

## Response ID ANON-EK5P-BM1Q-6

Submitted to Reforming the criminal law to address misogyny  
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### Chapter 1 - An offence of misogynistic harassment

Do you support the proposal to create an offence of misogynistic harassment which relates to harassment of an identified victim or victims?

Other (please provide details in the text box below)

please give reasons for your answer:

We do not believe there are currently any gaps in the law which mean that such behaviour as detailed is currently lawful in Scotland.

What is at issue is how seriously crimes of sexual assault or harassment against women are taken. As was made clear by Lord Bracadale, sometimes, the reporting and recording of such offences is improved by raising awareness for those who may be victims and by police training.

A hate crime aggravator might improve the seriousness by which these crimes are viewed, but, without a holistic approach this may just languish on the statute book,

Do you have any comments on the list of effects on the victim (fear, alarm, degradation, humiliation and distress) that trigger the offence being committed?

Please provide details:

Women are, too often, the subject of vicious campaigns which cause stress, anxiety, and fear. It is worth pointing out that, as women's rights campaigners, we and others have frequently been subject to vicious, sustained attacks triggered when we speak out on women's rights. Sadly, these have sometimes come from people who should know better: people on the payroll of political parties or funded groups, or election candidates.

These have included comments on appearance, lies, abuse, and even threats.

Excuses for this behaviour include "I don't hate women, only TERFs". In attacks on JK Rowling, the excuse was made that she has money, as though wealth means that a woman was fair game.

We sincerely hope that legislation will be accompanied with training - including of politicians and officials - to ensure that people understand that abuse of women is not excusable by political difference or by the offender's identity.

Do you agree that the offence of misogynistic harassment should be capable of being committed in all places (public and private)?

Yes

please give reasons for your answer:

If this is to be introduced there should be no distinction between offences committed in a workplace or online and those in the street.

Do you have any views on the proposed maximum penalty of 7 years imprisonment for the offence of misogynistic harassment?

please provide details:

Within the existing framework, we have been informed that Hate Crime cases are unlikely to be dropped by the Crown Office and Procurator Fiscal Service and nearly always reach court. Sometimes, these crimes amount to name calling or unpleasant messages on social media. This is in stark contrast to often violent crimes against women which have a shamefully low rate of prosecution and conviction. We believe this is a factor of the operational failures in investigating crimes against women.

We note that the most serious offences against women are not included in this legislation and, while we have some understanding for the rationale behind that, it would be disastrous if the result of this legislation was that less serious crimes were punished by lengthy prison sentences while rape continues to be under-reported and to have a low conviction rate. If this legislation, like hate crime, results in priority offences which detract from the most extreme violence, it will be a pyrrhic victory for women,

We also note that under 25 year olds have recently been handed lighter sentences for rape due to their age. In April, Sean Hogg was sentenced to a community payback order with 270 hours of unpaid work for the rape of a 13 year old child and, in June, Myles Harris was given a sentence of under three years after assaulting a 12 year old. In such a climate, it is not unreasonable to find distasteful that there may be lengthy sentences to men for shouting at women on the street while the sexual assault of children is met with such leniency.

Do you agree with the inclusion of a reasonableness defence to the offence of misogynistic harassment?

Yes

please give reasons for your answer:

While the genuine sexist harassment of women is deplorable, steps to counter it are undervalued by opportunistic or political attempts to weaponise it. Only this month, Green MSPs have been accusing political opponents of "misogyny" for criticism of policy or behaviour. This is cynical in the extreme and we would be horrified if the creation of such an offence led to some in the Scottish Government thinking their words and actions were therefore beyond reproach.

Do you have any other comments on the offence of misogynistic harassment?

please provide details:

One of the most egregious motivating factors in misogynistic harassment is born of exposure to pornography and the normalisation of prostitution.

Porn normalises the sexual abuse of women and girls. Thanks to the internet, it is now readily available and is a major driver of sexual harassment. What was extreme is now becoming mainstream with violent practices such as choking sometimes described as a "kink". The group We Can't Consent to This was formed in response to the rising use of the "rough sex" defence in murder trials.

To date, both the Scottish Government and the UK government have been reluctant to address the harms of pornography and the dangerous, hateful ideas it perpetuates.

CEASE Big Porn Report links the epidemic of boys sexually harassing and assaulting girls at schools and colleges across the UK with the consumption of porn. It quotes UK Government statistics that show each month around 1.4 million children visit porn sites from their desktop - this has profound real-life consequences. Several important amendments are proposed to improve the upcoming Online Safety Bill.

As Misogyny is often born of exposure to extreme pornography, we suggest that the Government tries to find ways to tackle this at root rather than punishing people after the event. An outcome which be better for society and victims.

Two and half years ago, we responded to the consultation on "challenging men's demand for prostitution, working to reduce the harms associated with prostitution and helping women to exit". In the period since then, nothing has changed. The Scottish Government have promised to reform the law on prostitution (saying they regard as violence against women). The cross party group on Commercial Sexual Exploitation are lobbying for reforms along the lines of the Nordic Model which would see the women decriminalised and exit routes provided, while criminal charges are reserved for the men who exploit, use and abuse the women. We are in favour of this and we are very concerned by the push in some funded lobby groups to categorise "sex work" as a job like any other. VAWG groups like NIA have highlighted that the "normalisation, understatement and minimisation of rape and abuse masks the scale and extent of violence, coercion and abuse in prostitution."

The Consultation cited the Government's position that: "Gender based violence is a function of gender inequality, and an abuse of male power and privilege. It takes the form of actions that result in physical, sexual and psychological harm or suffering to women and children, or affront to their human dignity, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. It is men who predominantly carry out such violence, and women who are predominantly the victims of such violence. By referring to violence as 'gender based' this definition highlights the need to understand violence within the context of women's and girl's subordinate status in society. Such violence cannot be understood, therefore, in isolation from the norms, social structure and gender roles within the community, which greatly influence women's vulnerability to violence"

This being so, we are horrified that this legislation makes no attempt to engage with the harms done by this, one of the most misogynistic "industries". In our response to that consultation, FWS wrote:

"Prostitution is inherently violent. Women should not be criminalised for the exploitation and abuse they endure. Buying human beings for sex is harmful, exploitative and can never be safe. We need to reduce the demand that drives sex trafficking...Legislation must be updated to make any form of profiting from another person's prostitution or CSE a criminal offence, including through advertising, and online and other facilitation services. This is necessary to be compliant with CEDAW Article 6."

We maintain that until and unless the Scottish Government is prepared to deal with the most extreme and abusive exploitation of women, and while they actively exclude the sale of women's bodies from consideration of misogyny, their commitment to ending sexism will be suspect.

## Chapter 1 (cont.) - An offence of misogynistic behaviour

Do you support the proposal to create an offence of misogynistic behaviour which does not require that the behaviour is directed at a specific victim?

Other (please provide details in the text box below)

please give reasons for your answer:

Do you have any comments on the list of effects on the victim (fear, alarm, degradation, humiliation and distress) that trigger the offence being committed?

please provide details:

Do you agree that the offence of misogynistic behaviour should be capable of being committed in both public and private places

Not Answered

please give reasons for your answer:

Do you have any views on the proposed maximum penalty of 7 years imprisonment for the offence of misogynistic behaviour?

please provide details:

Do you agree with the inclusion of a reasonableness defence to the offence of misogynistic behaviour?

Not Answered

please give reasons for your answer:

Do you agree with the inclusion of a 'freedom of expression' provision setting out, for the avoidance of doubt, that certain behaviour does not constitute the offence of misogynistic behaviour?

Yes

please give reasons for your answer:

As mentioned previously, too many people, including politicians, attempt to ascribe critical comments (whether of individuals or of policy) to misogyny. This trivialises a serious matter and should never be used to quash freedom of speech.

Do you have any other comments on the offence of misogynistic behaviour?

please provide details:

## Chapter 2 - An offence of threatening or abusive communications to women or girls that reference rape, sexual assault or disfigurement

Do you support the proposal to create a specific offence of 'threatening or abusive communications to women and girls which reference rape, sexual assault or disfigurement'?

Yes

please give reasons for your answer:

While the general principle is welcome, it should be noted that this should already be covered by existing law. If these crimes are not already been prosecuted, where is the guarantee that they will be in the future?

Do you agree that the offence should be committed where a message is threatening or abusive, or both, and makes reference to rape, sexual assault or disfigurement?

Yes

please give reasons for your answer:

See above

Do you have any comments on the approach taken in the draft offence to the harms of rape, sexual assault and disfigurement?

please provide details:

Do you have any comments on the approach taken in the draft offence about the two different ways in which the offence can be committed?

please provide details:

This is where the unequal treatment of the sexes in this legislation becomes problematic. Threats of rape or sexual violence may affect both women and men. We are not convinced that the caveats here will cover the need to ensure there is equality before the law.

Do you have any comments on the proposed defences to the offence?

please provide details:

Do you have any comments on the proposed maximum penalty of 5 years imprisonment for the offence?

please provide details:

Do you have any other comments on the proposed offence of threatening or abusive communications to women and girls that reference rape, sexual assault or disfigurement?

please provide details:

## Chapter 3 - A new statutory aggravation relating to misogyny

Do you support the recommendation in Baroness Kennedy's report that there should be a statutory aggravation concerning misogyny?

Other (please provide details in the text box below)

please give reasons for your answer:

We remain bewildered as to why this could not have been done years ago by the simple expedient of adding sex to Hate Crime legislation.

Two years ago, in response to the call for views from the Working Group, FWS wrote:

"After giving up the opportunity to protect women under hate crime laws thirteen years ago the funded women's groups have made little progress and we agree with Lord Bracadale that, once again, meaningful progress has been lost by failing to add sex to the Hate Crime Bill. The issue is not so much about gaps in the law but rather one of not adequately using existing laws to prosecute crimes against women, including street harassment. Adding sex to the Hate Crime Act would elevate the seriousness of these offences."

We maintain that the Scottish Government have acted shamefully slowly and have dragged out, unnecessarily, the process by which women and girls might have been protected in law. Adding sex to the Hate Crime Act would have ensured that police training was already in place.

While it may be the case that the proposed law will eventually have the same impact, we maintain that it would be faster and more efficient to add sex now to Hate Crime, assuming that the Government is genuinely interested in solving this issue and ensuring that crimes against women have the same standing as those against other protected characteristics.

The rationale given for not including sex in the Hate Crime Bill - without evidence and contrary to agreement on both sexes being covered in the Domestic Abuse Act - was that it might be used against women. We said then that this is not an argument against one category, but against the aggravated model as it exists in legislation in Scotland.

Including sex would have the advantage of consistency, would prevent duplication and confusion and would also mean that training within the police and court system could begin at once. We note that there is funding set aside for the implementation of the new Hate Crime law. We have no reason to assume that a similar budget has been set aside for the standalone offence, but we would welcome clarification on this important point.

Do you agree with the approach contained in the draft provision that an offence is aggravated by misogyny if:

Not Answered

please provide details in the text box below:

Do you agree with the Working Group's recommendation that the statutory aggravation should not be capable of being libelled for certain offences because these offences are inherently misogynistic and this would already be taken into account of when sentencing the offender?

Not Answered

please give reasons for your answer :

Do you have any comments on the list of offences in the schedule in response of which the misogyny aggravation cannot be libelled?

please provide details:

Do you have any other comments about the statutory aggravation relating to misogyny?

please provide details:

## Chapter 5 - Impact Assessments

Do you have any views on potential impacts of the proposals in this consultation on human rights?

please provide details:

We are concerned that by not following established practice (as in Hate Crime and Domestic Abuse Act) and framing the law in neutral language, it might be possible for men to argue that they are not been treated equally under the law.

Do you have any views on the potential impacts of the proposals in this consultation on equalities and the protected characteristics set out above?

please provide details:

Nowhere in the consultation document is there a definition of woman. It needs to be clear that this does not include any men, regardless of identity or GRC status. They are adequately covered in existing hate crimes, confusion needs to be avoided, and as per our JR (<https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2022csh4.pdf>) they are separate and distinct characteristics.

If the definition does not align it will cause confusion with harassment in the workplace that is covered by the Equality Act, will impact on ability of many

organisations, inc the police, to uphold their PSED. And of course, could see women prosecuted for misogyny against a man.

Do you have any views on the potential impacts of the proposals in this consultation on children and young people as set out in the UN Convention on the Rights of the Child?

please provide details:

Do you have any views on the potential impacts of the proposals in this consultation on socio-economic inequality?

please provide details:

Do you have any views on the potential impacts of the proposals in this consultation on communities in the Scottish islands?

please provide details:

Do you have any views on the potential impacts of the proposals in this consultation on privacy and data protection?

please provide details:

Do you have any views on the potential impacts of the proposals in this consultation on business and the third sector?

please provide details:

Do you have any views on the potential impacts of the proposals in this consultation on the environment?

please provide details:

## About you

What is your name?

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Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

For Women Scotland

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

I confirm that I have read the privacy policy and consent to the data I provide being used as set out in the policy.

I consent