Background

The Scottish Government Consultation proposes five new criminal laws in response to recommendations made in Baroness Kennedy's report Misogyny a Human Rights Issue https://www.gov.scot/publications/misogyny-human-rights-issue/

Baroness Kennedy's report recommended the creation of 'gendered law', that would offer protection to only women and girls.

The following definition was developed by the working group, to aid them in the development of criminal law in relation to misogyny.

"Misogyny is 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."

Proposals

The five new proposed criminal laws are:

- **An offence of misogynistic harassment.** This would make it a criminal offence for a person to behave in a way that amounts to misogynistic harassment directed at a woman or girl or group of women and girls.
- **An offence of misogynistic behaviour.** Intended to deal with misogynistic behaviour which is likely to have the effecting of causing a woman or girl to experience fear, alarm, degradation, humiliation or distress where that behaviour is not directed at a specific woman or girl (or group of women and girls) and so could not be described as 'harassment'.
- **A statutory aggravation concerning misogyny.** This would be used where an offence had a misogynistic motive or a person demonstrates misogyny whilst committing a crime. The statutory aggravation would ensure that this motive is recorded and taken into account when sentencing.
- **An offence of threatening or abusive communications to women or girls that reference rape, sexual assault or disfigurement.** This offence criminalises sending an abusive message to a woman or girl that refers to rape, sexual assault or disfigurement
- **An offence of stirring up hatred against women and girls.** This offence is concerned with the effect that the behaviour may be likely to have on the people in whom the perpetrator is seeking to stir up hatred of women and girls.

Questions posed in the consultation

1. An offence of misogynistic harassment

This offence is intended to criminalise behaviour which is misogynistic and amounts to harassment of a particular person or group of people.

- behaves in a manner that is threatening, sexual or abusive (or a combination of those things); and
- the behaviour is directed at a particular person or group of people; and it is so directed at that person or group of people by reason of their being, or one or more members of the group being, or presumed to be, a woman or girl; and
- a reasonable person would consider that the behaviour would be likely to have the effect of causing the person or a member of the group to suffer, fear, alarm, degradation, humiliation or distress; and
- the accused either intends their behaviour to have one of these effects, or else is reckless as to whether their behaviour is likely to have one or more of these effects on that person (there is no requirement that the behaviour must actually have this effect).

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

Yes

Please give a reason for your answer

The Glasgow Violence Against Women Partnership (GVAWP) very much welcome specific legislation to respond to misogynistic harassment. Every day of every hour women and girls will experience misogyny to a greater or lesser degree. While we understand that these proposals are intended to respond to the severe end of the misogyny continuum, it is important to understand that this behaviour influences the choices that women and girls make consistently, to minimise, reduce, negate, or mitigate against misogynistic behaviour and harassment. It influences their freedom of movement, limits life choices and undermines their confidence and wellbeing as well as their place in society.

The law is written in gender neutral terms however, this approach can be harmful. We do not live in a gender neutral society and this creates gender bias effectively entrenching inequality and fails to acknowledge differing needs and experiences.

For too long now the impact of misogyny in the day to day lives of women and girls has been neglected. Misogyny is most often the primary motivation of attacks on women and girls. There should be no doubt of the enormity of the challenge. Women and girls must be afforded protection in law and those who perpetrate crimes of misogynistic harassment, made visible and held accountable for their actions.

Question: 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

Baroness Helena Kennedy in her report 'Misogyny a Human Rights Issue' [1] highlighted the voices of women and girls who shared their lived experience of misogyny including the impact it had on them. Women and girls live, work and play in an environment where patriarchy, entitlement, sexism, toxic masculinity and misogyny are part and parcel of their daily functioning. Women and girls are desensitised to subtle and not so subtle microaggressions of sexism which degrade them, but also distort their perceptions of entitled behaviour and the societal expectation to minimise and dismiss. As part of her enquiry into the levels of misogyny in Scottish society, Baroness Kennedy conducted a lived experience survey. Out of the 930 women and girls who responded to the survey only 0.7% reported that this behaviour had no impact on them. Women consistently reported feelings of powerlessness, being uncomfortable, embarrassed, humiliated consistently and if they retaliated in any way this led to escalating aggression.

Trauma responses to all forms of violence against women and girls are well documented. Trauma manifests in different ways depending on the individual and their life experiences. Therefore, we think it is appropriate that there is reference to trauma responses from victim(s) when looking at impact.

We caution against the creation of a definitive 'list' of responses expected to be displayed by victim(s) of misogynistic behaviour. There is a danger that if a report is made of misogynistic behaviour by a woman or group of women, if they fail to display the effects as listed, their report may well be minimised, disbelieved and dismissed. While much work, training, legislation and policy has been developed and implemented to tackle myths associated with male violence towards women and girls, they are still present in our society and in our institutions.

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

Yes

Please give a reason for your answer:

Patriarchy has given permission for entitlement, inequality, sexism, toxic masculinity and misogyny to thrive in many different environments. It is woven into the fabric of our society and culture.

Daily women and girls are subjected to unwanted sexist and misogynistic experiences, ranging from reduced visibility, being undermined, views and opinions diluted, catcalling, wolf whistling, leering, being followed, taking unwanted pictures, upskirting, to unwanted touching, groping, threats to maim and harm, to actual sexual and physical assaults. Overwhelmingly these assaults are perpetrated by men. This happens in the public arena, on public transport, in parks, in education, hospitality, sports venues and public buildings (please note this is not an exhaustive list). They also happen in private spaces including homes, places of work, cars and increasingly online via social media, texts, emails and other such mediums. Therefore, it

[1] https://www.gov.scot/publications/misogyny-human-rights-issue/

is important that the behaviour is criminalised in all settings with no space being considered less harmful an environment for misogyny to take place.

Question: Do you have any views on the proposed maximum penalty of 7 years imprisonment for the offence of misogynistic harassment? Please provide details.

The GVAWP are of the view that the production of robust sentencing guidelines to accompany the legislation is necessary. Sentencing as a punishment cannot be viewed in isolation from rehabilitation and the expectation of change.

A workshop was organised to gather views from GVAWP members to inform our response and participants were sceptical. Participants believed we have yet to see consistent and robust sentencing applied to those convicted of inherently misogynistic offences such as domestic abuse, rape and sexual violence. Disposals range from fines, restriction of liberty, community payback orders, short sentences all of which are intended to punish the offender but there is often an absence of rehabilitation to prevent future offending. There is only one court mandated domestic abuse programme Caledonian, but not all offenders are mandated to participate and there is a degree of scepticism from those who took part in the GVAWP workshop that this is likely to be replicated in this legislation intended to tackle misogyny.

Violence against women and girls is considered a serious crime and legislation has been introduced in Scotland to deliver a clear message that violence against women and girls will not be tolerated and that perpetrators will be held to account. Despite legislation, domestic abuse has a high rate of recidivism, between the same offender and the same victim. This is reflected in cases discussed at MARAC in Glasgow. From January to April 2023 MARAC discussed 362 high risk victims of domestic abuse. Of that group 175 were referred on the basis that a repeat incident of domestic abuse had taken place, 93 of these cases also involved a breach of bail or Non Harassment Order. Serial offenders often featured in discussions, where the offender was known to have a history of domestic abuse offending. GVAWP members were of the view that those who commit offences related to misogyny will continue to offend, unless there are programmes of prevention activity which robustly address this.

There will be many including Sheriffs who are of the view that 7 years imprisonment is overly punitive and harsh and might ask will imprisonment bring about the necessary change which prevents this behaviour occurring in the future? We also note that the maximum penalty that can be applied to those convicted of coercive control is 5 years. The sentencing recommended here is more in line with the revised Hate Crime legislation than it is with sentencing associated with crimes that are committed under the umbrella of violence against women and girls.

Sentencing and punishment is one thing, however it should not occur in isolation from rehabilitation. The GVAWP is supportive of whole system investment in prevention programmes and activity which motivate and provide the opportunity to allow offenders to take responsibility for their behaviour and demonstrate willingness and commitment to change entrenched views and attitudes.

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

Unsure.

Please give a reason for your answer?

It is very difficult to understand what might determine a reasonable defence to misogynistic harassment. We understand that this provision exists elsewhere in law and this is perhaps why it is included here in the interest of a fair trial.

Question: Do you have any other comments on the offence of misogynistic harassment.

The GVAWP representatives and its associated working groups members attended a workshop to gather views to help inform this response to the consultation.

Whilst they very much welcomed the proposal to introduce legislation to criminalise misogyny in response to the report produced by Baroness Kennedy, there was general consensus that there will be challenges in implementing the legislation.

What is proposed is radical reform. We know that changes in law can and do influence cultural and societal change, for example wearing safety belts or the introduction of mandatory use of car seats for babies and children. To exercise their rights women and girls need to understand what these are. The Scottish Government must, if this is to be more than a paper exercise in response to 'Misogyny a Human Rights Issue', deliver accessible awareness raising and prevention programmes to ensure that women and girls are supported, encouraged and have confidence to exercise their rights in law to be protected from misogynistic harassment, misogynistic behaviour, sexually threatening abusive messaging and stirring up hatred towards them.

Gendered roles and social constructs subordinate women and girls from an early age to have a level of tolerance of 'male entitlement', sexism, misogyny and toxic masculinity. There must be a top down, that is the legislation, and a bottom up approach to changing attitudes which must include prevention activity across all spheres of society.

Violence against women campaigns have helped create a greater understanding of what male entitlement, sexism, misogyny and toxic masculinity is and how they contribute to the subordination of women and girls. The GVAWP are of the view that despite these campaigns women and girls may be reluctant or find it difficult to name and identify their experience as misogynistic behaviour or harassment and report it as such.

Women and girls must have confidence that their reports will be taken seriously. When investigating and prosecuting crimes of misogynistic harassment and behaviours it is vital that both Police Scotland and Crown Office Procurator Fiscal Services (COPFS) have the resources and gender competence to execute the legislation.

There must be mandatory collection and analysis of data on reports and outcomes that allows the legislation once enacted to be monitored and measured. This should also include post legislative scrutiny which allows us to better understand the impact of the legislation, similar to the report recently produced on Domestic Abuse (Scotland) Act 2018, and make us aware of any unintended consequences for women and girls, including intersectionality.

There must be a Scottish Government commitment to create the platforms to collect the experiences of women and girls and Baroness Kennedy's report must be considered the beginning and not the end. The law must be mapped out against the experiences of women and girls to allow for robust and critical examination of law through the eyes of the women and girls it is designed to provide protection.

The Scottish Government must embark on a sustained public awareness raising campaign for the legislation to have its desired impact. There is an over reliance on short burst messaging which has some effect but does not permeate the public consciousness over the longer term.

Legislation can influence and inform wider cultural and societal change however along with the proposed legislation this must be accompanied by prevention activity across all spheres of society.

2. An offence of misogynistic behaviour

This offence is intended to criminalise misogynistic behaviour that is not directed at a particular person or group of people and can be seen as a 'public order' offence concerned specifically with misogynistic behaviour.

This offence is committed where the accused person: and

- behaves in a manner which is sexual or abusive (or both); and
- the behaviour is motivated (wholly or partly) by contempt or malice and ill-will towards women and girls or of a character such that a reasonable person would consider it to be contemptuous of women and girls; and
- the behaviour would be likely to cause a reasonable woman or girl to suffer fear, alarm, degradation, humiliation or distress; and
- the person intends by their behaviour to cause a woman or girl one of these effects, or else is reckless as to whether their behaviour has that effect.

Question: 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?

Yes

Please explain your response.

We live in a culture which colludes with systems of male entitlement and power, it allows misogyny to exist and this is damaging. It undermines the possibility of creating relationships of equality, respect and honesty between men and women.

It is important to consider the collective impact misogynistic behaviours have on all women and their status in society. There is no doubt that this behaviour has an impact on the day to day lives of women and girls as a group. These behaviours are intended to assert male superiority and subordinate the place of women and girls and this should be recognised.

We also need to consider how institutions and industry contribute to the objectification of women. Prostitution is one example of an institution which reinforces and perpetuates the unequal status of all women. Given that the system of prostitution is premised on gender inequality, it is wholly incompatible with universal standards of human rights and undermines the status of women in our society.

If men have the ability to buy sexual access to a woman's body, women will be viewed as objects to be bought, sold or abused according to male entitlement. It is irrelevant to whether

a man has ever bought sex, the fact that we live in a society where women can be bought and sold reveals how our society views women and their place in it. So long as women are used as objects they will be treated as such, it does not matter if they are prostitutes, if one woman is sexually objectified all women are sexually objectified.

There is a need to challenge systems and structures which sustain inequality, objectify women and create a lie that women are sexually available to men and serve to normalise the acceptability of sexually predatory behaviour in our society.

Question: 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.

As before the GVAWP were of the view that a definitive list of impacts may not be helpful. We are mindful that the 'reasonable person' test will be applied. As previously stated, we are of the view that the suite of trauma responses should be included here.

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

Yes

Please give a reason for your answer.

Please see our response to misogynistic harassment.

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

Please provide details?

Please see our previous response to misogynistic harassment.

Defences
Question: Do you have any comments about the inclusion of a reasonableness defence to the offence of misogynistic behaviour?

Please see our previous response to misogynistic harassment.

Question: Do you have any comments about the inclusion of a freedom of expression provision setting out, for the avoidance of doubt, that certain behaviour does not constitute an offence of misogynistic behaviour?

Under Article 10 of the Human Rights Act 1998, freedom of expression is a human right and this includes the right to hold opinions and impart this without government or state interference. Freedom of expression is a cornerstone of democracy.

In October 2021, Irene Khan, the Special Rapporteur on promotion and protection of freedom of opinion and expression presented her report[2] on gender justice and freedom of expression to United Nations General Assembly. In her report she noted

[2] https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/212/16/PDF/N2121216.pdf?OpenElement

'*Sexism and misogyny, combined with direct discrimination through laws and policies, are dominant factors in gendered censorship. Growing trends of populism, authoritarianism, nationalism and fundamentalism worldwide have accentuated patriarchy and misogyny and enhanced discrimination against women, as well as the suppression of their ability to express themselves.'*

For too long the voices of women have been silenced and this legislation must support women to assert their collective voice, to state their truth and their experiences and those seeking to silence them to be held accountable for their trolling, doxing and other such behaviours.

The GVAWP are mindful that 'freedom of expression' may well be used as a reasonable defence. The right to freedom of expression, does not permit individuals or groups crossing the boundary from the right to hold an opinion and share it in such a way that it is threatening, abusive, causing fear, alarm, distress, is degrading and humiliating or stirs up hatred.

The GVAWP suspects that that the boundary between freedom of speech and sharing of misogynistic views is not as clear cut as we would like it to be and may well be open to interpretation. It is the responsibility of law makers to ensure that clarity exists.

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

Please see our response under misogynistic harassment.

3. **An offence of Issuing Threats of, or Invoking, Rape or Sexual, Assault or Disfigurement of Women and Girls online and offline**.

The offence is committed where a person knowingly conveys a message which is:

- threatening or abusive or both to a person who is, or is presumed to be, a woman or girl; and
- the message makes reference to rape, sexual assault, disfigurement, violence likely to result in disfigurement, or a combination of those things.

Question: 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 a reason for your answer?

Communication whether verbal, written, text, email or online comments, which involves threats of sexual abuse, rape and disfigurement are frequent features in the lives of women and girls, these happen in public, in private and increasingly online where the perpetrator has the luxury of hiding behind anonymity.

The spread of this abuse is rising and must be addressed. Women and girls are acutely aware that one online comment can lead to a barrage of abuse and threats within minutes. It leaks into our society and women and girls are subjected to sexualised and other aggressions which escalate in frequency and nature.

It is important to acknowledge in some instances the individuals who participate in this behaviour will be unknown to the individual(s) it is targeted at. There is a need to consider how this anonymity will be tackled by the law.

We are more familiar when well-known women make visible their experiences of misogyny to the wider public. A recent BBC 2 documentary 'Asking For It' highlighted the experiences of actress and comic Emily Atack, where she revealed that she was subjected to a litany of explicit images and threats to rape. This is the experience of thousands of women and girls in Scotland and this too must be recognised and responded to.[3]

Question: 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.

We note that there are provisions elsewhere in law that can respond to threatening or abusive communications and this new offence is seeking to widen criminal law. The GVAWP are supportive of the proposed approach that it is irrelevant as to whether the author of such communications intended to carry out the threat, the fact that it was made is sufficient for such an offence to have occurred.

Threats to rape, disfigure or assault a woman or girl must be taken seriously. For too long women and girls have lived with comments that seek to obfuscate the behaviour 'I was only joking' or 'surely you didn't think I was serious', if in the unlikely event they are ever in the position to challenge the individual(s). Comments and responses such as these minimise and avoid taking any responsibility for the misogynistic threats at play and the level of trauma and fear for their safety they place women and girls in. in. More commonly women and girls will experience criticism, apportioning blame or responsibility in part to them because of images they have posted of themselves, or read comments intended to be helpful on how they can reduce the level of sexist hate speak they are subjected to, if they modify images they share. It is for these reasons the GVAWP is supportive of the inclusion of this within the Bill.

Question: 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.

The success of any legislation is in the application of it and there is no doubt that all involved in criminal justice processes will need to demonstrate robust gender competence to investigate and prosecute crimes of this nature.

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

Please provide details.

We have no further comments.

Question: Do you have any comments on the proposed maximum penalty of 5

[3] https://www.girlguiding.org.uk/girls-making-change/girls-attitudes-survey/

years for the offence?

Please refer to our earlier responses regarding sentencing.

Question: Do you have any other comments on the proposed offence?

No.

4. A new statutory aggravation concerning misogyny

The purpose of the new statutory aggravation relating to misogyny and is similar to the aggravators attached to ‘Hate Crimes’.

The aggravation will apply when the offender has demonstrated necessary prejudice towards the individual because she is a woman or a girl or is motivated by prejudice towards women and girls. The aggravation does not use the language of prejudice but uses ‘mindset’ meaning malice, ill-will or contempt. Contempt is understood in this context to mean

The aggravation will be applied to the underlying offence e.g. ‘threatening and abusive behaviour’, the offence must be corroborated but evidence of the aggravation can come from a single source.

The aggravator will not apply in offences concerning sexual violence or domestic abuse, which are deemed to be inherently misogynistic.

If proven, the Sheriff must take into consideration the statutory aggravator on misogyny when sentencing. This may or may not invite the Sheriff to impose a higher tariff.

A statutory aggravator will also be noted on the offenders record and the aggravator will be recorded.

Question: Do you support the recommendation in Baroness Kennedy’s report that there should be a statutory sentencing aggravation relating to misogyny?

Yes

Please give a reason for your answer.

Statutory aggravators are attached to substantive offences, unlike the substantive offence they do not need corroboration and the GVAWP are supportive of this.

By attaching the statutory aggravator to the substantive crime, it allows us to track patterns of behaviour, it lets us understand the growth and spread of misogyny. By creating this approach, we will be in the position to take the right measures that begin to make our real and virtual worlds a safer place for women and girls.

It will also allow Sheriffs to record the substantive crime as being motivated by misogyny and take that into consideration when sentencing. This will also be attached to the offender’s record.

We would recommend annual production of data that allows for examination of the application of the law and provide information on where statutory aggravators of misogyny were applied. This will allow us to afford scrutiny to the application of the aggravators and examine the extent

of misogyny across other offences. The caveat to all of this is the gender competence of investigating officers and the prosecution of such offences.

Question: Do you agree with the approach contained in the draft provision that an offence is aggravated in the following two situations: namely if:

- the offender demonstrates contempt, or malice and ill will towards the victim and that is based on the victim being or being presumed by the offender to be a woman or girl; or
- whether or not there is a specific victim of the offence, the offence is motivated wholly or partly by contempt, or malice and ill will towards women and girls.

Yes.

Please provide details.

The aggravators as outlined in the consultation are written similarly to those applied within the Hate Crime and Public Order (Scotland) Act 2021. It is proven when the 'offender' demonstrates a 'mindset' towards the victim, based on her being a woman or girl, perceived to be a woman or girl or a supporter of the rights of women or girls. The GVAWP welcome the inclusion of aggravators to reflect the seriousness of a crime.

While supportive of the inclusion of aggravators this will require significant levels of gender competence in order that the aspirations of this element of the bill is realised. There is an extensive list of crimes where the aggravator cannot be applied, and this raises a broader question of what it can and should apply to.

Question: 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 account of when sentencing the offender?

Yes

Please provide details.

The GVAWP agree that the crimes listed are inherently misogynistic but in saying that they are of the opinion that crimes related to all forms of violence against women are not recognised in law as being inherently misogynistic. This is not currently evidenced in the investigation, prosecution, and sentencing of offenders. The GVAWP believes this in due in part to a lack of gender competence.

There is an assumption that all the characters involved in criminal justice procedures understand the gendered nature of violence against women and girls and this is not our experience nor is the experience of women and girls.

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

Please provide details.

The list of offences which cannot be libelled is extensive. As we previously mentioned we are not convinced that the offences as listed are recognised as being inherently misogynistic. Consistently there is a failure to apply a gendered lens to these crimes by police investigating crimes, by prosecutors, by juries and by Sheriffs. It is perhaps not the design of the law that is the issue here, it is the application of it by those involved across the criminal justice processes which fails women and girls. The gender blind application of the law serves no one's interests, it demonstrates a lack of awareness of the specific needs of women and girls.

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

Please provide details.

No further comments.

5. An offence of stirring up hatred against women and girls

The offence of stirring up hatred of women and girls is committed where the accused behaves in a threatening or abusive manner, or communicates threatening or abusive material, and, in either case, has the intention of stirring up hatred against women and girls.

The stirring up offence is limited to behaviour or communications which are threatening or abusive and intended to stir up hatred of women and girls. The purpose of the offence is not to interfere with a person's ability to freely debate issues concerning, or relating to, women and girls.

Question: Do you agree with the report's recommendation that there should be an offence of stirring up hatred of women and girls?

Yes

Please give reasons for your answer.

The increasing threat of involuntary celibate 'incel' behaviour is of grave concern. Incels often call for serious violence to be carried out on women or girls and has been responsible for murders in the United Kingdom and overseas.

Incel groups and individuals have gained significant traction over the last few years and there is a deeply worrying growth in their popularity amongst men and boys. Men and boys who engage in this world self-identify and are of the view that women and girls, particularly feminists are the route of their problems. Incels are just one part of the broader 'manosphere' which exist online, actively promoting the return to rigid gender roles by any means.

It is vital to the safety of women and girls that action is taken against this 'activism' in order that women and girls are safe in their communities.

The profile of pick up artists (PUA) is growing in influence. They promote engaging with women and girls they do not know, using trickery, psychological manipulation and coercion to achieve their means of sexual activity with women, with the underpinning belief that women do not have the right to say no. Often pick up artists will share 'techniques' online or offer classes/workshops to groups of men advocating sexist, misogynistic, sexually abusive harmful means to engage with women and girls.

It is right that we are disturbed, shocked and outraged at the promotion of this behaviour and it is necessary to take action against deeply damaging behaviour such as this.

Question: Do you agree with the report's recommendation that the offence should be committed where a person behaves in a threatening or abusive manner or communicates threatening or abusive material, with the intention of stirring up hatred of women and girls?

Yes

Please give reasons for your answer.

This element of the Bill is seeking to address behaviours not directed at an individual or group of women or girls but nonetheless the behaviours displayed encourage and incite violence and/or abuse on women and girls and have an impact on all women and girls. Baroness Kennedy in her report clearly evidences why we must include this within the Bill and we support this.

Question: Do you have any comments on the proposed approach to freedom of expression set out in the draft provisions?

Please provide details.

Please see our previous response to 'freedom of expression'.

Question: Do you have any other comments on the draft offence of stirring up hatred of women and girls?

No.

Please provide details.

6. Impact Assessments

As with any policy it is important that EQIA is undertaken, to consider the impact any change will have on particular groups and how Scottish Government might address these.

The assessments also explore what impacts the proposed reforms to the criminal law will have on matters such as privacy, equality, child rights and wellbeing and business. In addition, Scottish Government need to ensure that any reforms to the criminal law comply with the European Convention on Human Rights.

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

Yes

Please provide details.

We are of the view that this legislation will advance the human rights of women and girls to live free from threats of, or actual violence, abuse, intimidation, acts intended to subjugate, degrade and humiliate or otherwise undermine and prevent full participation in society.

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

The Equality Act sets out 9 protected characteristics age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

The GVAWP believe that this legislation will enhance the opportunity to work towards greater equality for women and girls.

Question: 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?

Misogyny and sexist stereotyping are a significant hinderance to children and young people, boys and girls realising their full potential. Gender stereotyping is ever present in the lives of children in the toys they play with, the books they read, cartoons they watch, the clothes they wear and the labels that are attached to them by those who love and care for them.

Combating misogyny and inequality begins in childhood and it is incumbent on us all to create real and virtual worlds that children and young people can thrive and develop in an age and stage appropriate way.

Gender Friendly Nurseries, is a pilot programme developed by North East Glasgow Health Improvement staff. From this pilot NHS Greater Glasgow and Clyde produced the Gender Friendly Nursery Toolkit [4]. It is activity such as this that will bring about change however this has to be consistent and receive investment if a longer term impact is to be realised.

Prevention activity needs wholescale investment, building on existing activity such as Equally Safe at School [5].

Education establishments need to address policy and practice, taking a whole school approach agreeing how it will tackle gender inequality, sexism, misogyny and violence against women and girls. They must be resourced to collect data on gender that relate to suspensions, attainment, attendance and learning support. By doing this they will have a greater understanding of the scale of the issue before them and can begin to implement steps of change and the opportunities that exist within the daily life of school which can support work to achieving greater equality and support children and young people to become the adults they have the right to be.

The proposed legislative change is likely to be an abstract concept and the GVAWP believe that to achieve impacts on the rights of the child the focus of work must be in prevention.

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

[4] https://www.nhsggc.org.uk/media/253686/gender-friendly-nursery-support-pack-dec-2018.pdf
[5] https://www.equallysafeatschool.org.uk/about-svpp/

The report produced by Baroness Kennedy brings into sharp focus the socio-economic impact of misogyny and its contribution in maintaining inequality and ensuring that our society is predicated to meet the needs of white, heterosexual, able bodied men.

Over the years there has been activity which has advanced the need to challenge inequality but yet it prevails and this is an indicator that much work remains to be done and greater effort is required.

Socio-economic status of women impacts on their functioning, how they perceive the world around them, how they perceive themselves and how they are perceived by others. This inequality impacts on educational attainment, poverty, health mental and physical and the status women and girls have in society.

Introducing legislation to address the serious and enduring end of the misogyny continuum is only one part of the solution and there is much work to be done in order that we address the grave inequalities experienced by women and by those who are afforded identity by dint of their protected characteristics.

There is a need to focus energy, attention and investment in prevention work, in schools, in further and higher education, in the workplace, in our homes, in our streets and in our day to day living.

Poverty

Women's poverty is fuelled in part by misogyny. Women are more likely to be in poverty, more likely to remain in poverty for longer, the intersection between poverty and discrimination because of sex, puts women and girls at greater risk of sexual exploitation.

Women are more likely to earn less than their male counterparts, be subject to zero hours contracts, be in low paid and less valued employment, require flexibility in employment,

It is the responsibility of all relevant services to take action to address this.

Access to justice and protection

Women and girls experience multiple complex barriers in accessing justice and protection. While there is no doubt that legal responses have improved significantly to afford women more rights in law and improved legal protections, there is evidence that discrimination still exists. In her book 'Eve was Shamed: How British Justice is Failing Women' Baroness Kennedy, cites a catalogue of examples of how justice continues to discriminate against women:

'the law of self-defence has been constructed by men, considering being attacked by another man. The law fails to sufficiently consider the disadvantages that women feel in the face of male strength and that most women suffer long terms abuse – which doesn't allow for the defence of provocation'.

In 2011, Sally Challen was convicted of the murder of her husband, at the time 'coercive control' was not recognised as a crime in England and Wales, only becoming legislation in 2015. She was sentenced to life imprisonment, it took until 2019 for her legal team to successfully appeal against her sentence, citing that the years of coercive control she was subjected to, resulted in her diminished responsibility and subsequently committing a crime. In Scotland, coercive controlling behaviour was not criminalised until the introduction of the Domestic Abuse (Scotland) Act 2018.

In Scots law, corroboration is required before any conviction can be secured against an accused. Crimes such as domestic abuse, rape, sexual violence and abuse, are overwhelmingly experienced by women and girls, they are largely committed in private, involving 2 parties, the victim and the accused. In order to achieve a prosecution each element of evidence requires corroboration, where rape is concerned this would mean that there would need to be 2 pieces of evidence that supported penetration happening and 2 pieces of evidence that consent was not given, the victim would also need to supply in her statement 2 pieces of evidence that it was the accused who committed the crime. When these crimes occur in private without witnesses and despite there being supporting evidence but insufficient to corroborate each element, the case cannot proceed. This is why women are denied access to justice and why organisations such as Rape Crisis and Women's Aid support the removal of corroboration.

Conclusion

For women and girls to have confidence in this legislation and all the actors involved in bringing about change then all the other changes need to happen, legislating in isolation will not eradicate misogyny.

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

The GVAWP are of the view that Violence Against Women Partnerships, local authorities and women's services located in Scotland's islands are better informed to give an opinion on any impacts for communities on Scottish Islands.

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

The GVAWP are of the opinion that the proposed legislation will cut across a number of sectors in Scotland. The impacts are not limited to the business and third sectors.

Gender inequality is widespread across many sectors in Scotland, including, public, third, business, sporting, media, faith, entertainment. We are aware that across these arenas gender pay gaps exist, occupational segregation, gender stereotyping happens, sexual harassment occurs. All of these indicate that inequality and sexism in the wider workplace continues. There is no doubt that this is harmful, it impacts on employee productivity, sense of belonging, mental health and job satisfaction. The GVAWP are of the view that this legislation, if passed, will impact across the board. All have a responsibility to review their structures, systems and processes and take responsibility to commit to change where these factors perpetuate disadvantage.

We strongly support the application of a gendered lens to enable all sectors to understand where these structural inequalities exist and then undertake measures to address entrenched gender stereotypes.

Business Sector

Women are vastly underrepresented at Senior Management level and black and ethnic minority women even more so. The Fawcett Society Sex and Power [6] Report, 2022 highlights:

[6] https://www.fawcettsociety.org.uk/sex-power-2022

- Less than 1/3 of the UK's top jobs are filled by women. Across 5,166 positions of power in society, women make-up under a third (32%) what that means is that 919 are missing from the top roles.
- Women remain just 8% of FTSE 100 CEOs and there are no women of colour.

If we accept that sexism and misogyny operate on a continuum, statistics such as these contribute to the existence of harmful attitudes which this proposed legislation is attempting to address.

With that in mind the business sector should be motivated in its responsibilities towards addressing sexism and inequality in the workplace.

We would propose that existing Scottish and Local Government relationships with the business sector come together to develop a framework that will help tackle these challenges.

Public Sector

The public sector must act as advocates for change, Equally Safe at Work[7] is an accredited programme developed by Close the Gap, to support employers to improve their employment practices to advance gender equality and prevent violence against women and girls. Public sector services have begun to participate in this programme of activity and this should be championed. We are only at the beginning of this work to tackle the institutional barriers that underpin the presence of inequality, sexism and misogyny in our sectors and starting points are important.

In May 2023 Scotland's Police Constable made a statement on institutional discrimination within Police Scotland, as part of this he announced:

'……...it is right for me, the right thing for me to do as Chief Constable, to clearly state that institutional racism, sexism, misogyny and discrimination exist. Police Scotland is institutionally racist and discriminatory. Publicly acknowledging these institutional issues exist is essential to our absolute commitment to championing equality and becoming an anti-racist Service. It is also critical to our determination to lead wider change in society.'

Statements such as these are courageous, it involves ownership of discrimination and a commitment to change. Collectively the public sector must commit to a review of their structures, policies and practice which allow institutional barriers that contribute to the existence of misogyny and sexism within our public sector.

For this legislation to realise any success women and girls must have confidence in all stakeholders. All public authority staff, men and women must have the ability to call out and challenge sexism, inequality, male entitlement and toxic cultures without fear of retribution, being undermined, side-lined or have their complaint dismissed. Codes of conduct must be explicit and the public sector must be leaders in advocating cultural and societal change.

Third Sector

In 2022 a report by Inclusive Boards[8] highlighted just 13% of charity boards have gender parity, and only 4 in 10 women are represented on Boards, despite women taking up 68% of roles in the sector. Gender pay gaps exist between male and female Chief Executive Officers and that it is increasing.

[7] https://www.equallysafeatwork.scot/
[8] https://www.inclusiveboards.co.uk/

Following on from the #MeToo movement, the Fawcett Society along with other partners led a campaign to challenge sexual harassment in the workplace and produced a report Tackling Sexual Harassment in the Workplace[9]. The report highlighted:

- At least 40% of women have experienced workplace harassment, and women who are marginalised for other reasons, such as race or disability, face an increased risk and different forms of sexual harassment
- 45% of women in a recent survey reported experiencing harassment online through sexual messages, cyber harassment and sexual calls
- Almost a quarter of women who had been sexually harassed said the harassment had increased or escalated since the start of the pandemic while they were working from home
- Almost seven in ten (68%) disabled women reported being sexually harassed at work, compared to 52% of women in general
- Ethnic minority workers (women and men) reported higher rates (32%) of sexual harassment than white workers (28%) over the last 12 months
- A poll of LGBT workers found that 68% had experienced some form of harassment in the workplace

The report also highlighted that often the response from employers is to resolve the incidents individually and quietly to minimise reputational or other risks. This fails to address any institutional barriers that exist that allow sexism and harassment to remain prevalent in the third sector.

Media & Entertainment

The presence of misogyny in print, digital multi-media and entertainment has been a subject of much discussion. There are no mediums that have escaped allegations of misogyny, sexism and toxic cultures of white male entitlement. It is present in the films we watch, the articles we read in print and online, in the music we listen too, adverts we are exposed to and television we watch, it is unrelenting gaslighting.

We are aware that when women in the public eye speak out, they very quickly become targets for horrific vitriol and are left managing a litany of threats all of which undermine and threaten their safety and wellbeing. Very little action has been taken by any industry to address this.

Newspaper headlines when depicting violence against women and girls often run with sensational headlines, ‘othering’ perpetrators and distorting articles which hold women partially responsible for the violence or abuse they experience because ‘they didn’t leave’, ‘didn’t speak out’, ‘didn’t report’, nowhere does this industry consider their culpability in sustaining gender inequality and contributing to misogynistic views and attitudes.

Conclusions

Scottish Government, public services, third sector and across the business sector and industry, must come together to be the change for good. There needs to be a framework that allows us to begin a very serious transformation of our culture and our society. There may well be elements that are beyond our control, this however, should not deter our sustained efforts to imagine a safer and more respectful society for women and girls.

[9] https://www.fawcettsociety.org.uk/Handlers/Download.ashx?IDMF=8eabc7f1-07c0-4d7e-9206-de431524301e

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

The GVAWP are not sufficiently informed to comment on any potential impacts on the environment.