

Response ID ANON-JCCD-HJNQ-5

Submitted to SSI to add "sex" as a characteristic to the Hate Crime and Public Order (Scotland) Act 2021

Submitted on 2025-10-17 14:37:03

Questions

Question 1 Do you support the approach of extension of both the stirring up of hatred offence and the aggravation of offences by prejudice to cover the characteristic of sex?

Yes

Please use this space to give reasons if you wish to.:

We strongly support the addition of sex as an aggravator and as a stirring up offence.

The independent review by Lord Bracadale recognised the increase in hatred against women and recommended adding the characteristic of sex to hate crime legislation. We share Bracadale's view that it was a missed opportunity not to include such a provision in the Hate Crime Bill of 2020. [1] It created a hierarchy of characteristics and a strong message was given to the public that offences based on prejudice towards women were of less importance than those offences towards other groups, including those towards men who cross-dress as women.

Remedying this now would provide consistency and clarity, and reassure women about the potential loss of momentum now that the Government has decided not to proceed with the development of a standalone misogyny law. It would allow for immediate and necessary police training and inclusion in awareness campaigns. If women are visible in the public information campaigns on hate crimes it would encourage women to report crimes and provide reassurance that such reports would be taken seriously, as was demonstrated in the successful pilot scheme in Nottingham.

The College of Policing makes it clear that "Hate crimes should be treated as priority incidents" which means that offences against women where an aggravator can be attached are more likely to reach court leading to increased prosecution rates and higher sentencing. [2]

Although we did not initially support the addition of stirring up offences to the Hate Crime Bill and still have some reservations about the appropriate level of freedom of expression protections, now the Act is in force it is important that women have the same protections as other characteristics. We previously explained at length how the measures could be used against women who would simultaneously be left with no corresponding protection as a defence. [3] Including sex now would rectify this imbalance and enable women to feel more confident in speaking on topical issues and women's rights.

The history of women in law remains all too relevant. A call for women to be protected in hate crime legislation was first made some twenty-two years ago which, although not accepted by the then administration, led to the establishment of a working group to examine the issue. [4] A number of women's organisations including Engender, Rape Crisis Scotland and Scottish Women's Aid supported the proposition but did a u-turn when it came to giving evidence to the Parliamentary Committee scrutinising the Offences (Aggravation by Prejudice) Bill in 2008, stating "Something needs to be done, but I do not think that this bill is the answer...we do not know what, we do not know when, but there is hope." [5] The Committee cautioned against giving up a chance to make a difference by including women in the Bill and it was bitterly disappointing to see history repeat itself during the passage of the Hate Crime Bill.

The Cabinet Secretary for Justice and Home Affairs is to be commended for her determination to break this deadlock and finally provide much needed protection for women on par with other characteristics. [6] The majority of "coalface" groups supported adding sex to the Hate Crime Bill [7] and it would be a pitiful state of affairs to be persuaded otherwise by unrepresentative groups such as Engender who would rather continue waiting yet more years for a different outcome. There is nothing preventing the continuation of work on additional and tailored misogyny laws in the next Parliament, and data collected from adding sex to the Hate Crime Act in the meantime may prove to be valuable in shaping that work.

References:

[1]

<https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/J-27-10-2020?meeting=12903&iob=116638#orscontrib>

[2] <https://www.college.police.uk/app/major-investigation-and-public-protection/hate-crime/responding-hate-crimes>

[3] <https://forwomen.scot/wp-content/uploads/2021/02/For-Women-Scotland-Hate-Crime-Bill-FoE-Amdts-21Feb2021.pdf>

[4] <http://archive2021.parliament.scot/SPICeResources/Research%20briefings%20and%20fact%20sheets/SB08-41.pdf>

[5] <https://archive.parliament.scot/s3/committees/equal/or-08/eo08-1502.htm#Col680>

[6]

<https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/CJ-24-09-2025?meeting=16602&iob=141744#orscontrib>

[7] <https://murrayblackburnmackenzie.org/2020/12/04/legislating-for-hatred-against-women-the-view-from-the-coalface/>

Question 2 Do you agree that if the offence of stirring up hatred is extended to the characteristic of sex, the freedom of expression provision at section 9 should apply?

Yes

Please use this space to give reasons if you wish to.:

Question 3 Are you content with the interpretive provision relating to the characteristic of sex?

Yes

Please use this space to give reasons if you wish to.:

The Supreme Court explained very clearly why sex in the Equality Act 2010 takes its biological meaning and that to do otherwise would cut across characteristics and lead to the legislation becoming incoherent and unworkable. The same legal tests apply to offences based on prejudice towards sex.

Protections in both Acts are centred around defined groups of people and apply the principle of perception. It is worth noting that Equality Network argued for cross-dressers (but not sex) to be included in the Hate Crime Act primarily to protect those with a transgender identity in the event that they were perceived to be cross-dressers, even though the absence of the sex characteristic means they remain unprotected if perceived to be a woman.

The Explanatory Note explains that the interpretation given to sex mirrors the approach of the Supreme Court yet states "The groups that are protected by the characteristic of sex under the 2021 Act, as now inserted by these Regulations, are the group of people who were, at birth, assigned female and the group of people who were, at birth, assigned male". This should be corrected as at no point did the Supreme Court judgment use such ideological language; sex is a biological fact and is not "assigned".

Question 4 Are you content with the provisions concerning data collection in relation to the characteristic of sex?

Yes

Please use this space to give reasons if you wish to.:

Question 5 Do you have any views on potential impacts of the proposals in this consultation on human rights?

Yes

Please use this space to give reasons if you wish to.:

In both UK equality law and in international treaties such as CEDAW and the Istanbul Convention there is a clear acceptance that sex remains the fundamental basis for discrimination and violence against women. Adding sex to the Hate Crime Act will be a positive step in addressing convention rights for women by treating aggravated offences more seriously.

While offences based on prejudice towards sex predominantly concern offences by men towards women the reverse does happen. Access to the law should be available to all and it is appropriate that the legislation covers both sexes in a similar manner to the neutral language used in the recent Domestic Abuse Act.

Question 6 Do you have any views on the potential impacts of the draft SSI on equalities and the protected characteristics of age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and/or sexual orientation?

Yes

Please use this space to give reasons if you wish to:

Evidence given to the Justice Committee on the Hate Crime Bill highlighted that experience showed the majority of religious aggravated offences were towards women but that the interplay between characteristics was not understood or captured by statistics. [1] Adding sex will remedy this situation and provide data and allow targeted action where offences are based on prejudice towards sex on its own, or intersecting with other characteristics.

References:

[1] Col 49: <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=12934>

Question 7 Do you have any views on the potential impacts of the draft SSI on children and young people as set out in the UN Convention on the Rights of the Child?

Not Answered

Please use this space to give reasons if you wish to.:

Question 8 Do you have any views on the potential financial or other impacts of the draft SSI on businesses, government and the third sector?

Not Answered

Please use this space to give reasons if you wish to.:

Question 9 Do you have any views on the potential impacts of the draft SSI on socio-economic inequality, communities on the Scottish islands, privacy and data protection, or the environment?

Not Answered

Please use this space to give reasons if you wish to.:

About you

What is your name?

Name:

Trina Budge

Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

For Women Scotland

Further information about your organisation's response

Please add any additional context:

For Women Scotland is a not-for-profit grassroots group campaigning to protect and strengthen women's rights in Scotland. We brought the case to the UK Supreme Court that provided clarity on "sex" in the Equality Act 2010 and engaged extensively with consultations and evidence to the Justice Committee as the Hate Crime & Public Order (Scotland) Act 2021 was considered by Parliament.

Links to material relating to hate crime can be found on our website here:

<https://forwomen.scot/category/hate-crime-bill/>

<https://forwomen.scot/consultation-submissions/>

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

Publish response only (without name)

Do you consent to Scottish Government contacting you again in relation to this consultation exercise?

Yes

What is your email address?

Email:

info@forwomen.scot

Where did you hear about this consultation?

Scottish Government website

If other, please say where.:

Evaluation

How satisfied were you with this consultation?

Not Answered

Please enter comments here.:

How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?

Not Answered

Please enter comments here.: