

Hate crime and public order (Scotland) Act 2021 - draft SSI to add 'sex' as a characteristic: consultation

Zero Tolerance for Scottish Government, 7 October 2025

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

No

Only support the Stirring Up Hatred Offence

Only support the Aggravation of Offences by Prejudice

Zero Tolerance is Scotland's expert organisation on the primary prevention of men's violence against women and girls (VAWG). Primary prevention is a long-term strategy to prevent violence before it starts by addressing the root cause – gender inequality.

Zero Tolerance does not support the addition of Sex as a characteristic to The Hate Crime and Public Order (Scotland) Act 2021.

Over several years of consultation between the Scottish Government and the women's sector in Scotland, we have made clear that there are gaps in the law where egregious misogynistic harassment is not criminalised (Engender, 2019). Since 2018, expert gender equality and VAWG organisations in Scotland, including Engender, Close the Gap, Rape Crisis Scotland, Scottish Women's Aid, and Zero Tolerance, have offered an evidence-based solution to these gaps in the law: a standalone offence that would respond to expressions of misogyny. In this

consultation response, we will not rehearse the very clear evidence that we, and our sector, have laid out elsewhere over these many years of work.

As a direct result of our sector's work, the Scottish Government commissioned significant independent research into the potential of a standalone offence. This research, which our sector participated in, examined a large body of international oral and written evidence and reviewed extensive research into women's experience of misogynistic conduct. As a result, the research recommended that the Scottish Government creates a specific piece of legislation, the new Misogyny and Criminal Justice (Scotland) Act, and specifically, explicitly recommended not to add Sex as a characteristic to the Hate Crime and Public Order Act (Scotland) Act 2021 (Scottish Government, 2022a). The Scottish Government's response to these recommendations agreed "that these recommendations represent a new and necessary departure, in that they specify women and girls as requiring specific protection of the criminal law and are pivotal in challenging society's tolerance of misogyny." (Scottish Government, 2022b).

The Scottish Government commissioned and paid for research that clearly evidenced that the Misogyny and Criminal Justice (Scotland) Act is the solution that women and girls in Scotland need and made a commitment to bring this Act forward. We strongly urge the Scottish Government to follow through on this commitment and heed previous evidence.

The Misogyny and Criminal Justice (Scotland) Act is our continued recommendation. We will not rehearse all the evidence here, as it has been well laid out previously. Below, we lay out at a high level the serious risks and harms of introducing Sex as a characteristic to The Hate Crime and Public Order (Scotland) Act 2021.

Women are not a minority

Hate crime legislation is principally designed to protect minorities. Women are not a minority, and so this legislation is not fit to address the gaps in the law that put us at risk (Engender, 2019; Scottish Government, 2022a: 6). Misogyny is so deeply rooted in our patriarchal ecosystem that it requires a more fundamental set of responses

than adding Sex to hate crime legislation (Engender, 2019; Scottish Government, 2022a: 7).

However, many women also belong to minority groups (women of colour, LGBT+ women, disabled women, et cetera). We are calling for a Misogyny and Criminal Justice (Scotland) Act that can be enacted at the same time as the Hate Crime and Public Order (Scotland) Act 2021 to capture offences which are both misogynistic and racist, homophobic, and/or ableist. For example, if an assault was carried out by someone who used a misogynistic and a racist slur, both the Misogyny Act and the Hate Crime Act should be available in the justice process concurrently.

Misogynistic harassment is not gender neutral

In the policy note for this Draft SSI, it is wrongly claimed that the recommendations from Baroness Kennedy's report can be implemented in a gender-neutral way through the addition of the characteristic of sex to the Act. In actuality, Baroness Kennedy's report explicitly states that the Misogyny Act is specifically recommended as it will 'depart from the established practice of having law that is neutral with regard to gender' as 'treating as equal those who are not yet equal only furthers inequality' (Scottish Government, 2022a: 7).

Human rights frameworks that Scotland is committed to, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Istanbul Convention, are clear that there should be a presumption against gender neutral laws to address harms to women, such as a sex aggravation or stirring-up offence (Engender et al, 2021). Instead, laws should be shaped around women's lived experience (Engender et al, 2021).

In addition, Equally Safe, Scotland's world-leading violence against women strategy, may be undermined by the inclusion of a 'sex' aggravation. It is fundamentally contradictory under Equally Safe's understanding of violence against women to say that some incidents of violence against women are a product of discrimination or animus on the ground of sex, and some are not (Engender et al, 2021).

Misogyny is not always motivated by hate

Baroness Kennedy's report defines misogyny as:

'...[A] way of thinking that upholds the primary status of men and a sense of male entitlement, while subordinating women and limiting their power and freedom. Conduct based on this thinking can include a range of abusive and controlling behaviours including rape, sexual offences, harassment and bullying, and domestic abuse' (Scottish Government, 2022a: 29).

The report is also clear and explicit that 'hate' is a useless concept when it comes to the harmful conduct of men towards women and the motivations for this conduct. In sum, she argues that 'Ill-will does not describe what men feel when they abuse or degrade women' (Scottish Government, 2022a: 12). Rather, misogyny is about inclusion of women, but 'on patriarchal terms' (Scottish Government, 2022a: 48). It sees women being told they deserve to be raped or kept in the kitchen, rather than told they are hated (Scottish Government, 2022a: 48).

This makes Hate Crime an inadequate framework for addressing misogyny, as much of the behaviour will not be covered by the new legislation intended to address it.

Trans women are victim-survivors of misogynistic harassment

There is ample evidence that trans women experience misogyny. Transmisogyny, otherwise known as transphobic misogyny, is the intersection of transphobia and misogyny as experienced by trans women and transfeminine people (Serano, 2007). Trans women experience gendered oppression in some of the same ways that cis women do, and some of their experiences are distinct to them. (Stonewall, 2018: 16; Zero Tolerance, 2023). Indeed, trans women are the group at highest risk of physical violence or sexual attack within the LGBT+ community – violence which is caused by trans misogyny (FRA, 2024).

Misogyny, as argued by Baroness Kennedy, is about patriarchal social structures – not women's biology. Adding Sex into the Hate Crime Act ignores the patriarchal roots of misogyny experienced by all women. Adding the characteristic of Sex, which is a reductive definition of what a woman is, to Hate Crime legislation poses the risk of misogynistic crimes, such as transmisogynistic crimes, not being

criminalised. This not only puts trans women at risk of not being able to seek justice for the misogyny they experience, but it also puts all women at risk of not being able to seek justice for the misogyny they experience.

Misogyny is experienced by the majority of women

Baroness Kennedy's report lays out extensive evidence about the prevalence of misogyny in Scotland (Scottish Government, 2022a). We will not rehearse that evidence here, but rather add that there is clear evidence that misogyny is on the rise in Scotland (Duffy et al, 2024). The landscape has changed since 2018.

The UK Commission for Countering Extremism (2021) found that there has been 'a rise in extreme misogynistic hate speech in the UK'. Research has repeatedly demonstrated the links between misogyny and other forms of extremism. As Gentry (2022) argues, violent misogyny has long been a central component of White supremacist and neo-Nazi ideology, with these far-right groups advocating for strict gender roles, male domination and the subjugation of women (cited by Duffy et al, 2024). Also, the far right and incels share a common language of aggrieved male entitlement and a conspiratorial world view that positions White men as the true victims of modern society (Ging, 2019, cited by Duffy et al, 2024). Far-right groups utilise social media algorithms to rapidly spread their misogynistic messages, which justify and incite harm against women and girls, to men and boys (Duffy et al., 2024). It is concerning that while the Scottish Government are publicly acknowledging the urgent need to counter extremist views and attacks on human rights, they are at the same time reneging on commitments designed to counter misogyny and undermining years of work by expert women's organisations.

Zero Tolerance are clear that a Misogyny Act is needed. However, legislation alone will not solve misogyny: a long-term strategy which sees significant investment in prevention is also required. Women's organisations need sustainable funding to do this work. To conclude, we call on the Scottish Government to listen to the expert evidence it asked for, and act now to tackle the rising tide of extreme misogyny.

References

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<https://www.gov.scot/publications/misogyny-and-criminal-justice-working-group-recommendations-scottish-government-response/>

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https://files.stonewall.org.uk/production/files/stonewall_and_nfpsynergy_report.pdf?dm=1724230515

Zero Tolerance, (2023). Future Tales: Marginalised women's vision of a Scotland free from men's violence against women and girls. Available at:
<https://www.zerotolerance.org.uk/resources/Future-Tales-Report.pdf>

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?

It is beyond the capacity of Zero Tolerance to answer this question.

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

Yes

No

We share deep concerns with other equality and human rights organisations about the Scottish Government's approach to the interpretive provision relating to the characteristic of Sex, and we oppose its introduction. The justification for this provision given is that the Scottish Government wishes to "achieve equivalence with the meaning of sex in the Equality Act 2010, as determined by the Supreme Court in *For Women Scotland v Scottish Ministers*."

The Supreme Court made absolutely clear that the ruling must not be used to define the category of a "woman" for purposes beyond the definition of 'sex' in the Equality

Act 2010. Furthermore, the practical application of the judgment remains unclear as the sector awaits finalised guidance from the Equality and Human Rights Commission. Current proposals breach the Human Rights Act 1998.

Further justification for the provision is outlined. The Scottish Government intend for there to be “no overlap” between the scope of two characteristics of ‘transgender identity’ and ‘sex’ in the Act. Not only does this undermine the intention of the Gender Recognition Act 2004 (to provide transgender people with “legal recognition in their acquired gender”) but is also completely impractical.

Transmisogyny, otherwise known as transphobic misogyny, is the intersection of transphobia and misogyny as experienced by trans women and transfeminine people (Serano, 2007). Transgender women are victimised because of their identity as women and their identity as transgender – the prejudice which motivates these crimes operates concurrently. Indeed, trans women are the group at highest risk of physical violence or sexual attack within the LGBT+ community – violence which is caused by trans misogyny (FRA, 2024). Misogyny and transphobia interact as an intersectional and structural oppression that is unique to transgender women. In short, real life has overlap, and the law should allow for it.

References

FRA, (2024). LGBTIQ Equality at a Crossroads – Progress and Challenges. Available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2024-lgbtqi-equality_en.pdf

Serano, J., (2007). Whipping Girl: A Transsexual Woman on Sexism and the Scapegoating of Femininity. Seal Press.

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

It is beyond the capacity of Zero Tolerance to answer this question.

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

Yes

No

We have significant concerns that women's human rights will not be sufficiently protected by the proposed legislative changes. Please refer to our answer to question one for further details, or consult 'Misogyny - A Human Rights Issue' (Scottish Government, 2022).

References

Scottish Government. (2022) Misogyny – A Human Rights Issue. Available at:
<https://www.gov.scot/publications/misogyny-human-rights-issue/>

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?

It is beyond the capacity of Zero Tolerance to answer this question.

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?

It is beyond the capacity of Zero Tolerance to answer this question.

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?

It is beyond the capacity of Zero Tolerance to answer this question.



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?

It is beyond the capacity of Zero Tolerance to answer this question.

For Further Information

Contact: info@zerotolerance.org.uk

About Us

Zero Tolerance is a Scottish charity working to end all forms of men's violence against women by tackling its root cause: gender inequality.