Minister for Justice and Equality launches public consultation on hate speech

IRIS 2020-1:1/13

Ingrid Cunningham
School of Law, National University of Ireland, Galway

On 24 October 2019, the Minister for Justice and Equality, Charles Flanagan, launched a public consultation process on hate speech. The consultation forms a crucial part of the review of the relevant law in this area – namely, the Prohibition of Incitement to Hatred Act 1989 – and aims to ensure that Ireland's legislation on hate speech is fit for purpose and is effective in meeting the real needs of communities and individuals who experience the impact of hate speech.

The Prohibition of Incitement to Hatred Act 1989 prohibits certain forms of threatening, abusive or insulting conduct that are intended or likely to stir up hatred against a group of persons on account of certain characteristics. These characteristics are "race, colour, nationality, religion, ethnic or national origins, membership of the travelling community and sexual orientation." Threatening, abusive or insulting conduct can take the form of "Actions likely to stir up hatred", under Section 2, and includes: the publication or distribution of written material; the use of words or behaviour or the display of written material outside of a private residence; and the distribution, showing or playing of a recording of sounds or visual images. The Act also contains a provision governing "Broadcasts likely to stir up hatred", and this covers broadcasts to the general public of images or sounds under Section 3. In addition, the Act contains a provision on the "Preparation and possession of material likely to stir up hatred", which includes "the preparation and possession, or the making or possession, of written material or recordings of sounds or visual images." The Act contains some exceptions and defences; however, the conduct or material concerned – whether it involves words, written material, images or sounds – must be: "threatening, abusive or insulting" and "intended or likely to stir up hated against a group of persons" (not an individual) on account of their characteristics.

There are four preliminary issues identified for discussion in the consultation. The first issue is whether the list of protected characteristics covered by the Act should be extended to include other groups in society with shared identity characteristics – for instance, "disability or gender identity" – who are vulnerable to having hatred stirred up against them. The second issue is whether the use of the term "hatred" should be changed? Under the existing Act, in order to be an offence, the words or material must be intended or likely to stir up "hatred" against one of the protected groups that the consultation paper identifies as being

© European Audiovisual Observatory (Council of Europe) 2026

at “high threshold” risk. The consultation paper states that “the Act is designed to deal with hateful behaviour that is sufficiently severe to reach the threshold for criminal prosecution” and notes that the term “hatred” is not defined under the Act, which uses the term according to its usual meaning. Moreover, “given that prosecutions under the current Act have been relatively rare,” the consultation is seeking views as to “whether the requirement to stir up hatred should be replaced by another term (hostility or prejudice, for example)” and if so, what the implications would be for freedom of expression?

The third issue in the consultation deals with the application of the Act to online speech and notes that “while the wording of the current Act is broad enough to cover incitement via modern technologies and online behaviour [such as] online broadcasting, publication and social media discourse”, views are being sought to consider whether a more explicit wording that cited these forms of communication might result in more successful prosecutions under the legislation. The current Act, for instance, refers to distributing written material to the public or a section of the public, and the consultation organisers are seeking views as to “whether this is sufficient to capture modern day communications where posts on social media sites can be general posts or theoretically limited to followers or ‘friends’ and could therefore be argued not to be public”.

The fourth issue relates to the requirement under the current Act “to prove that the action was intended or likely to stir up hatred”. The Consultation paper notes that “in some cases prosecutions may not succeed, as this intent or likelihood cannot be proven, regardless of the actual effect of the action”; therefore, the consultation is seeking views as to “whether the need to prove intent or likelihood within the Act should be changed – for example to include circumstances where the person was reckless as to whether their action would stir up hatred.”

There are three ways in which the public and relevant stakeholders can contribute to the consultation on hate speech: through an online questionnaire posted on the Department of Justice and Equality website; a structured set of workshops designed to hear specifically from minority communities; and a public call for written detailed submissions, aimed at those with expert knowledge of the subject or the operation of the current legislation. The public consultation on hate speech runs until 13 December 2019, and a second phase dealing with hate crime (which is separate, but closely related to hate speech) will be published by the Department of Justice and Equality in 2020.

Department of Justice and Equality, 'Hate Speech Public Consultation'

http://www.justice.ie/en/JELR/Pages/Hate_Speech_Public_Consultation

© European Audiovisual Observatory (Council of Europe) 2026

Review of the Prohibition of Incitement to Hatred Act 1989, Pubic Consultation, October 2019, Consultation Document

http://www.justice.ie/en/JELR/A_Review_of_the_Prohibition_of_Incitement_to_Hatred_Act_1989.pdf/Files/A_Review_of_the_Prohibition_of_Incitement_to_Hatred_Act_1989.pdf

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026