behaviours are right or wrong and therefore the value of specific education or deterrence in this respect is highly questionable.

A second problem ... concerns the extent and effectiveness of the supposed deterrent effect of such laws. For example, if an individual is prepared to carry out an offence that already carries a proscribed punishment, how can we be certain that simply increasing the potential for punishment will cause the offender to rethink?¹⁷

Summary

When introducing legislation to address prejudice and hate crimes and keeping it updated, great care must be taken both to ensure that it does not creep into all areas of interpersonal relationships or exclude key vulnerable groups, potentially sending the message that they are not worthy of protection. However, given that such legal protections are now the international norm, and that Jersey is a diverse and multicultural community which is committed to tolerance and inclusion, it does not seem wise on balance for us to continue to do without this legislation.

2.2 Why use the term 'motivated by prejudice'

In developing this draft legislation, the Government has drawn inspiration from the approach this issue taken in Scotland. The relevant Scottish legislation refers to crimes that are 'aggravated by prejudice'. The Scottish treatment of these offences consists of "*statutory aggravations which may be applied in cases where there is evidence that a crime has been motivated by malice and ill-will based on the victim's actual or presumed sexual orientation, transgender identity or disability. The aggravations*

¹⁶ Hate Crimes - Criminal Law and Identity Politics, J. B. Jacobs and K. Potter, 1998, Oxford University Press

¹⁷ The Case Against Hate Crime Laws, University of Portsmouth 2013

also cover situations where an offender demonstrates malice or ill-will towards a relevant societal group as a whole, without the need for an individual victim to be identified.”¹⁸

The draft Law’s formulation of offences being ‘*motivated by prejudice*’ and ‘*motivated ... by hostility based on prejudice*’ have the same practical effect as the Scottish terminology.

One of the key motivations for using this term rather than ‘motivated by hatred’, which is the main alternative, is that hatred is an emotive term and it may be more difficult to prove beyond doubt that a person ‘hated’ another person or group.

The Law Commission of England and Wales has found that “*Hatred is not defined in the ... Public Order Act 1986, but a dictionary definition of hatred is: “the emotion or feeling of hate, active dislike, detestation, enmity, ill will, malevolence”. The verb is defined as: “to hold in very strong dislike, to detest, to bear malice to, the opposite of ‘to love’”. “Hatred” is stronger than “hostility”.*¹⁹ While this is quite correct, the term “hatred” has been the subject of detailed analysis and is therefore a reasonably well understood term in English Law, even though it is not defined in the 1986 Act.

In addition, the Crown Prosecution Service (CPS) guidance on stirring up hatred in the UK says - “*Hatred is a very strong emotion. Stirring up racial tension, opposition, even hostility may not necessarily be enough to amount to an offence.*”

The Organisation for Security and Cooperation in Europe (OSCE) considers that hate crime is one appropriate term amongst several, concluding that “*hate crimes are criminal acts committed with a bias motive. It is this motive that makes hate crimes different from other crimes. A hate crime is not one particular offence. It could be an act of intimidation, threats, property damage, assault, murder or any other criminal offence. The term “hate crime” or “bias crime”, therefore, describes a type of crime, rather than a specific offence within a penal code*”.²⁰

Alternate formulations are found in the US, which is an interesting example as all of the state legislation has broadly similar objectives within the same overarching legal framework. Although 46 of the 50 states (and the District of Columbia) have some statutes equivalent in effect to hate crime legislation, as at 2010 only 13 made specific reference to the term²¹. Alternative terms include ‘bias-related crime’ (District of Columbia), ‘bias intimidation’ (Michigan and Pennsylvania), ‘aggravated harassment’ (New York) and ‘malice toward...’ (Arizona).²²

¹⁸ Offences (Aggravation by Prejudice) (Scotland) Bill - Explanatory Notes

¹⁹ Law Commission of England and Wales, Report No LC348 - “Hate Crime: Should the Current Offences be Extended”, Paragraph 3.8, 2014

²⁰ Guide to Hate Crime - the Organisation for Security and Cooperation in Europe (OSCE)

²¹ Alabama, California, Delaware, Hawaii, Illinois, Iowa, Kentucky, Maryland, Massachusetts, New Mexico, New York, Rhode Island and Utah.

²² All data in this section from ‘CRS Report for Congress - State Statutes Governing Hate Crimes’, 2010, Congressional Research Service. <https://fas.org/sgp/crs/misc/RL33099.pdf>

2.3 Summary

'Hate' is a strong and pejorative term. The international shorthand for such criminal acts is 'hate crime', and it may be that in regular parlance the term will be used in Jersey to describe the criminal behavior addressed by the draft Law. However, other terms are in use and the draft Law is intended to provide a potentially greater level of protection for citizens against harm by prohibiting acts of stirring up prejudice or proposing that the courts should treat acts motivated by prejudice as more serious than others.

Question 6

- **Do you think that 'prejudice' is the appropriate language for the threshold of these crimes?**

Question 7

- **Do you think that the language of the threshold will affect whether these crimes are prosecuted and convicted?**

(The questions are set out again together at the end of the consultation paper. If you are responding by post it may be easier to write your answers there.)

SECTION 3: THE SCOPE OF PROTECTION

3. What are protected characteristics?

The Law rests on the definitions in the Discrimination (Jersey) Law 2013²³, and with some exceptions deals with crimes motivated by prejudice against groups with 'protected characteristics' under that Law.

The protected characteristics under this Law are-

- Race, including –
 - colour;
 - nationality;
 - national origins (including Jersey origin);
 - ethnic origins.

- Sexual orientation (including heterosexuality).

- Gender reassignment, including-
 - if the person is proposing to undergo, is undergoing or has undergone a process to change their physiological or other attributes; or
 - if a person does not intend to have any medical intervention but identifies as a member of another gender.

- Disability, consisting of-
 - one or more long-term physical, mental, intellectual or sensory impairments which can adversely affect a person's ability to engage or participate in activity

The rationale for including these characteristics is broadly that the groups in question are minorities in terms of numbers of individuals, and that they have historically been subject to adverse treatment on the grounds of the characteristic.

Some characteristics under the Discrimination Law are not protected by this legislation-

²³ [Discrimination \(Jersey\) Law 2013](#), as amended, Schedule 1

- Sex, in respect of men, women or people with intersex status.
- Pregnancy and maternity.
- Age.

These characteristics are considered important for the purposes of employment and other discrimination, but it is less clear that specifically treating these groups as the potential victims of crimes of prejudice will be helpful or effective. These omissions are considered below.

3.1 Sex

In the case of sex, which is arguably the most contentious omission, a number of jurisdictions are considering the question at this time and the debate is far from settled. The argument for inclusion are the same as those made earlier in respect of the need for the Law in general, and also that there is a recognition in modern society that there has been an imbalance in the distribution of economic, social and political power that has left women at a disadvantage in some areas. By that analysis, women in particular are vulnerable and some consideration should be taken of that position in a law such as this. Men would also benefit from the inclusion of sex, but this argument is rarely advanced as the key point.

Unless specifically exempted, this could have the effect of classifying incidences of domestic abuse and sexual assaults as crimes of prejudice if they took place between people of different sexes, and this position is supported by some commentators.

Notably, an open letter co-signed by the Fawcett Society (an equality campaign group), Citizens UK (a community organisation group), senior Jewish and Muslim faith leaders and others asked the National Police Chiefs Council (NPCC) to vote to record misogyny as a hate crime nationwide at its meeting on 11 July 2018 (which the NPCC ultimately rejected)..

They argued that-

Across the UK, a huge majority of young women (85%) and nearly half (45%) of all women have been sexually harassed in public places. Only one in ten received help after these incidents. Almost half of young women are consciously doing safety planning, including avoiding public transport at night... Categorising misogyny as a hate crime won't end violence against women, but if we can challenge the normalisation of these

attitudes on our streets and in public life we can challenge violence against women and girls in wider society. Recording these incidents also provides a vital evidence base. When Police forces treat these incidents seriously, women's trust in the police increases.

Also in the same vein, Labour MP Stella Creasy put forward an amendment to misogyny as an aggravating factor to the UK's 'upskirting bill'²⁴, which was debated in the Commons in September 2018, which was withdrawn after the UK government proposed instead a fully funded review with wider scope (see section 3.4).

However, including sex as a characteristic creates difficulties beyond those resulting from the other characteristics. The various offences around sexual assaults have recently been comprehensively rebuilt and modernised by the Sexual Offences Law 2018. They now deal with the gravity of the offence on their own terms, and the courts in sentencing will consider the effect on the victim and the wider implications for society of these crimes, which means that the core rationale for designation as hate crimes has already been addressed.

Rape and other sexual offences already have a specific set of penalties significantly above those for non-sexual assaults causing the same physical harm, and to increase those penalties by designating sexual assaults as prejudicial crimes against women would 'double-count' the sexual element. In addition, it would place sexual assaults between people of the same sex at a lower level of severity than those between sexes.

The special harm caused by domestic abuse is recognised, and a Domestic Abuse Law is currently in the initial stages of development. This will provide a statutory definition of such abuse, which is expected to provide the basis for its own sentence aggravation provisions.

3.2 Pregnancy and maternity.

Pregnancy and maternity appear as potential characteristics for discrimination in the Discrimination Law. It appears that the intention was to ensure that women did not unfairly lose employment opportunities due to pregnancy or reasonable childcare requirements. There is no body of evidence to suggest that pregnancy or maternity prejudice underpins any notable volume of crime, academic analysis of the subject is thin and a media review suggests that while there is reporting of crimes of

²⁴ Properly the Voyeurism (Offences) (No. 2) Bill, which would create a new offence under Section 67 of the Sexual Offences Act 2003 of taking pictures under clothing without consent.

prejudice against pregnant women or mothers, their maternal status is not the grounds for attack but makes the crime more repugnant and noteworthy, thus worth reporting on.

For these reasons, there is no intention to include pregnancy and maternity in the protected characteristics.

3.3 Age

While age is not a protected characteristic in the UK's legislation²⁵, the Crown Prosecution Service does record incidents against older people in a specific category of offences, where-

*'the victim is 68 or over, any incident/criminal offence which is perceived by the victim or any other person, to be committed by reason of the victim's vulnerability through age or presumed vulnerability through age'*²⁶

Many States in the US have some level of additional protection for older people in their legislation, but this primarily concerns situations where the older person is dependant to some degree and is being mistreated (akin to the rationale for protection of children). The US Department of Justice operates a dedicated 'Elder Justice initiative', which catalogues legislation intended to-

*'protect older adults from physical abuse, neglect, financial exploitation, psychological abuse, sexual abuse, and abandonment'*²⁷.

The core rationale in treating or recording crimes against older people in a specific manner appears to be the concept of 'vulnerability', in other words that crimes against older people are easier to commit. This can be seen in the instances of assault, fraud and even sexual exploitation that older people can suffer because their age results in a smaller social network, less technological capacity and physical weakness.

While crimes against older people are considered to be especially reprehensible, the vulnerability of a victim is already a factor considered by the courts in sentencing. The question must be whether

²⁵ The Crime and Disorder Act 1998, as amended

²⁶ Crown Prosecution Service Policy, 'Guidance on the prosecution of crimes against older people - Monitored Crimes Against Older People', 10 September 2018 <https://www.cps.gov.uk/publication/policy-guidance-prosecution-crimes-against-older-people>

²⁷ US Department of Justice, Elder Justice initiative <https://www.justice.gov/elderjustice/elder-justice-statutes-0>

any additional burden of crime is suffered by the aged specifically because of prejudice against them, rather than a perception that they are an easy target.

3.4 The current UK review

The UK Law Commission is currently preparing to undertake a wide-ranging review into hate crime, the funding for which was part of the agreement around withdrawal of the misogyny amendment referenced above. The terms of reference include considering-

“The current range of offences and aggravating factors in sentencing, and making recommendations on the most appropriate ways to ensure that the criminal law provides consistent and effective protection from behaviour motivated by hatred of protected groups or characteristics”²⁸.

Given that the UK has a considerably greater research capacity than Jersey, together with a population large enough to offer better sampling sizes, it would seem premature for the position in local legislation to be finalised before the arguments brought to light by the Law Commission are available. However, there is no commitment to take the same path as the UK, and responses on the matter of protected characteristics would be extremely valuable.

Question 8

- Do you think that the Law needs to make crimes motivated by gender ‘crimes of prejudice’?

Question 9

- Do you think that the Law needs to make crimes motivated by age ‘crimes of prejudice’?

Question 10

- Do you feel that the Law properly balances the rights of free speech on religion and against other religions with the protection of LGBTQ citizens and others who may be criticised on religious grounds? (If you answer no, please indicate why.)

(The questions are set out again together at the end of the consultation paper. If you are responding by post it may be easier to write your answers there.)

²⁸ Law Commission – ‘Hate Crime: Background to our Review’ https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2019/07/6.5286-LC_Hate-Crime_Information-Paper_A4_FINAL_030719_WEB.pdf

SECTION 4: PUBLIC DISORDER

4. New offences of public disorder

The draft Law also deals with some issues regarding public order, specifically by repealing and replacing some customary law and statutory offences, and creating new offences in statute. The new offences are-

4.1 Riot

A riot is described as “12 or more persons who are present together [and] use or threaten unlawful violence for a common purpose”. The offence requires that an observer, if there were one, would be in fear for their safety. It can be committed in a public or private place, and carries a penalty of up to 10 years imprisonment and an unlimited fine.

As this will now be a statutory offence the draft Law will repeal the existing *Loi (1797) sur les rassemblements tumultueux*. The Loi is completely unsuited to any modern usage as it not only prohibits ‘riot’ in the modern sense but also any gathering of 12 or more citizens or ‘under the pretext of, considering, declaring or representing ... any alleged grievance’.²⁹ (This does not seem to exempt political protest.) It also makes provision for the arrest and banishment of offenders. Understandably, it has not been used to charge anyone for a considerable time.

The old customary law provision has much in common with the old English common law offence of unlawful assembly, and it seems appropriate for Jersey to continue to retain a comparable position. Offences related to unlawful assembly in England were abolished and replaced with the offences of riot and violent disorder in the English Public Order Act 1986. The new offence of riot is thus based on the offence in England. This will allow local judges to take advantage of a body the UK case law as well as ensuring that the law is ECHR-compliant.

4.2 Affray

The word affray comes from the French “*effraier*”, to terrify. This is a long-standing Jersey customary law offence which shares roots with a common law offence in England, which was replaced by the

²⁹ *Loi (1797) sur les rassemblements tumultueux*, unofficial translation, Jersey Legal Information Board.

1986 Act. Unlike the old customary law riot, affray is fairly frequently charged. It consists of unlawful fighting, violence or a display of force, in public that might severely upset (terrify) bystanders.

Critically, the Jersey customary offence differs from the English in that it requires that there is a bystander, who is not involved in the offence but does witness it.³⁰ The new statutory offence of affray would not require that any bystanders be present, which will mean that it can be better applied where the offence is committed in a private place.

The penalty for affray will be graver than that for the English offence. This is a deliberate decision and it is proposed that this new offence should cover the same conduct a would be covered in England by the separate, but very similar but more serious offence of 'violent disorder'.

'Violent disorder' has not been adopted as an offence in Jersey as it is applicable to gatherings as small as only three people, which creates significant overlap with any offence of affray, even if those people are assembled for a nefarious purpose. There does not seem to be a pressing need for this offence in Jersey.

4.3 Threats to kill or to cause serious harm

The draft Law also provides for an offence of issuing or making threats to kill or cause serious harm. The offence will be committed if a person makes a threat with the intention that the recipient should believe that they will genuinely act on it. It is punishable by up to 10 years imprisonment and an unlimited fine.

Jersey law already makes provision for dealing with less serious threats to a certain extent in the Crime (Disorderly Conduct and Harassment) Law, and threats by electronic communications in the Telecommunications Law³¹. However, in the case of serious threats, better protection is required, and is provided for in many other jurisdictions.

In Irish legislation, *"a person who, without lawful excuse, makes to another a threat, by any means intending the other to believe it will be carried out, to kill or cause serious harm to that other or a third person shall be guilty of an offence"*³². 'Serious harm' is defined as *"injury which creates a substantial risk of death or which causes serious disfigurement or substantial loss or impairment of the mobility of the body as a whole or of the function of any particular bodily member or organ"*.

³⁰ See the Royal Court case of AG v Shewan et al (2005) JRC049A

³¹ Telecommunications (Jersey) Law 2002, Article 51 - Improper use of telecommunications system

³² Non-Fatal Offences Against the Person Act, 1997, paragraph 5.

<http://www.irishstatutebook.ie/eli/1997/act/26/section/5/enacted/en/html>

This is punishable by up to 10 years imprisonment, as is intended for the Jersey offence, but the court would take a position on the seriousness of the threats and scale the penalty accordingly. The Law follows this position.

The Law Commission of England has recommended that “*a reformed statute governing offences of violence should include an offence of threatening to kill, cause serious injury to or rape any person, including cases where the threat is conditional on the conduct of the person to whom the threat is made or any other fact or event.*”³³ This expands slightly on the intended meaning of the provision, but is broadly intended to have the same effect as the Irish provision.

There is some debate as to whether a threat to post ‘revenge pornography’ or explicit images either publicly or to friends and family be considered a threat of serious harm. For instance, should a threat to destroy a person’s business be included? If such non-physical injury was included, then the court would have to decide whether the harm threatened was genuinely ‘serious’ in the meaning of the provision, which would avoid this provision being treated as a catch-all for undesirable behaviour.

Also, it should be noted that, like murder or assault, the actions of posting ‘revenge pornography’ or taking illegal steps to destroy a business are themselves already offences, and this provision would serve to create a new, additional offence around the threat to do so.

Opinions differ on whether threats of rape should be specially identified. One school of thought suggests that rape in itself clearly constitutes serious harm, the contrary position is that this should be made explicit so that courts and the public are in no doubt at all that such threats are without question criminal offences.

Rape threats are considered to be a genuine and current issue. Firstly, as the Law Commission recognises, these are threats often made by criminal gangs to coerce victims³⁴, and secondly such threats have become a well-established feature of abusive discourse on the internet.

Research from 2014 found that 25% of women in the age range 18-24 had experienced sexual harassment online, and 7% have experienced some sort of sustained harassment.³⁵ This is therefore a live issue and there appear to be strong grounds for treating such threats as a distinct category.

There is also the question of how far the jurisdiction of the offence should extend. The Law Commission report concluded that the threatening offence should be applicable beyond the simple territorial boundaries of England and Wales. This would allow much better coverage of threats made

³³ Report on Reform of Offences Against the Person, 2015, Law Commission of England, Chapter 8.18.

http://www.lawcom.gov.uk/app/uploads/2015/11/51950-LC-HC555_Web.pdf

³⁴ Law Commission c.8.6

³⁵ Pew Research Centre (American Trends Panel), October 2014. <http://www.pewinternet.org/2014/10/22/online-harassment/>

over the internet, where jurisdictional boundaries are often a barrier to prosecution. Translating the Commission's recommendation to Jersey result in an offence that covered threats-

- made from within Jersey to someone anywhere in the world, (e.g. I will come to Spain and kill you) or;
- made by anyone anywhere but concerned some harmful action that was to be carried out in Jersey (e.g. I will get on a plane to Jersey and break your legs).³⁶

There are, obviously, challenges in relation to the enforceability of criminal offences applicable to activity carried out from within other jurisdictions. However, those challenges are not insurmountable and law enforcement agencies and prosecutors are often required to work closely together to tackle harmful on-line behaviour.

4.4 Harassment

Articles 20 and 21 of the Law deal with the offence of harassment. This offence already exists in Article 2 of the Crime (Disorderly Conduct and Harassment) (Jersey) Law 2008, and no changes are made to the nature or effect of the offence by including it in this law.

The Disorderly Conduct Law also provides for Restraining Orders, which appear in the new Law at Article 22. These Orders can be imposed on an offender, in addition to any other sentence, when a court believes that that they are required to protect a person from harassment³⁷.

These offences are moved into this new legislation to simplify the area of law and allow the public to see the statutory provision for public disorder in a single place. This was the intention behind the UK's Public Order Act 1986, and with these changes Jersey will have a clearer and more coherent approach to such offences than most jurisdictions.

Question 11

- **Do you think that continuing to base public order offences on the model of England and Wales is appropriate?**

Question 12

- **Do you think that rape threats require special identification?**

³⁶ Technically, the recommendation in full would also require that the law include threats that specifically refer to killing someone and were made against a local citizen and were to take place in a country that is a signatory to the European Convention on the Suppression of Terrorism, but this is less relevant to Jersey.

³⁷ Formerly only available in cases of harassment, the scope of Restraining Orders was expanded to cover any offence in October 2016 by the Telecommunications (Amendment No. 3) and Crime (Miscellaneous Provisions) (Jersey) Law 2016.

Question 13

- **Should threats of serious harm be restricted to physical harm, or should threats of emotional, financial and other forms of attack be included in the legislation?**

Question 14

- **Should the jurisdiction of the offence of making threats to kill or to cause serious harm extend outside of Jersey?**

(The questions are set out again together at the end of the consultation paper. If you are responding by post it may be easier to write your answers there.)

SECTION 5: PARISH HALL ENQUIRY FINES

5. Parish Hall Enquiries - fines for customary offences

5.1 Current position

A significant proportion of the public order offences in Jersey are dealt with by means of a Parish Hall Enquiry (an Enquiry). This is a part of the prosecution process, overseen by a Centenier that allows low-level offending to be dealt with by a consensual and voluntary process as an alternative to taking the matter to court. In addition, the majority first offences for of 'unaggravated³⁸' possession of personal amounts of Class B and C drugs may be dealt with at Parish Hall level by way of a written caution.

This has the advantage of keeping minor offenders out of the criminal justice system, and it has been generally established that the outcomes of the Enquiry process are positive in the sense of fairness and restorative justice³⁹.

Enquiries are used extensively to resolve minor matters. In 2017, 71% of the 4011 offences administered by the States of Jersey Police were resolved at an Enquiry. Only 15% of those offences were charged directly to Court, and 13% went on from the Enquiry to be dealt with at Court⁴⁰.

The sanctions that can follow an Enquiry are –

- Written caution – which is a formal record that the offence has been committed by the attendee. This does not form part of the attendee's criminal record. There is often an element of reparation or restoration attached including a letter of apology or compensation to a victim.
- Voluntary supervision – Supervision programmes may involve drug and alcohol education, victim awareness, restorative justice initiatives, employment and training support and bereavement counselling.

³⁸ Offences where there are no aggravating factors increasing the seriousness.

³⁹ The Conduct and Effectiveness of Parish Hall Enquiries, Miles and Raynor, 2005

⁴⁰ SoJP figures - Total 4011, resolved at Enquiry 2867, Enquiry to court 540, direct to court 604, percentages rounded.

- Deferred decision – where the attendee leaves without penalty but the Centenier reserves the right to bring charges later. Deferral is conditional on the attendee committing no further offences, so acts to incentivise good behavior.
- No further action – where, for whatever reason, although the attendee recognises that they have committed the offence the Centenier chooses to impose no further sanction.
- Charge and bail for a Court appearance – this is recognition that the matter is not suitable for resolution at the Enquiry, either because the attendee does not agree to do so, because the attendee does not believe that they are guilty or because the matter is too serious.

In addition, Centeniers are able to impose fines for minor statutory offences where they are proscribed by law, including littering, speeding and some other traffic offences.

They are not however able to impose fines for customary offences, as these have historically been developed by courts, and thus the fining power is reserved to the courts. The offences of being drunk and disorderly (or drunk and incapable), breaches of the peace and common assault fall into this category. These customary offences can be dealt with at an Enquiry, but the options for the Centenier are more restricted. In practice this would resolve what looks like a rather arbitrary division between the treatment of customary and statutory offences at this level.

Separately, Centeniers are not currently able to fine individuals for the possession of personal amounts of Class B and C drugs, as they can only issue a written caution. This has meant that a second-time minor drug offender must be dealt with by the Magistrates Court, which places additional stress on the court service as well as escalating the offence to a higher level than necessary.

5.2 Proposed changes

Article 25 of the new law would provide that, where a person accepts the decision of a Centenier, they can be fined up to £200 at a Parish Hall Enquiry (this will be periodically increased to account for inflation). It is hoped that this will resolve a difficult issue where a person persistently offends at a low level, where the individual incidents are not in themselves serious enough to be passed to the Magistrate's Court. In these cases, a Centenier does not have the option of imposing a fine, and so lacks a key sanction which might serve to modify the offending behaviour.

In addition, Article 28 (2) of the Law would make a ‘consequential amendment⁴¹’ to the Misuse of Drugs (Jersey) Law 1978 to address occasional repeat drug possession offences through the imposition of a similar fine of up to £200.

The thresholds and criteria for dealing with possession by way of a fine will be laid out in an updated direction to Centeniers, to be issued by the Attorney General as the titular head of the Honorary Police. In summary, in accordance with established practice the power to impose fines will only be applied under the following circumstances:

- The individual must admit the offence and agree that it be dealt with at the Parish Hall;
- There must be no evidence that the offence is related to the dealing or onward distribution of drugs.
- The amount in the person’s possession must be below a level that is consistent with it being for personal consumption – with the levels to be specified in the guidance.
- The Investigating officer must be satisfied the commodity in question is a drug.
- The Individual must agree to be contacted by the drug and alcohol service.
- The Individual must have previously received a written caution at Parish Hall for possession of Class B or C drug.
- The Individual must have no more than one previous appearance at Parish Hall for possession of Class B or C drug in the preceding 12 months.

5.3 Appropriateness

The capacity to issue fines for a broader range of offences would be likely to result in more offences being dealt with by Enquiries and fewer by the Magistrate.

In respect of road traffic offences that do not directly do harm to a victim, e.g. dropping litter, speeding, red light infractions, seat belt offences, etc, there can be very little objection to an Enquiry resolving a matter. However, if more customary offences were retained in Parish, there might be an increase in the number of ‘victim’ offences dealt with at this level. This raises the issue of the status of a victim in an Enquiry. In particular, the issue of whether a victim might feel ill-served if an offence is dealt with at a community justice level rather than in a court.

However, the most detailed work on the treatment of victims in the system found that victims are generally satisfied with the Enquiry. Rather than simply go through a judicial process which has the

⁴¹ A consequential amendment is a change described in one piece of legislation that has the effect of making changes to the wording of a different one. The new wording will be added to the relevant statute, or ‘overwrite’ a section of it as appropriate. In this case the words contained in Article 28 of the Crime (Produce and Public Disorder) (Jersey) Law would be added as a new Article 28A to the Misuse of Drugs (Jersey) Law 1978.

objective only of imposing a legal sanction such as a fine or sentence, academic analysis has found that the consequences of the offending was discussed to some degree at over 85% of the Enquiries, and there was 'much discussion' of the consequences at nearly 75%⁴² In over 70% of the inquiries there was some sort of apology from the offender⁴³. 100% of the victims surveyed felt that their feelings about the effect the crime had been adequately considered, and 85% felt that their opinion about the offender had been fully considered, with the remainder acknowledging that their opinion had been taken into account to some extent⁴⁴. (Note that this analysis dates from 2005.)

Question 15

- **Do you think that the sentencing powers of Centeniers should be extended to cover customary offences?**

Question 16

- **Do you think that the sentencing powers of Centeniers should be extended to cover minor repeat drug offences?**

(The questions are set out again together at the end of the consultation paper. If you are responding by post it may be easier to write your answers there.)

⁴² The Conduct and Effectiveness of Parish Hall Enquiries, Miles and Raynor, 2005, Table 9.7, p.94

⁴³ Ibid, Table 9.34, p. 104

⁴⁴ Ibid, Tables 10.6 and 10.7, p.119

6. Summary of questions

The questions at the end of the sections above are repeated below for convenience. You are free to make any comment you like in respect of the questions, but please do indicate clearly if you are answering yes or no so we can gauge the level of support for each proposal (or if you are unsure).

Section 1 – Crimes of Prejudice and the draft Law

Question 1		Overall, do you support the development of legislation to tackle crimes of prejudice (hate crimes)?
Yes	<input type="checkbox"/>	<i>Detail</i>
No	<input type="checkbox"/>	
Unsure	<input type="checkbox"/>	

Question 2		Do you think that the statutory aggravation model is the appropriate method of addressing crimes of prejudice in Jersey?
Yes	<input type="checkbox"/>	<i>Detail</i>
No	<input type="checkbox"/>	
Unsure	<input type="checkbox"/>	

Question 3		Do you agree that the test for the new stirring up hatred offences should be that the conduct is ‘threatening, abusive or insulting and the intention or effect must be to stir up prejudice’?
Yes	<input type="checkbox"/>	<i>Detail</i>
No	<input type="checkbox"/>	
Unsure	<input type="checkbox"/>	

Question 4		Do you agree that ‘stirring up’ offences should be introduced?
Yes	<input type="checkbox"/>	<i>Detail</i>
No	<input type="checkbox"/>	
Unsure	<input type="checkbox"/>	

Question 5		Do you think that where the court has found prejudice to be the motivation for an offence, it should be required to state so publicly?
Yes	<input type="checkbox"/>	<i>Detail</i>
No	<input type="checkbox"/>	
Unsure	<input type="checkbox"/>	

Section 2 - Rationale and Terminology

Question 6	Do you think that 'prejudice' is the appropriate language for the threshold of these crimes?	
Yes	<input type="checkbox"/>	<i>Detail</i>
No	<input type="checkbox"/>	
Unsure	<input type="checkbox"/>	

Question 7	Do you think that the language of the threshold will affect whether these crimes are prosecuted and convicted?	
Yes	<input type="checkbox"/>	<i>Detail</i>
No	<input type="checkbox"/>	
Unsure	<input type="checkbox"/>	

Section 3 – The Scope of Protection

Question 8	Do you think that the Law needs to make crimes motivated by gender 'crimes of prejudice'?	
Yes	<input type="checkbox"/>	<i>Detail</i>
No	<input type="checkbox"/>	
Unsure	<input type="checkbox"/>	

Question 9	Do you think that the Law needs to make crimes motivated by age 'crimes of prejudice'?	
Yes	<input type="checkbox"/>	<i>Detail</i>
No	<input type="checkbox"/>	
Unsure	<input type="checkbox"/>	

Question 10	Do you feel that the Law properly balances the rights of free speech on religion and against other religions with the protection of LGBTQ citizens and others who may be criticised on religious grounds? (If you answer no, please indicate why.)	
Yes	<input type="checkbox"/>	<i>Detail</i>
No	<input type="checkbox"/>	
Unsure	<input type="checkbox"/>	

Section 4 - Public Disorder Offences

Question 11		Do you think that continuing to base public order offences on the model of England and Wales is appropriate?
Yes	<input type="checkbox"/>	<i>Detail</i>
No	<input type="checkbox"/>	
Unsure	<input type="checkbox"/>	

Question 12		Do you think that rape threats require special identification?
Yes	<input type="checkbox"/>	<i>Detail</i>
No	<input type="checkbox"/>	
Unsure	<input type="checkbox"/>	

Question 13		Should threats of serious harm be restricted to physical harm, or should threats of emotional, financial and other forms of attack be included in the legislation?
Yes	<input type="checkbox"/>	<i>Detail</i>
No	<input type="checkbox"/>	
Unsure	<input type="checkbox"/>	

Question 14		Should the jurisdiction of the offence of making threats to kill or to cause serious harm extend outside of Jersey?
Yes	<input type="checkbox"/>	<i>Detail</i>
No	<input type="checkbox"/>	
Unsure	<input type="checkbox"/>	

Section 5- Parish Hall Enquiry Fines

Question 15		Do you think that the sentencing powers of Centeniers should be extended to cover customary offences?
Yes	<input type="checkbox"/>	<i>Detail</i>
No	<input type="checkbox"/>	
Unsure	<input type="checkbox"/>	

Question 16		Do you think that the sentencing powers of Centeniers should be extended to cover minor repeat drug offences?
Yes	<input type="checkbox"/>	<i>Detail</i>
No	<input type="checkbox"/>	
Unsure	<input type="checkbox"/>	

General

Question 17	Do you have any other comments on the structure and content of the draft Law?

Thank you for taking the time to complete the questionnaire. Lastly, would you like to make any comment about the consultation itself and suggest how we might improve public engagement in future?

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7. Privacy Notice

Strategic Policy, Planning and Performance Department Crime (Prejudice and Public Disorder) Law consultation Privacy Notice (Fair Processing Notice)

The Council of Ministers is registered as a 'Controller' under the Data Protection (Jersey) Law 2018 as we collect and process personal information about you. Our registration number is 16051. We process and hold your information in order to provide public services and meet our statutory obligations. This notice explains how we use and share your information. Information may be collected on a paper or online form, by telephone, email, or by a member of our staff, or in some cases, by another government department.

We will continually review and update this privacy notice to reflect changes in our services and feedback from service users, as well as to comply with changes in the law.

WHAT	WHY
<p>What information do we collect about you?</p> <p>We may collect the following types of information about you:</p> <ul style="list-style-type: none"> • Name • Email address • Postal address • Organisation you represent <p>We will not hold or process the names and contact details of persons other than the person making contact (or persons authorised). Should we receive this information, it will be securely and confidentially deleted and/or disposed of.</p>	<p>Why do we collect information about you?</p> <p>We need to collect and hold information about you, in order to:</p> <ul style="list-style-type: none"> • seek views of islanders and other stakeholders on the development of the Crime (Prejudice and Public Disorder) Law • provide policy advice to Ministers • register your interest in this subject area, in order that we can respond after the consultation closes • respond to Freedom of Information Requests

HOW

How will we use the information about you and who will we share your data with.

Protecting your privacy and looking after your personal information is important to us. We work hard to make sure that we have the right policies, training and processes in place to protect our manual and electronic information systems from loss, corruption or misuse. Where necessary we use encryption, particularly if we are transferring information out of the department. Encryption means the information is made unreadable until it reaches its destination.

We will use the information you provide in a manner that conforms to the Data Protection (Jersey) Law 2018.

We may not be able to provide you with a service unless we have enough information or your permission to use that information.

We will endeavour to keep your information accurate and up to date and not keep it for longer than is necessary. In some instances the law sets the length of time information has to be kept. Please ask to see our retention schedules for more detail about how long we retain your information.

Where necessary, we may disclose your information to other Government of Jersey departments or organisations, either to fulfil your request for a service to comply with a legal obligation, or where permitted under other legislation. Examples of this include, but are not limited to: where the disclosure is necessary for the purposes of the prevention and/or detection of crime; for the purposes of meeting statutory obligations; or to prevent risk of harm to an individual, etc. These

departments and organisations are obliged to keep your details securely, and only use your information for the purposes of processing your service request. We will only do this, where possible, after we have ensured that sufficient steps have been taken by the recipient to protect your personal data and where necessary we will ensure that the recipient has signed a Data Sharing Agreement. A Data Sharing Agreement sets out the purpose of the sharing and the rules that must be followed when processing your data.

We may need to pass your information to other departments or organisations outside the Government of Jersey who either process information on our behalf, or because of a legal requirement. We will only do so, where possible, after we have ensured that sufficient steps have been taken by the recipient to protect your personal data.

We will not disclose any information that you provide 'in confidence', to anyone else without your permission, except in the few situations where disclosure is required by law, or where we have good reason to believe that failing to share the information would put someone else at risk. You will be told about this unless there are exceptional reasons not to do so.

We do not share or process your information overseas. We do not use web services that are hosted outside the European Economic Area.

At no time will your information be passed to organisations for marketing or sales purposes or for any commercial use without your prior express consent.

Publication of your information	E-Mails	Telephone Calls
<p>We may need to publish your information on our website and/or in the Jersey Gazette for the following reasons:</p> <ul style="list-style-type: none"> • Where we are required by law to publicise certain information, for example the name of persons to appear at an examination in public, associated with a review of the Island Plan • Where we are required to provide statistical information about a group of people; although your data will be anonymised to protect your identity. • Where you have responded to a public consultation, although your comments will be anonymised to protect your identity. 	<p>If you email us we may keep a record of your email address and a copy of the email for record keeping purposes.</p> <p>For security reasons we will not include any confidential information about you in any email we send to you. We would also suggest that you keep the amount of confidential information you send to us via email to a minimum or use our secure online services where possible or correspond with us by post.</p> <p>We will not share your email address or your email contents unless is it necessary for us to do so; either to fulfil your request for a service; to comply with a legal obligation, or where permitted under other legislation.</p>	<p>We do not record or monitor any telephone calls you make to us using recording equipment, although if you leave a message on our voicemail systems your message will be kept until we are able to return your call or make a note of your message. File notes of when and why you called may be taken for record keeping purposes. We will not pass on the content of your telephone calls, unless is it necessary for us to do so; either to fulfil your request for a service; to comply with a legal obligation, or where permitted under other legislation.</p>

Your rights

<p>You can ask us to stop processing your information You have the right to request that the Strategic Policy, Planning and Performance Department (on behalf of the Council of Ministers) stop processing your personal data in relation to any of our services. However, this may cause delays or prevent us delivering a service to you. Where possible we will seek to comply with your request but we may be required to hold or process information to comply with a legal requirement.</p>	<p>You request that the processing of your personal data is restricted You have the right to request that we restrict the processing of your personal information. You can exercise this right in instances where you believe the information being processed is inaccurate, out of date, or there are no legitimate grounds for the processing. We will always seek to comply with your request but we may be required to</p>
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<p>You can withdraw your consent to the processing of your information</p> <p>In the few instances when you have given your consent to process your information, you have the right to withdraw your consent to the further processing of your personal data. However, this may cause delays or prevent us delivering a service to you. We will always seek to comply with your request but we may be required to hold or process your information in order to comply with a legal requirement.</p> <p>You can ask us to correct or amend your information</p> <p>You have the right to challenge the accuracy of the information we hold about you and request that it is corrected where necessary. We will seek to ensure that corrections are made not only to the data that we hold but also any data held by other organisations/parties that process data on our behalf.</p>	<p>continue to process your information in order to comply with a legal requirement.</p> <p>You can ask us for a copy of the information we hold about you</p> <p>You are legally entitled to request a list of, or a copy of any information that we hold about you.</p> <p>You can <u>submit a subject access request (SAR) using our online form</u>.</p> <p>However where our records are not held in a way that easily identifies you, for example a land registry, we may not be able to provide you with a copy of your information, although we will do everything we can to comply with your request.</p>
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Complaints

<p>You can complain to us about the way your information is being used</p> <p>If you have an enquiry or concern regarding how the Strategic Policy, Planning and Performance Department processes your personal data you can:</p> <p>Telephone: +44 (0)1534 445443</p> <p>Email: oneSPPP@gov.je</p> <p>Strategic Policy, Planning and Performance Department 19 – 21 Broad Street St Helier Jersey JE2 3RR</p> <p>Or you can also complain to the Central Data Protection Unit about the way your information is being used</p> <p>Telephone: +44 (0)1534 440514</p> <p>Email: DataProtection2018@gov.je</p> <p>Central Data Protection Unit 3rd Floor 28-30 The Parade St Helier Jersey JE2 3QQ</p>	<p>You can also complain to the Information Commissioner about the way your information is being used</p> <p>The Office of the Information Commissioner can be contacted in the following ways:</p> <p>Telephone: +44 (0)1534 716530</p> <p>Email: enquiries@oicjersey.org</p> <p>Office of the Information Commissioner 2nd Floor 5 Castle Street St Helier Jersey JE2 3BT</p>
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