

## Response ID ANON-R7GH-1ZP8-B

Submitted to **Consultation on Scottish Hate Crime Legislation**

Submitted on **2019-02-24 14:00:19**

### Part One – Consolidating and Modernising Hate Crime Legislation

#### 1 Do you think the statutory aggravation model should continue to be the core method of prosecuting hate crimes in Scotland?

No opinion

**Please tell us why::**

#### 2 Do you think that the language of the thresholds for the statutory aggravations would be easier to understand if it was changed from 'evincing malice and ill will' to 'demonstrating hostility'?

No

**Please tell us why::**

My dictionary defines malice as "the desire to harm someone" and hostility as "unfriendliness or opposition".

Understanding a term does not justify using it to replace something quite different.

#### 3 Do you think changing the language of the thresholds for the statutory aggravations from 'evincing malice and ill will' to 'demonstrating hostility' would change how the thresholds are applied?

Yes

**Please tell us why::**

It would lower the thresholds.

Dictionary definitions:

malice - the desire to harm someone, and

hostility - unfriendliness or opposition

Wishing harm upon someone is not the same as being unfriendly or opposing their arguments.

Changing the language to 'hostility' may well lead to increased prosecutions merely for a difference of opinion.

#### 4 Do you think that variations of sex characteristics (intersex) should be a separate category from transgender identity in Scottish hate crime legislation?

Not Answered

**Please tell us why::**

I agree with the views of the charity DSD Families.

Disorder/Different Sex Development is not an identity, it is a medical condition of abnormal chromosomes. Clearly it should never have been in the same category as transgender identity.

Not only should it be separate from the trans umbrella in general, but it should not, without any evidence or consultation with those affected, become a separate category.

DSD is on the whole an invisible medical condition and there is probably more evidence that cancer patients are subject to more hate crime for physical presentation than any DSD person.

#### 5 Do you think that the terms used in Scottish hate crime legislation in relation to transgender identity and intersex should be updated?

No

**Please tell us why::**

The term 'transsexual' matches the terms used in current law, in particular the Gender Recognition Act.

Many transsexual people derive their legal rights from this legislation and have concerns that changing the language is confusing and may lead to a dilution in their rights.

#### 6 If you think that the terms used in Scottish hate crime legislation in relation to transgender identity and intersex should be updated, what language would you propose?

**Please tell us why::**

Language should be consistent across the relevant legislation.

**Part Two – New Statutory Aggravations**

**7 Do you agree with Option A to develop a statutory aggravation for gender hostility?**

No

**Please tell us why::**

As outlined in the previous section 'hostility' does not match the language used in the legislation and may erroneously be equated to 'unfriendliness' rather than the higher threshold of 'evincing malice and ill-will'.

The term gender is confusing and there is no consistent understanding of what is encompassed by the term. Is it referring to:

- sex;
- sex-role stereotypes; or
- gender identity?

It is therefore not clear who this law is designed to protect. Part Two of the accompanying notes use sex, women (which is a category of sex), gender, sex/gender, and even non-binary in the text. Why would non-binary be included in this category when it is also included in the protected characteristic of transgender?

Using the term 'gender' is also problematic as it lacks the basis of a protected characteristic. It would make more sense to align with the language and clear definition as used in the Equality Act, that is, 'sex'. Professor Rosa Freedman gave evidence to the Parliamentary census committee recently, explaining that international law is quite clear that sex refers to biological sex.

From the accompanying notes, "It is important to understand that... the practical impact of gender-based offending falls almost exclusively on women." The recognition that this statutory aggravation primarily affects 'women' is important - women are defined as adult human females and deserve equal protection under the law, and not to have definitions and language obfuscated in such a manner.

The way this proposal stands at the moment allows for a possible prosecution of a woman being 'unfriendly' to a non-binary man. I am sure that was not the law-makers intention and trivialises the serious sex-based crimes face by women.

If this statutory aggravation was corrected phrased in terms of 'sex' and 'malice and ill-will' it is more likely to be consistent with existing statutes, and be more accurate and applicable in practice.

**8 Do you agree with Option B to develop a standalone offence for misogynistic harassment?**

Unsure

**If you agree, please tell us why and provide examples of the types of behaviour that could be captured by this offence.:**

**9 Do you agree with Option C of building on Equally Safe to tackle misogyny (this would be a non-legislative approach)?**

Yes

**If you agree please tell us why.:**

A punitive change in legislation must go hand-in-hand with education and societal change in order to prevent crimes.

**Please provide examples of the types of behaviour that could be captured by this offence.:**

**10 Do you agree with Option D of taking forward all of the identified options? (This would include development of a statutory aggravation based on gender hostility (Option A); development of a standalone offence relating to misogynistic harassment (Option B); and work to build on Equally Safe (Option C)?)**

No

**If you agree, please tell us why.:**

**Please provide examples of the types of behaviour that could be captured by this offence.:**

**11 Do you think that a new statutory aggravation on age hostility should be added to Scottish hate crime legislation?**

No

**Please provide details.:**

Again, age does not have the underlying basis of being a protected characteristic in the Equality Act. How can it be possible to legally discriminate against a trait, but then be an statutory aggravating factor in a crime?

**12 Do you think there is a need for sectarianism to be specifically addressed and defined in hate crime legislation?**

Unsure

Please give your reasons for your response:

**13 If your response to question 12 was yes, do you think a statutory aggravation relating to sectarianism should be created and added to Scottish hate crime legislation?**

Not Answered

Please give your reasons for your response.:

**14 If yes to question 12, do you think a standalone offence relating to sectarianism should be created and added to Scottish hate crime legislation?**

Not Answered

Please give your reason for this:

**15 If your response to question 12 was yes, do you agree with the Working Group that sectarianism should be defined in Scots Law in terms of hostility based on perceived Roman Catholic or Protestant denominational affiliation of the victim and/or perceived British or Irish citizenship, nationality or national origins of the victim?**

Not Answered

Please give your reason for this.:

**16 If you disagree with the Working Group's proposed definition of sectarianism, what do you believe should be included in a legal definition of sectarianism?**

Please give your reason for this:

**17 The Scottish Government recognises that legislation on its own will not end sectarianism. What else do you feel could be done to address sectarianism?**

Comments::

**18 Do you think that a new statutory aggravation on hostility towards a political entity should be added to Scottish hate crime legislation?**

No

Please provide details::

The freedom of speech to engage in political protest is vitally important.

**19 Do you think that a new statutory aggravation should be added to Scottish hate crime legislation to cover hostility towards any other new groups or characteristics (with the exception of gender and age)?**

No

Please provide details::

**20 Do you think that the religious statutory aggravation in Scottish hate crime legislation should be extended to include religious or other beliefs held by an individual?**

Unsure

Please provide details::

**21 Do you think that the statutory aggravations in Scottish hate crime legislation should apply where people are presumed to have one or more protected characteristic?**

Unsure

Please provide details::

**22 Do you think that the statutory aggravations in Scottish hate crime legislation should apply where people have an association with that particular identity (relating to religion, sexual orientation, age, gender, race, disability, transgender identity and intersex)?**

Unsure

Please tell us why::

## Part Three – New Stirring Up of Hatred Offences

**23 Do you agree with Lord Bracadale’s recommendation that stirring up of hatred offences should be introduced in respect of each of the protected characteristics including any new protected characteristics?**

Unsure

**Please provide details::**

**24 Do you agree with Lord Bracadale’s recommendation that any new stirring up hatred offences should require that the conduct is ‘threatening or abusive’?**

Unsure

**If not, what do you think the threshold should be for the offence to be committed?:**

**25 Do you think that the existing provisions concerning the stirring up of racial hatred should be revised so they are formulated in the same way as the other proposed stirring up hatred offences?**

Yes

**Please provide details::**

**26 Do you agree with Lord Bracadale’s recommendation that there should be a protection of freedom of expression provision for offences concerning the stirring up of hatred?**

Yes

**If you answered yes to the previous question, do you have any comments on what should be covered by any such ‘protection of freedom of expression’ provision?:**

<https://www.thetimes.co.uk/article/trans-lobby-has-sent-me-death-threats-says-professor-rosa-freedman-0bl8cpcqh>

This is an example of the abuse of a women who was exercising her freedom of expression rights in order to discuss proposed legal changes to the Gender Recognition Act.

In the last couple of years, many women have sought to come together to discuss the legal rights of women and how they will be impacted by any changes to the GRA. On almost every occasion, the venue of such meetings has not been disclosed until the last minute in order to protect the venue from campaigns of harassment and calls to cancel the meeting by transgender rights activists. Women have often been called transphobes and accused of stirring up hatred against transgender people.

Woman’s Place UK has organised over 20 meetings around the UK since September 2017 and I understand 18 of those have been targeted for cancellation. See: <https://womansplaceuk.org/a-womans-place-is-in-leeds/>

Forwomen.scot were called a hate group for holding a public meeting recently in order to discuss women’s rights. Such was the harassment of the venue that the risk management team only allowed the meeting to go ahead if the organising group bore the cost of employing a large security team. If the hate crime laws included the stirring up of hatred then transgender activists may successfully close down women gathering to discuss their legal rights. Additionally, all the women attending this meeting do not believe they have a gender or gender identity, but rather a sex which is the basis of the historical oppression women have faced. Ironically, any ‘gender hostility’ inclusions in hate crime legislation may not protect these women from crimes such as the harassment and violent threats they faced for attending the meeting.

It is absolutely essential that freedom of expression is protected in order to allow for the discussion and exchange of ideas, particularly those around protected characteristics. Otherwise there is a very real danger that feminism effectively becomes outlawed.

**27 Do you agree with Lord Bracadale’s recommendation that no specific legislative change is necessary with respect to online conduct?**

No

**Please provide details::**

Again, it is imperative that ‘gender’ is changed to ‘sex’.

A cursory look at posts on Twitter will reveal the online abuse that women are on the receiving end of for their feminist views. See also this collection of abusive tweets: [https://drive.google.com/drive/folders/1TCEdSyGHR-STiyrH01nTSVei7kjb8CW\\_](https://drive.google.com/drive/folders/1TCEdSyGHR-STiyrH01nTSVei7kjb8CW_)  
(TERF stands for Trans Excluding Radical Feminist and is an inaccurate, derogatory term often used alongside threats of violence towards women.)

Twitter does not cover sex in their abuse policies, only gender, so women (particularly feminists who do not believe humans can change sex) have no protection when using the platform to discuss and exchange views on upholding sex-based rights, as defined in the Equality Act.

## Part Four - Exploitation and Vulnerability

**28 Do you think a statutory aggravation (outwith hate crime legislation) should be introduced that could be applied when a perpetrator exploits the vulnerability of the victim?**

Not Answered

**Please provide details::**

**29 If you think a statutory aggravation (outwith hate crime legislation) should be introduced that could be applied when a perpetrator exploits the vulnerability of the victim, please provide details of the circumstances that you think such an aggravation should cover?**

**Please provide details::**

## **Part Five – Other Issues**

**30 Do you think that Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 about racially aggravated harassment should be repealed?**

Not Answered

**Please provide details. :**

**31 What do you think the impact of repealing section 50A of the Criminal Law (Consolidations) (Scotland) Act 1995 about racially aggravated harassment could be?**

**Comments::**

**32 Do you think that courts should continue to be required to state in open court the extent to which the statutory aggravation altered the length of sentence?**

Not Answered

**Please provide details::**

**33 Do you agree that no legislative change is needed in relation to the support given to victims of hate crime offences?**

Not Answered

**Please provide details::**

**34 Do you agree that no legislative change is needed in relation to the provision of restorative justice and diversion from prosecution within hate crime legislation in Scotland?**

Not Answered

**Please provide details::**

**35 What else do you think the Scottish Government could include in its proposals to update Scottish hate crime legislation?**

**Comments::**

## **About you**

**What is your name?**

**Name:**

Trina Budge

**What is your email address?**

**Email:**

trinabudge@outlook.com

**Are you responding as an individual or an organisation?**

Individual

**What is your organisation?**

**Organisation:**

**The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:**

Publish response only (without name)

**We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?**

Yes

## **Evaluation**

**Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)**

**Matrix 1 - How satisfied were you with this consultation?:**

**Please enter comments here.:**

**Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:**

**Please enter comments here.:**