

## Response ID ANON-2AZ9-9S5X-Y

Submitted to **Law Commission consultation on hate crime laws**

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### About you

#### What is your name?

**Name:**

For Women Scotland

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

**Enter the name of your organisation :**

For Women Scotland

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

Response on behalf of organisation

#### If other, please state::

#### What is your email address?

**Email:**

info@forwomen.scot

#### What is your telephone number?

**Telephone number:**

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

#### Explain to us why you regard the information as confidential:

### Chapter 9: A proposed model for reform

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

Other (please expand)

#### Please expand on your answer :

We neither agree nor disagree.

We are responding to this consultation as a Women's right organisation based in Scotland. Our responses are informed by the proposed Hate crime Bill in Scotland. We represent the interests of a group that is not covered by the hate crime legislation (women and girls) while being one of the most targeted demographics (domestic violence and femicide rates are increasing while rape conviction rates are falling). We are dissatisfied with the fact that Sex, a protected characteristic in the Equality Act 2010, is not covered by the existing legislation (but might be in the proposed reform, although there needs to be no doubt about the definition of Sex as a protected characteristic). We believe this hinders efforts to eradicate violence against women and girls.

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.

While women are not specifically covered as a group, transgender identity is. Firstly (and we will go back to this in our further responses) the existing and proposed legislation does not offer a coherent definition of "transgender identity". The Equality Act 2010 mentions "gender reassignment" as a protected characteristic, not gender identity. The concept of an innate (or perhaps fluid) gender identity is unverifiable, has a very tenuous basis in science (<https://theelectricagora.com/2020/06/02/on-sex-and-gender-identity-perspectives-from-biology-neuroscience-and-philosophy/>) relies on no objective and coherent criteria (is it a matter of simple declaration?) and does not have a clear definition. Secondly, we believe that including some protected characteristics while excluding others in the proposed legislation creates a hierarchy of where some are seen as more worthy than others.

We are also very concerned by the lack of clarity around the concept of "stirring up hatred" for instance, which appears to be central to the existing legislation and the proposed reform. Such lack of clear definition makes this reform unworkable and prone to highly subjective and variable interpretations. We will expand in our next responses.

### Chapter 10: How should characteristics be selected?

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

Other (please expand)

**Please expand on your answer :**

Neither agree nor disagree

We are concerned that Sex is excluded from the list of protected characteristics in the existing legislation. As explained in question 1, misogynistic crimes are on the rise a conviction rates for some of the most serious crimes against women are very low. The government should increase its effort to eradicate and/or punish violence against women and girls. Instead, it is giving the impression that these crimes are not motivated by hatred but "random" attacks.

We have great concern about the definitions of some of the protected characteristics covered by the existing legislation and proposed reform.

The meaning of transgender identity in the existing legislation reads (Section 146(6) of the CJA 2003) "references to being transgender include references to being transsexual, or undergoing, proposing to undergo or having undergone a process or part of a process of gender reassignment". This definition is intended to be inclusive, not exhaustive. It derives from this non exhaustive definition that anyone who declares themselves to be in the process of undergoing gender reassignment is covered by the legislation. There is therefore no objective criterion to define a transgender identity. The stipulation that this definition is not exhaustive could mean that transvestism and non binary identities are included. We believe that it is important that a clear, objective definition of transgender identity be given in the reformed legislation.

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 even believe exists. 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 ([https://fairplayforwomen.com/wp-content/uploads/2017/11/153.full\\_.pdf](https://fairplayforwomen.com/wp-content/uploads/2017/11/153.full_.pdf)). 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 distress of women and girl customers (<http://archive.vn/tEFJ2>).

We would suggest that it must be stated clearly that the transgender identity category does not include non-binary identity or cross-dressing and that the proposed reform moves forward with the categories relating to transsexuals, which has the benefit of aligning with existing legislation and does not stray into niche fetishes or nebulous concepts.

The category "sexual orientation" must be defined with a clear understanding that the word "sex" (in attraction to same, opposite or both sexes) means biological sex and is not to be conflated with gender identity. Sex and Gender have different meanings and conflating both will lead to clear conflicts in the case of sexual orientation (as a man who identifies as a woman and a woman are not in a same sex relationship).

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

Other (please expand)

**Please expand on your answer :**

Other

(1) We agree that the need to include a characteristic in the hate crime legislation must be evidence based. In this regard, the exclusion of the "Sex" category is unjustifiable considering the high rate of offences and crimes committed against women and girls: 1 in 3 women and girl have suffered harassment of a sexual nature and 1 in 5 have been sexually assaulted or raped, 3 women are killed by men (often ex partners) each week in the UK. In comparison, the murder rate of transgender people in the UK is 1 person per year, making transgender people one of the safest demographics in the country when it comes to violent crime (<https://www.channel4.com/news/factcheck/factcheck-how-many-trans-people-murdered-uk>).

(2) We agree that establishing the occurrence of additional harm should be evidence based although we are not sure what the means to establishing and measuring additional harm could be and we fear that such judgment could be strongly influenced by who is claiming to be more vulnerable, which is open to subjective interpretations.

For instance, it is very possible (and it has indeed happened) that a disabled person (autistic in one well publicised case) could misgender a transgender person because their disability prevents them from reading social cues (gender presentation) while still being able to recognise the person's sex. In this case, an autistic young man was convicted and had to pay a fine for the offence of misgendering a police officer. We believe this is a case of a poorly managed conflict of rights where the perceived offence towards one protected characteristic (transgender) was deemed more "harmful" than convicting a disabled young man for the offence of perceiving a transgender person's sex rather than their gender identity.

<https://www.birminghammail.co.uk/news/uk-news/duty-transgender-police-officer-left-17652064> . The offence of "misgendering" is an offence that is entirely specific to one group (transgender) and is not considered to cause harm to any other group. In this case would such an offence be considered additional harm or a new type of offence?

(3) We agree that the protection of characteristics needs to be "workable in practice". This is why clear definitions based on objective criteria are crucial. Therefore, as previously suggested, we believe that "sex" (in sexual orientation) and "transgender identity" need to be defined precisely in the legislation in a way that is easily identifiable, understandable, objective and specific. In addition, there must be strategies clearly spelled out to deal with potential conflicts between protected characteristics (such as mentioned above). This seems to be lacking in the current proposal.

As "Sex" is not among the included characteristics, we foresee a clear inequity and imbalance between the protection of male people claiming a "female identity" and the rights of women to have their specific (biological and physiological) needs recognised, and to gain satisfactory protection for their specific vulnerabilities

(which particularly include sexual offences perpetrated by male people irrespective of gender identity).

## Chapter 11: The existing protected characteristics

**Consultation Question 4: We invite consultees' views on whether the definition of race in hate crime laws should be amended to include migration and asylum status; and/or language.**

**Please share your views below:**

As our group's primary focus is on women's rights we do not take a specific position on this issue.

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

Other (please expand)

**Please expand on your answer:**

As our group's primary focus is on women's rights we do not take a specific position on this issue.

**Consultation Question 6: We do not propose to add sectarian groups to the groups protected by hate crime laws (given that they are already covered by existing protection for "religious groups"). Do consultees agree?**

Other (please expand)

**Please expand on your answer:**

As our group's primary focus is on women's rights we do not take a specific position on this issue.

**Consultation Question 7: We invite consultees' views on whether "asexuality" should be included within the definition of sexual orientation.**

**Please share your views below:**

People are discriminated against (and still sentenced to death in parts of the world) for being homosexual or bisexual. Prejudice against homosexuality is the reason sexual orientation is included as a protected characteristic in the EA10 and in hate crime legislation.

We do not believe "asexual" should be added in the list of characteristics. There is no evidence that people are discriminated against for being asexual. We believe the inclusion of protected characteristics should be strongly supported by empirical evidence.

**Consultation Question 8: We provisionally propose that the current definition of "transgender" in hate crime laws be revised to include:**

No

**Please expand on your answer:**

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 ([https://fairplayforwomen.com/wp-content/uploads/2017/11/153.full\\_.pdf](https://fairplayforwomen.com/wp-content/uploads/2017/11/153.full_.pdf)). 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 (<http://archive.vn/tEFJ2>).

We would suggest that it must be stated clearly that the transgender identity category does not include non-binary and cross-dressing categories and that the proposed reform moves forward with the categories relating to transsexuals, which has the benefit of aligning with existing legislation and does not stray into niche fetishes or nebulous concepts.

No

**Please expand on your answer:**

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 ([https://fairplayforwomen.com/wp-content/uploads/2017/11/153.full\\_.pdf](https://fairplayforwomen.com/wp-content/uploads/2017/11/153.full_.pdf)). 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 (<http://archive.vn/tEFJ2>).

DSD (intersex) families, the UK information and peer support charity for families of children diagnosed with differences of sex development, asked for DSD conditions to be removed not only from the characteristic of transgender identity but from the entire Hate Crime Bill in Scotland. 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 (<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11836&i=107072&c=2137161#ScotParlOR>), although unfortunately later exacerbated by the Scottish Government ill-advisedly (<http://archive.ph/Grof2>) 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 ([https://research-information.bris.ac.uk/ws/portalfiles/portal/139271435/Bristol\\_Pure\\_Version\\_PD.pdf](https://research-information.bris.ac.uk/ws/portalfiles/portal/139271435/Bristol_Pure_Version_PD.pdf)). 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.

**Please share your views below:**

We would suggest that it must be stated clearly that the transgender identity category does not include the non-binary and cross-dressing categories and that the proposed reform moves forward with the categories relating to transsexuals, which has the benefit of aligning with existing legislation and does not stray into niche fetishes or nebulous concepts.

**Consultation Question 9: We invite consultees' views on whether the current definition of disability used in the Criminal Justice Act 2003 should be retained.**

**Please share your views below:**

As our group's primary focus is on women's rights we do not take a specific position on this issue.

**Consultation Question 10: We invite consultees' views on whether criminal conduct based on a wrongly presumed lack of disability on the part of the victim should fall within the scope of protection afforded by hate crime laws.**

**Please share your views below:**

As our group's primary focus is on women's rights we do not take a specific position on this issue.

## **Chapter 12: Gender or sex**

**Consultation Question 11: We provisionally propose that gender or sex should be a protected characteristic for the purposes of hate crime law. Do consultees agree?**

Other (please expand)

**Please expand on your answer:**

The Equality Act 2010 lists Sex (not gender) as a protected characteristic. We believe that the hate crime legislation should align with the Equality Act 2010. Again, we would like to stress the importance accurate and precise definitions for the purpose of granting protection via the hate crime legislation. While sex is defined in law, gender is not. Sex is the biological characteristic of being either male or female while gender is understood as being a set of characteristics (variable and ill-defined, ranging from dress code to personality traits, to physical attributes) that are associated with either sex. Therefore, these terms are not synonymous and should not be used interchangeably. Sex is the term that is defined in law and the basis of the specific protections and rights granted to women and girls. It should be the protected characteristic in the new hate crime legislation.

There has been an ongoing effort from lobby groups to conflate gender and sex. On the one hand, women are told that gender and sex are interchangeable terms and that therefore referring to gender for the purpose of granting rights and protections does not conflict with their existing sex-based rights. On the other hand, women are told that the rights and protections they were granted on the basis of sex can be applied to anyone with a "female gender" including males with a transgender identity (as per the definition in the existing legislation it "includes references to being transsexual, or undergoing, proposing to undergo or having undergone a process or part of a process of gender reassignment). "Transgender identity" is already covered by the existing legislation and proposed reform. Sex, not gender, must be the protected characteristic covered in the new legislation, with a particular emphasis on women and girls vulnerabilities.

**Please share your views below:**

Again we insist that the terms should be chosen carefully and be legally defined. The legislation should mention sex-specific (not gender-specific) offences, for instance.

We agree that sexual offences, forced marriage and FGM which are sex-specific (not gender-specific) should be included in the legislation.

**Consultation Question 12: We invite consultees' views as to whether sex or gender-based hate crime protection should be limited to women or include both women and men.**

**Please share your views below:**

As stated earlier we believe that it is important that the inclusion of protected categories must be evidence based. While there is a plethora of evidences that females are subjected to misogynistic crimes and offences (rapes, indecent exposure, upskirting, voyeurism, physical assault, sexual harassment, murder by male partners and ex-partners) for being females, there is no strong evidence that men are exposed to similar crimes for being of the male sex.

We still live in a society where women are constantly sexualised while men are not, where men's bodily autonomy and integrity are accepted as a given but where women's dignity, autonomy and safety are under constant or recurrent threats due to deeply held misogynistic beliefs and cultural practices that still promote men's entitlement to women's bodies and sexual and reproductive labour.

The latest attempts to decriminalise buying poor/groomed women for sex, to legalise surrogacy (womb rental), to present female hypersexualisation as empowerment in conjunction with the abysmal conviction rate for rapes and sexual assaults attest that such perceptions are still widespread and seen as "normal".

We believe it is specifically women and girls (females) who should be the protected category in the new legislation.

**Consultation Question 13: We provisionally propose that a protected category of "women" is more suitable than "misogyny", if sex or gender-based hate crime protection were to be limited to the female sex or gender. Do consultees agree?**

Other (please expand)

**Please expand on your answer:**

The new category should be limited to people of the female sex (women and girls). Misogyny is directed at adult human females because they are such, not because they have identified into a particular category

**Consultation Question 14: We provisionally propose a protected category of "sex or gender" rather than choosing between either "gender" or "sex" if hate crime protection were to adopt a general approach. Do consultees agree?**

No

**Please expand on your answer:**

We disagree. The protected characteristic should be Sex, not Gender.

As stated above:

The Equality Act 2010 lists Sex (not gender) as a protected characteristic. We believe that the hate crime legislation should align with the Equality Act 2010. Again, we would like to stress the importance of accurate and precise definition for the purpose of granting protection via the hate crime legislation. While sex is defined in law, gender is not. Sex is the biological characteristic of being either male or female while gender is understood as being a set of characteristics (variable and ill-defined, ranging from dress code to personality traits, to physical attributes) that are associated with either sex. Therefore, these terms are not synonymous and should not be used interchangeably. Sex is the term that is defined in law and the basis of the specific protections and rights granted to women and girls. It should be the protected characteristic in the new hate crime legislation.

There has been an ongoing effort from lobby groups to conflate gender and sex. In one hand, women are told that gender and sex are interchangeable terms and that therefore referring to gender for the purpose of granting rights and protections does not conflict with their existing sex-based rights. On the other hand, women are told that the rights and protections they were granted on the basis of sex can be applied to anyone with a "female gender" including males with a transgender identity (as per the definition in the existing legislation it "includes references to being transsexual, or undergoing, proposing to undergo or having undergone a process or part of a process of gender reassignment). Transgender identity is already covered by the existing legislation and proposed reform. Sex, not gender, must be the protected characteristic covered in the new legislation, with a particular emphasis on women and girls (females) vulnerabilities.

## **Chapter 13: Age**

**Consultation Question 15: We invite consultees' views on whether age should be recognised as a protected characteristic for the purposes of hate crime law.**

**Please share your views below:**

As our group's primary focus is on women's rights we do not take a specific position on this issue.

**Consultation Question 16: We invite consultees' views as to whether any age-based hate crime protection should be limited to "older people" or include people of all ages.**

**Please share your views below:**

As our group's primary focus is on women's rights we do not take a specific position on this issue.

## **Chapter 14: Other additional characteristics**

**Consultation Question 17: We invite consultees' views on whether "sex workers" should be recognised as a hate crime category.**

**Please share your views below:**

Our position on prostitution is that it constitutes violence and abuse against women in and of itself.

It is crucial to understand what drives prostitution and to find solutions towards ending the violence and dehumanisation that women face when being coerced or groomed into engaging in this activity. Some of the most shocking statistics about prostitution are as follows: Almost 70% of women in prostitution (in the US for instance) were sexually abused as children, as much as 81% suffer from PTSD as a result of having a history of prostitution (this is higher than for war veterans), the murder rates for prostituted women in the US is almost 100 times higher than for the general population, depending on locations the prevalence of physical assaults on prostituted women varies from 57% (Canada) to 93% (Cambodia).

These figures clearly demonstrate that prostitution is not "work" but abuse. The driving forces behind prostitution are not the expression of women's free will but, in the majority of cases, financial desperation in conjunction with a history of grooming, rape, drug addiction, trafficking or low self-esteem, and of course, the idea that men are entitled to sex and to women's bodies. It is clear that in order to induce a cultural shift that would benefit women in prostitution and women's status in society overall, we need to be able to criminalise the men who enable and benefit from this abuse, while the women victims of prostitution must be given the opportunity to heal and to exit this dehumanising "trade".

The appalling example of the Leeds "managed zone" which has seen an increase in the number of reported assaults and harassment against women both in the sex trade and outside of the sex trade (school girls, mothers with infants) shows that decriminalising the buyers leads to the notion that men are entitled to any woman or girl's body regardless of consent. In a world where women are already under constant pressure to be sexually available to men and where rapes are hardly ever prosecuted, encouraging the idea that it is lawful to demand access to desperate and vulnerable women's bodies is highly unlikely to deter predatory behaviours against women from men.

**Consultation Question 18: We invite consultees' views on whether "alternative subcultures" should be recognised as a hate crime category.**

**Please share your views below:**

As our group's primary focus is on women's rights we do not take a specific position on this issue.

**Consultation Question 19: We invite consultees' views on whether "people experiencing homelessness" should be recognised as a hate crime category.**

**Please share your views below:**

As our group's primary focus is on women's rights we do not take a specific position on this issue.

**Consultation Question 20: We invite consultees' views on whether "philosophical beliefs" should be recognised as a hate crime category.**

**Please share your views below:**

As our group's primary focus is on women's rights we do not take a specific position on this issue.

**Chapter 15: The legal test for hate crime laws**

**Consultation Question 21: We provisionally propose that the legal test that applies in respect of enhanced sentencing should be identical to that which applies to aggravated offences. Do consultees agree?**

Other (please expand)

**Please expand on your answer:**

As our group's primary focus is on women's rights we do not take a specific position on this issue.

**Consultation Question 22: We provisionally propose that the current legal position – where the commission of a hate crime can be satisfied through proof of "demonstration" of hostility towards a relevant characteristic of the victim – be maintained. Do consultees agree?**

Other (please expand)

**Please expand on your answer:**

As our group's primary focus is on women's rights we do not take a specific position on this issue.

**Consultation Question 23: We invite consultees' views as to whether the current motivation test should be amended so that it asks whether the crime was motivated by "hostility or prejudice" towards the protected characteristic.**

**Please share your views below:**

We believe that unless these terms are defined and commonly understood, there is a risk that subjective measures will be applied which in turn could impact on free speech: what is one person's prejudice, is another person's firmly-held belief.

**Chapter 16: Aggravated offences**

**Consultation Question 24: We provisionally propose that the model of aggravated offences with higher maximum penalties be retained as part of future hate crime laws. Do consultees agree?**

Other (please expand)

**Please expand on your answer:**

There is little evidence that harsher sentences act as a deterrent in any field of law. However, care should be taken to ensure that offences are seen to be treated equitably and with comparable gravity to other crimes. We suggest that the Sentencing Council would be well placed to consult and advise on this.

**Consultation Question 25: We provisionally propose that the characteristics protected by aggravated offences should be extended to include: sexual orientation; transgender, non-binary and intersex identity; disability, and any other characteristics that are added to hate crime laws (in addition to the current characteristics of race and religion). Do consultees agree?**

No

**Please expand on your answer:**

See our response about Non binary, transgender, DSD and other categories.  
There is little evidence that harsher sentences act as a deterrent.

**Consultation Question 26: We provisionally propose that the decision as to whether an aggravated version of an offence should be created be guided by:**

Other (please expand)

**Please expand on your answer:**

There is little evidence that harsher sentences act as a deterrent. (see response to Q24)

**Consultation Question 27: We provisionally propose that aggravated versions of communications offences with an increased maximum penalty be introduced in reformed hate crime laws. Do consultees agree?**

Other (please expand)

**Please expand on your answer:**

There is little evidence that harsher sentences act as a deterrent.

**Consultation Question 28: We provisionally propose that aggravated versions of the following offences should be created, notwithstanding that they have life maximum penalties:**

Other (please expand)

**Please expand on your answer:**

There is little evidence that harsher sentences act as a deterrent.

**Consultation Question 29: We provisionally propose that aggravated versions of the following offences against the person should not be introduced in reformed hate crime laws:**

Yes

**Please expand on your answer:**

**Consultation Question 30: We invite consultees' views on whether any property or fraud offences should be included within the specified aggravated offences.**

**Please share your views below:**

As our group's primary focus is on women's rights we do not take a specific position on this issue.

**Consultation Question 31: We provisionally propose that aggravated versions of sexual offences should not be introduced (and hate crimes in these contexts should continue to be dealt with through enhanced sentencing). Do consultees agree?**

Other (please expand)

**Please expand on your answer:**

Sexual offences are directed principally against people of the female sex. The prosecution rate is already very low for these offences while the conviction rate is abysmal. This shows the disregard with which women (females) are already treated by the justice system. This should be dealt with as a matter of urgency. Whether this should be dealt with through the hate crime legislation is not clear to us. There is little evidence that enhanced sentencing acts as a deterrent.

**Consultation Question 32: We invite consultees' views on whether a provision requiring satisfaction of the legal test in respect of "one or more" protected characteristics would be a workable and fair approach to facilitate recognition of intersectionality in the context of aggravated offences.**

**Please share your views below:**

Intersectionality as it was devised is about the way that differing factors combine to aggravate the oppression of women. However, it is unclear what recognising intersectionality would achieve in this context

**Consultation Question 33: We invite consultees' views on whether the maximum sentences for the aggravated offences in the CDA 1998 are appropriate.**

**Please share your views below:**

As our group's primary focus is on women's rights we do not take a specific position on this issue.

**Consultation Question 34: We invite consultees' views on whether where only an aggravated offence is prosecuted, the Courts should always be empowered to find a defendant guilty of the base offence in the alternative.**

**Please share your views below:**

We do not believe the Courts should be limited in this way.

**Consultation Question 35: We invite consultees' views on whether they consider the Sussex Report's proposed "hybrid" approach to hate crime laws to be a preferable approach to the model that we have proposed.**

**Please share your views below:**

As our group's primary focus is on women's rights we do not take a specific position on this issue.

## **Chapter 17: Enhanced sentencing**

**Consultation Question 36: We provisionally propose that the enhanced sentencing model remain a component of hate crime laws, as a complement to an expanded role for aggravated offences. Do consultees agree?**

No

**Please expand on your answer:**

There is little evidence that enhanced sentencing acts as a deterrent.

**Consultation Question 37: We provisionally propose that sentencers should continue to be required to state the aggravation of the sentence in open court. Do consultees agree?**

Other (please expand)

**Please expand on your answer:**

As our group's primary focus is on women's rights we do not take a specific position on this issue.

**Consultation Question 38: We invite consultees' views on whether a more flexible approach to characteristic protection would be appropriate for the purposes of enhanced sentencing.**

**Please share your views below:**

There is little evidence that enhanced sentencing acts as a deterrent.

**Please share your views below:**

**Consultation Question 39: We provisionally propose that, contrary to the more flexible approach set out in R v O'Leary, a court should not be permitted to apply an enhanced sentence to a base offence, where an aggravated version of that offence could have been pursued in respect of the specified characteristic. Do consultees agree?**

Yes

**Please expand on your answer:**

## **Chapter 18: Stirring up offences**

**Consultation Question 40: We provisionally propose that the stirring up offences relating to "written" material be extended to all material. Do consultees agree?**

No

**Please expand on your answer:**

The provisions on "stirring up hatred" 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.

For Women Scotland (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 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” [1] - 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. [2] 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”. [3] 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, [4] 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, [5] at which point several politicians declared that what occurred 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 [6] - and thus potentially liable to criminal proceedings under the Bill - but the tidal wave of abuse received in return [7] 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 proposed reform 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”. [8] 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.

Overall, we do not think that such amendments will offer sufficient protection against the problems we have identified.

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

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

[3] a now deleted FB post where the head of Scottish Trans Alliance called for stickers with the dictionary definition of woman (adult human female) seen on the campus at Edinburgh University to be reported for hate crimes .

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

[5] <http://archive.vn/QHBF1>

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

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

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

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

**Consultation Question 41: We provisionally propose to replace sections 19 to 22 and 29C to 29F of the Public Order Act 1986 with a single offence of disseminating inflammatory material. Do consultees agree?**

No

**Please expand on your answer:**

We believe the definition of "inflammatory material" is too wide and open to subjective interpretations. See response to previous question (40).

**Consultation Question 42: We provisionally propose to align the defences available to innocent disseminators of inflammatory material to ensure consistency as follows:**

No

**Please expand on your answer:**

We believe the definition of "inflammatory material" is too wide and open to subjective interpretations. See response to previous question.

**Consultation Question 43: Under what circumstances, if any, should online platforms such as social media companies be criminally liable for dissemination of unlawful material that they host?**

**Please share your views below:**

As our group's primary focus is on women's rights we do not take a specific position on this issue.

**Please share your views below:**

As our group's primary focus is on women's rights we do not take a specific position on this issue.

**Consultation Question 44: We invite consultees' views on whether the meaning of "likely to" in the racial hatred offence should be defined in statute (and for any other characteristics to which it would apply in future). We further invite views on how might this be defined.**

**Please share your views below:**

As our group's primary focus is on women's rights we do not take a specific position on this issue.

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

Other (please expand)

**Please expand on your answer:**

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.

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

Other (please expand)

**Please expand on your answer :**

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.

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

Other (please expand)

**Please expand on your answer:**

On what objective criterion would this threshold be based? We believe it is impossible to define in case of subjective feelings such as "insulting", "inflammatory"... This is not workable in practice.

**Please share your views below:**

On what objective criterion would this threshold be based? We believe it is impossible to define in case of subjective feelings such as "insulting", "inflammatory"... This is not workable in practice.

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

No

**Please expand on your answer:**

Please see our extensive response to question 40.

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

Other (please expand)

**Please expand on your answer:**

While we agree that sex (females) should be a protected category in the new legislation we disagree with the so-called "stirring up" offences could be applied without strongly threatening freedom of speech, freedom of belief and academic freedom and integrity for the reasons mentioned in the answers to the previous

questions (from question 40).

**Consultation Question 50: We invite consultees' views on whether the definition of hatred for the purposes of the stirring up offences should include hatred on grounds of one or more protected characteristics.**

**Please share your views below:**

We believe that the definition of hatred is subjective and as we explain in our response to question 40, biological truth and statements of facts are deemed hateful to certain protected categories (transgender identity for instance) and are often described as such by members of this category. This not only exposes scientists to potential prosecution under the hate crime legislation but would also have momentous implications for scientific integrity, research and ultimately the rest of society which depends greatly upon scientific advances and probity.

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

Other (please expand)

**Please expand on your answer:**

we disagree with the so-called "stirring up" offences could be applied without strongly threatening freedom of speech, freedom of belief and academic freedom and integrity for the reasons mentioned in the answers to the previous questions (from question 40).

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

Other (please expand)

**Please expand on your answer:**

we disagree with the so-called "stirring up" offences could be applied without strongly threatening freedom of speech, freedom of belief and academic freedom and integrity for the reasons mentioned in the answers to the previous questions (from question 40).

**Please share your views below:**

We disagree with the so-called "stirring up" offences could be applied without strongly threatening freedom of speech, freedom of belief and academic freedom and integrity for the reasons mentioned in the answers to the previous questions (from question 40).

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

**Please share your views below:**

We disagree with the so-called "stirring up" offences could be applied without strongly threatening freedom of speech, freedom of belief and academic freedom and integrity for the reasons mentioned in the answers to the previous questions (from question 40).

**Consultation Question 54: We provisionally propose that prosecutions for stirring up hatred offences should require the personal consent of the Director of Public Prosecutions rather than the consent of the Attorney General. Do consultees agree?**

Other (please expand)

**Please expand on your answer:**

we disagree with the so-called "stirring up" offences could be applied without strongly threatening freedom of speech, freedom of belief and academic freedom and integrity for the reasons mentioned in the answers to the previous questions (from question 40).

**Consultation Question 55: We invite consultees' views on whether the current exemptions for reports of Parliamentary and court proceedings should be maintained in a new offence.**

**Please share your views below:**

We agree

**Please share your views below:**

## **Chapter 19: Football offences**

**Consultation Question 56: We provisionally propose that racist chanting at football matches remain a criminal offence distinct from the current Public Order Act 1986 offences. Do consultees agree?**

Other (please expand)

**Please expand on your answer:**

We are a feminist organisation and do not have a strong view on this particular issue.

**Consultation Question 57: We provisionally propose that the offence under section 3 of the Football (Offences) Act 1991 of engaging in "chanting of an indecent or racialist nature at a designated football match" be extended to cover chanting based on sexual orientation. Do consultees agree?**

Other (please expand)

**Please expand on your answer:**

We are a feminist organisation and do not have a strong view on this particular issue.

**Please share your views below:**

We are a feminist organisation and do not have a strong view on this particular issue.

**Consultation Question 58: We invite consultees' views on whether the offence under section 3 of the Football (Offences) Act 1991 should be extended to cover gestures and missile throwing.**

**Please share your views below:**

We are a feminist organisation and do not have a strong view on this particular issue.

**Consultation Question 59: We invite consultees' views on whether the offence under section 3 of the Football (Offences) Act 1991 should be extended to cover journeys to and from a designated football match.**

**Please share your views below:**

We are a feminist organisation and do not have a strong view on this particular issue.

**Consultation Question 60: We invite consultees' views on whether the offence under section 3 of the Football (Offences) Act 1991 should be amended to include association and perceived characteristics.**

**Please share your views below:**

We are a feminist organisation and do not have a strong view on this particular issue.

**Consultation Question 61: We invite consultees' views on whether the current penalty for the offence under section 3 of the Football (Offences) Act 1991 of engaging in chanting of an indecent or racist nature at a designated football match, a Level 3 fine, is sufficient.**

**Please share your views below:**

We are a feminist organisation and do not have a strong view on this particular issue.

## **Chapter 20: A Hate Crime Commissioner?**

**Consultation Question 62: We invite consultees' views on whether they would support the introduction of a Hate Crime Commissioner.**

**Please share your views below:**

We do not have a strong view on this particular issue.