

Hate Crime and Public Order (Scotland) Bill
Call for Views
Submission by For Women Scotland, 19 July 2020



For Women Scotland welcomes this opportunity to respond to the Call for Views on the Hate Crime and Public Order (Scotland) Bill. FWS is a grassroots women's rights organisation composed of ordinary women from across Scotland: the primary motivation for forming was concern about the Scottish Government's proposal to reform the Gender Recognition Act 2004 and the potential impact on the hard won rights and protections for women and girls. The following response concentrates on where the Bill impacts on women's rights and was formed after seeking input from the 1,500 subscribers to our newsletter.

PART 1 - AGGRAVATION OF OFFENCES BY PREJUDICE

Sex

While much of the documentation surrounding the Bill refers to gender (presumably synonymous with sex) we are pleased to see the provisional inclusion of "sex" in the Bill. Not only does this align with the protected characteristic in the Equality Act 2010 but it adheres to the Scottish Government's recent commitment to keep sex and gender (identity) separate and distinct, thus preventing any conflation of terms. This is important for many reasons, not least of all, the need to be careful of any implication that women can identify out of the harms inflicted upon them.

However, it is disappointing to see that the Bill, as proposed, does not yet include sex, choosing instead to leave it as an optional add-in for some undetermined date in the future.

Aggravation related to gender was considered some seventeen years ago in the Draft Criminal Code for Scotland^[1] and it is quite shameful that its long overdue inclusion in the hate crime framework has, once again, been overlooked. Not only does this disregard Lord Bracadale's recommendation but it contradicts the commitments of the Equally Safe programme of work to prevent and eradicate violence against women and girls.^[2]

The reluctance to legislate does little to reassure women that long-standing and increasing levels of violence and misogynistic crime are taken seriously, and actually reinforces the harms to women. It should not be the case that women are afforded less protection in hate crime provision than any other protected characteristic. Serious consideration should be given to the message this exclusion sends out.

The proposal of a working group to explore the possibility of a standalone offence of misogynistic harassment would only serve to keep women out of the hate crime framework, and certainly no alternative legislative progress can be made in this Parliamentary year. In fact, Lord Bracadale warns that this process could take several years. We wonder how, and indeed why, the tight group of Government funded women's organisations, who have conducted little in the way of wider consultation, has overridden Lord Bracadale's

[1] https://www.scotlawcom.gov.uk/files/5712/8024/7006/cp_criminal_code.pdf

[2] <https://www.gov.scot/publications/equally-safe/>

recommendations. There may be some beneficial results to come out of such a working group, but we hope its composition extends beyond the “usual suspects”, and any recommendations are clearly defined and actually enforceable in practice. However, this should be in addition to, and not at the expense of, the immediately achievable inclusion of sex in the aggravated offence.

DSD

Dsd families asked for DSD conditions to be removed not only from the characteristic of transgender identity but from the entire Hate Crime Bill. We support their position as no other medical condition is included, never mind one which is by-and-large undetectable by most people. There is a lack of robust evidence to support inclusion as a characteristic particularly when many other conditions arguably attract a higher level of abuse, for example, facial disfigurement or obesity.

We are also particularly concerned about the tendency of transgender lobbying groups to co-opt the category of intersex/variation in sex characteristics as a way to try and ‘prove’ their theory that sex is on a spectrum. This was discussed by the committee scrutinising the Census (Amendment) (Scotland) Bill^[3], although unfortunately later exacerbated by the Scottish Government ill-advisedly^[4] referring to a paper which argued that if intersex women and women who had undergone mastectomies were accepted into women-only spaces, then so should transwomen, who had similar non-normative and diverse bodies, even without reassignment surgery.^[5]

Given that DSD conditions were only included in the Offences (Aggravation by Prejudice) (Scotland) Act 2009 due to this conflation with transgender identity - which the Scottish Government has now acknowledged as inappropriate - this should be followed through with the complete removal of DSD from the Bill. In order to firmly close the door on allowing for the concept of a “female penis” to be regarded as just a variation in sex characteristics we would also like to see the category referred to with the more accurate name of differences of sex development.

Sexual Orientation

The Equality Act 2010 and the Offences (Aggravation by Prejudice) (Scotland) Act 2009 both define sexual orientation as towards persons of the same sex, the opposite sex, or either sex. This Bill however, has used the terminology “different sex” rather than “opposite sex”. This should be brought back into line with the Equality Act, as otherwise the impression is given that there are more than two sexes, which is factually incorrect.

Transgender Identity

The concept of an innate (or perhaps fluid) gender identity is unverifiable and does not have a clear definition - as demonstrated by the Justice Minister being unable to offer anything other than a circular definition.^[6] The Offences (Aggravation by Prejudice) (Scotland) Act 2009 also failed to provide any definition and, if it is to be repealed and updated in this Bill, it

[3] <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11836&i=107072&c=2137161#ScotParlOR>

[4] <http://archive.ph/Grof2>

[5] https://research-information.bris.ac.uk/ws/portalfiles/portal/139271435/Bristol_Pure_Version_PD.pdf

[6] <https://www.parliament.scot/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S5W-29943&ResultsPerPage=10>

is important that a clear and easily understood definition is now given.

The process of changing a person's legal sex in law is recognised in both the Gender Recognition Act 2004 and the Equality Act 2010. However, neither non-binary or cross-dressing are defined in the Offences 2009 Act, or given legal protection elsewhere in law. Whether a person considers themselves to have a non-binary identity is not something that is readily apparent to others, and is not a concept that many people understand or share in the same belief of its existence. Everyone is gender non-conforming in some respect - we are each unique and multi-faceted - but biological sex is binary and immutable, and we would stress the importance of access to legislation which protects females, above and beyond any personal identity held.

Cross-dressing is at best a fashion statement and at worst the public enactment of a male fetish to wear items of clothing, particularly lingerie, typically worn by women. There should be no place in law for the protection of either, and particularly not a sexual fetish that is a primary paraphilia of sex offenders.^[7] The conflation of cross-dressing within the category of gender reassignment in the Equality Act 2010 has already led to organisations such as Glasgow Life facilitating such men to indulge their sexual fantasies in the female toilets and changing rooms - much to the horror of women and girl customers.^[8]

We would suggest that both the non-binary and cross-dressing categories are removed from the transgender identity characteristic and the Bill moves forward with the two categories relating to transsexuals, which has the benefit of aligning with existing legislation and does not stray into niche fetishes or nebulous concepts.

PART 2 - OFFENCES RELATED TO STIRRING UP HATRED

The provisions on “stirring up hatred” and “possessing inflammatory material” are particularly worrying as it is highly likely that our organisation will be legislated out of existence if this Bill is to become law. Whilst our concerns apply to all the characteristics given protection in the Bill, we will focus on the conflict between the work we do for women's rights and that of the characteristic of transgender identity.

It is proposed that the freedom of expression we all take for granted in this country will now hang on the definitions of the terms used in the Bill, such as: threatening, abusive, insulting, stir up, likely, hatred - all of which are subjective, and none of which have been defined. This will inevitably require considerable police time and numerous court cases in order to provide some sort of clarification and will also cause many people to unnecessarily self-censor out of fear of prosecution.

FWS is based on the principle that sex is immutable and is a protected characteristic in law, providing women with legal rights regarding privacy, safety and fairness. We campaign for these rights to be protected and strengthened. However, some opponents are so steadfast in their belief that sex lies on a spectrum and that men can become women with no more than a statement to that effect, that, no matter how carefully we challenge these views, we

[7] https://fairplayforwomen.com/wp-content/uploads/2017/11/153.full_.pdf

[8] <http://archive.vn/tEEJ2>

are often deemed to be abusive (a term commonly defined as offensive or insulting) and stirring up hatred. A selection of these allegations are in the Appendix and include phrases such as “their rhetoric is one of hate and encourages hateful acts”, “their actions and statements do real damage to Scotland’s trans”, “stirring up transphobia” and “the speech of those proposed speakers doesn't just incite violence, IT IS VIOLENCE”. It is notable that several of the accusations come from academia and SNP politicians.

As a result, we are frequently referred to as anti-trans, transphobic, and a hate group who must be silenced “by any means necessary”^[9] - which undoubtedly would include reports to the police if the proposed hate crime Bill was law. It would be naive to assume otherwise, and indeed a SNP MP recently tagged Police Scotland into a social media post where he called a fellow group, the LGB Alliance, transphobic.^[10] Stickers displaying the dictionary definition of “woman” were deemed abusive enough for the manager of Scottish Trans Alliance to encourage reporting to the police as a hate crime, adding “We need the stats”.^[11]

Had the Bill been law during the period of consultation on reform of the Gender Recognition Act 2004 it would have been disastrous for democracy. Many women would have been terrified to voice their concerns under threat of possible prosecution and may not even have dared to submit a response to the Government consultation. Our campaigners distributed over 60,000 leaflets^[12] and we are aware that, in future, these materials could be seized and our members subjected to, at the very least, police interviews which would subsume the very short consultation period and prevent any further street campaigning. If transactivists considered our materials to be abusive, it would be nigh on impossible to mount a defence as, regardless of intent (which worryingly does not have to be proved by the prosecution), the sheer number of leaflets distributed would have made it overwhelmingly “likely” that the ‘abusive’ material would spread the message widely and hence “stir up” further abuse.

Similarly, our meetings would have been shut down while our “hate speech” was investigated, it is unlikely our adverts would have been accepted for publication by national newspapers, and there would be no opposing opinion on TV or radio programmes. In short, regardless of whether we could prove our speech, behaviour or materials to be reasonable, the invocation of hate crimes laws would have almost completely curtailed any effective opposition to a proposed change in law. While this may be seen as satisfactory to some with differing views to our group, it should not; it should serve as a warning of the threat to democracy by such authoritarian oversight on freedom of expression.

Another example of testing the real-life application of the Bill concerns a recent public letter written by a Trans Officer of the SNP,^[13] who claimed to have been set upon by a “transphobic” mob at a branch meeting several months prior. This was retweeted uncritically by many politicians who failed to recognise that neither a complaint had been registered with the party or an investigation carried out. The account was contested by many people who were present at the meeting,^[14] at which point several politicians declared that what occurred

[9] <http://archive.fo/26pIR>

[10] <http://archive.vn/6nAuG>

[11] a now deleted FB post, the screenshot of which can be seen in Appendix A

[12] <http://archive.vn/wfYoU>

[13] <http://archive.vn/QHBEI>

[14] <http://archive.vn/tlZiS>

was largely irrelevant, the only important factor was the individual's belief that they had been abused. This, of course, is where this iniquitous Bill leads us - a subjective feeling of abuse and a small meeting allegedly growing into a "den of transphobia" could have led to very serious, and wholly inappropriate, legal consequences for a number of SNP women.

Several posts on Twitter, and a follow up essay, by JK Rowling have been in the news over the last few weeks. Not only was she accused of transphobia and inciting hatred as her words were spread far and wide^[15] - and thus potentially liable to criminal proceedings under the Bill - but the tidal wave of abuse received in return^[16] shows very clearly that prosecutions flow only one way. Women are open to prosecution for seemingly innocuous comments such as "sex is real" but are afforded no such protection in law for the vile, misogynistic and violent threats levelled at them.

The Bill as it currently stands is fundamentally flawed and, unless amendments are made, is inevitably heading towards charges being brought against women for stating universal truths about sex, science and biology. We note, for example, the recent case where a woman was banned from a social media site for hateful conduct after stating "Only females get cervical cancer".^[17] While the likelihood of successful prosecutions is unknown, and perhaps may be low, it is the threat of vexatious complaints made to the police that will impact on people's ability to freely discuss women's sex-based rights.

From our experience we foresee significant problems with the proposed extension of stirring up offences to a larger group of characteristics, especially transgender identity. These risks might be somewhat reduced by removing the term "abusive" which is open to wide interpretation and, as our examples have shown, is all too easily taken as an offence by a person or group, rather than a quite legitimate criticism of an unscientific belief. Including transgender identity in the freedom of expression protections may also mitigate the risks, although it is of concern that those already proposed for other characteristics offer significantly weaker protections than the equivalent in England and Wales.

Overall, we do not think that such amendments will offer sufficient protection against the problems we have identified and call for Part 2 to be removed from the Bill.

[15] <http://archive.vn/d3nds>

[16] <http://archive.vn/p6pV2>

[17] <http://archive.vn/Ai0sP>

APPENDIX

Comments about FWS

“@ForwomenScot...They’re an anti-trans hate group”

<http://archive.ph/KGRv1>

“I’m really disturbed to see so-called women’s groups stirring up hate towards a female councillor, encouraging abuse towards her and attacking her for blocking abusive voices...FWS is a hate group.” *said by a researcher of a SNP MP*

<http://archive.vn/uquZ8>

“FWS’s abusive, bullying, pile-on tendencies or their repeated demonisation of trans individuals and allies” *said by a researcher of a SNP MP*

<http://archive.vn/sjpvE>

“FWS: they’re a pernicious hate group” *said by a researcher of a SNP MP*

<http://archive.vn/dfa0R>

“The transphobic @ALLIANCELGB is raising tens of thousands of pounds. Much of it comes from far right sources abroad. And there are multiple pseudonyms donating. Who is getting the cash? How is it being being spent? Are accounts available? @policescotland” *said by a SNP MP*

<http://archive.vn/6nAuG>

“Forwomenscot...are a single issue anti-trans account”

<http://archive.vn/9fanV>

“ForWomenScot, a prominent anti-trans Scottish campaign group”

<http://archive.vn/gSMIS>

“LGBT+ folks can spot a hate group a mile off. twitter.com/ForwomenScot/...”

<http://archive.vn/2xH0G>

“We all already knew that fpfw and fws were transphobic hate groups”

<http://archive.vn/82T6n>

“anti-trans group...@ForWomenScotland”

<http://archive.vn/4O0oX>

“I’m a trans journalist who exposes transphobic hate groups. In the past twelve months I’ve exposed two, FairPlayforWomen and ForWomenScot”

<http://archive.vn/VAYS2>

“gross transphobe group forwomen.scot”

<http://archive.vn/29NVX>

Referring to a photo of our co-founder and other attendees of a meeting at Parliament:
“Transphobic scum. Every last one of them”

<http://archive.fo/euVYg>

“Tax exile press barons and media moguls whip up a hate campaign against trans people in concert with fundamentalist Christians and Conservative politicians, and @ForwomenScot peddle the filth in Scotland. Gender critical feminism is fascism.”

<http://archive.md/0AhuX>

“ForWomenScot want you to attack rape crisis centres, women's libraries, women's conferences and LGBT+ school clubs. They want you to excuse cis men for their crimes and instead blame trans people for merely existing.”

<http://archive.ph/Y1ThR>

Referring to when Glasgow Women's Library cancelled our meeting: “I'm dead sure the wee bigot who made the booking for her anti-trans friends knew that, which is why she omitted the hate group's name from the booking field.”

<http://archive.ph/Tx1gM>

“Cw/transphobia...GC is a hate movement and we NEED to stop giving it a seat at the table”
said by a SNP Women's Officer

<http://archive.vn/COxDV>

With a link to our meeting in Glasgow: “the Scottish transphobes are at it again”

<http://archive.ph/LiiAT>

“anti-trans hate groups like Women's Place and For Women Scotland”

<http://archive.fo/hUEyP>

“encouraging an anti-trans nazi revisionist”

<http://archive.vn/8CzwK>

“ForWomenScot are explicitly setting out to deceive people about the levels of support in various political parties for their anti-trans views.” *said by a former director of Equality Network*

<http://archive.vn/2RcRM>

“There are many people who will couch this in terms of “balanced debate” or “legitimate concerns”, this is not an argument that we accept. We do not accept it for xenophobia and we do not accept it for transphobia.” *said by @SNPStudents*

<http://archive.vn/mjWxB>

“The mask of so-called “gender critical feminists” is slipping. They do not have “reasonable concerns”. Their rhetoric is one of hate and encourages hateful acts. Keep them out of Scottish politics and off Scotland's streets.”

<http://archive.vn/QM3aw>

From the Guardian, 01 Feb 2019

“While For Women Scot do a sterling job of making transphobia look respectable, their actions and statements do real damage to Scotland’s trans and non-binary community”, “As a trans woman, I feel this whole event is designed to make transphobia appear respectable”
<http://archive.vn/VB6PL>

Mhairi Black MP and Rhiannon Spear SNP National Women’s Convenor referring to women’s concerns as transphobia and bigotry and telling women “Don’t be a Jeremy Hunt”
<http://archive.vn/ZOaBp>

“Sisters Uncut Edinburgh openly condemns the hatred towards trans women that is being spread by so-called 'women's' groups like For Women Scotland.”
<http://archive.vn/V1aPI>

When asked not to call feminists TERFs: “You don’t get to define if you’re actions are hatefull. You don’t even have to intend to be hatefull. You just are.”
<http://archive.vn/XFh5s>

“T3RFs aren’t merely “women who disagree with me.” This isn’t a debate. Trans women are women. Trans men are men. You’re engaging in a hate crime if you deny their existence or right to self determination.” *said by a Guardian journalist*
<http://archive.vn/kjqb0>

“These people want trans women dead. Make them afraid.”
<http://archive.fo/EiwXr>

Comments about Printed Materials

“forw*men[dot]scot are posting transphobic leaflets through doors in Glasgow”
<http://archive.fo/mlRBJ>

“@ForwomenScot just came home from holiday to see your transphobic bullshit flyer. Just fuck off you bigoted cunts. Just stop spewing your hate filled shit.”
<http://archive.fo/JFAhV>

““Do you think... a man does not become a woman just because he says so?” this is literally transphobia, the end.”
<http://archive.fo/v1wiG>

“Found this nasty bit of irl transphobic propaganda courtesy of hate group "forw*menscot". Scratched it up with a coin til it was unreadable. Keep your eyes peeled folks.”
<http://archive.ph/OcNb8>

“No transphobia in my uni thank you!!!”
<http://archive.ph/P1z5s>

“For Women Scot...distributes propaganda full of lies about the reforms. That’s violence against trans women. Who are women. So violence against women.”

<http://archive.fo/UL5zK>

“Forwomen[dot]scot who do everything they can to attack trans people online and in public places, including flyposting transphobic images. It’s okay though, as people now know who they are.”

<http://archive.vn/F1pau>

From an email received 15 March 2019

“FARTS. That’s not an insult. It’s an acronym for the hateful bigots you are. But any bigot with a rage on can quietly leave leaflets all over the place spouting their misrepresentation, lies and hatred.”

Do we incite hatred and violence - or is it the other way round?

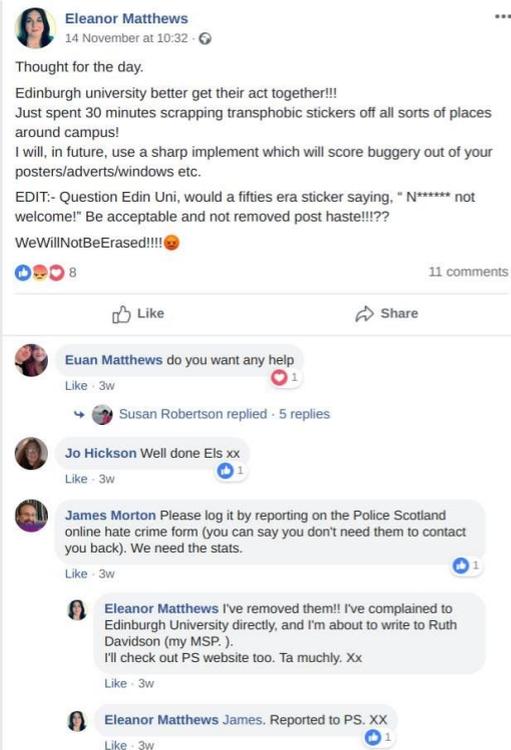
“Just caught wind that a TERF organisation has been flyering around Edinburgh, in public spaces full of people. If you catch one of these assholes in the act, please undo their work or throatpunch them. Transphobia has no place in 2019.”

<http://archive.fo/6s1y9>

“That would be this group which opposes the ECHR, is homophobic, transphobic abusive, hateful, and paid for anti-trans ads in the paper along with ForWomenScotland and LGB Alliance, at whose Scottish launch they spoke?” *said by a researcher of a SNP MP, initially referring to the Women Make Glasgow group*

<http://archive.vn/934Vw>

Comment by James Morton, Scottish Trans Alliance:



The screenshot shows a Facebook post by Eleanor Matthews from 14 November at 10:32. The post text reads: "Thought for the day. Edinburgh university better get their act together!!! Just spent 30 minutes scrapping transphobic stickers off all sorts of places around campus! I will, in future, use a sharp implement which will score buggery out of your posters/adverts/windows etc. EDIT:- Question Edin Uni, would a fifties era sticker saying, " N***** not welcome!" Be acceptable and not removed post haste!!!!?? WeWillNotBeErased!!!!!! 🙄". The post has 8 reactions and 11 comments. The comments are: Euan Matthews: "do you want any help" (1 like); Susan Robertson: "replied · 5 replies"; Jo Hickson: "Well done Els xx" (1 like); James Morton: "Please log it by reporting on the Police Scotland online hate crime form (you can say you don't need them to contact you back). We need the stats." (1 like); Eleanor Matthews: "I've removed them!! I've complained to Edinburgh University directly, and I'm about to write to Ruth Davidson (my MSP.). I'll check out PS website too. Ta muchly. Xx" (1 like); Eleanor Matthews: "James. Reported to PS. XX" (1 like).

Comments about Meetings

Regarding a proposed meeting at Parliament about the women's rights declaration: "anti-trans event" and "maybe that Guy Fawkes fellow had some good ideas."

<http://archive.ph/tbZ3r>

Regarding the cancelled meeting at Edinburgh University: "speakers with a history of transphobia", the harmful impact of this event on the trans and non-binary community", "speakers who do not accept trans identities as valid", "contravenes the University's commitment to Dignity and Respect and Trans Equality and these speakers should not be allowed this space"

<http://archive.ph/hkQw8>

"Transphobic event at Edinburgh Uni"

<http://archive.ph/upNoV>

"The speech of those proposed speakers doesn't just incite violence, IT IS VIOLENCE." *said by a research project manager at Edinburgh University*

<http://archive.ph/XtPUI>

From the Scotsman, 08 May 2019

"University debate on women's rights branded 'transphobic'", "stirring up transphobia", "a gathering of misogynistic transphobes...they are a vocal, hateful minority", "bigots...who use these opportunities to legitimise their hatefulness: their actions put lives at risk, encourage marginalisation & discrimination"

<http://archive.vn/d3mIV>

From the Scotsman, 23 June 2019

"Now those within our communities who are experiencing that same level of hatred, of stigma, of aggression and in this case of transphobia, they need to know that we will stand together again. I am sorry that this parliament very recently was used as a platform for transphobic hatred and bigotry, but I am determined that we won't let that tell us we're going to lose."

Said by Patrick Harvie MSP at Edinburgh Pride, and in reference to the meeting at Parliament hosted by Joan McAlpine MSP with guest speaker Meghan Murphy, a Canadian feminist.

<http://archive.vn/Yjb9P>

"Silent Protest Against Transphobic For Women Scot Meeting...For Women Scot are one of the most active transphobic groups in Scotland. They have campaigned extensively against reforms to the Gender Recognition Act. Members of the group have put up transphobic leaflets and stickers in Glasgow and Edinburgh. One of their leaders denied the existence of non-binary people at a committee in the Scottish Parliament. Their Twitter account regularly misgenders trans people."

<http://archive.fo/FmOmg>, <http://archive.fo/quABi>

Appealing for the meeting venue to “cancel these bigots”

<http://archive.fo/KUK19>

“Absolutely disgusted at @EdinburghUni and @MorayHouse for planning a transphobic and fear mongering event, and giving the likes of Julie Bindel and Rosa Freedman the opportunity to spread their bigotry. Not only are you failing your trans students, you are putting them in danger.”

<http://archive.fo/0HBGL>