

Consultation on draft SSI to add 'sex' as a protected characteristic to the Hate Crime and Public Order (Scotland) Act 2021



Respondent Information Form

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☐ Individual

☒ Organisation

Full name or organisation's name

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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

☐ No

Questionnaire

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

Please give reasons for your answer.

Glasgow Violence Against Women Partnership (GVAWP) are supportive of the introduction of a standalone offence of misogynistic harassment. Misogynistic harassment is endemic in society, and it affects every aspect of all women's lives. We are of the view a standalone offence would have provided a better and more appropriately targeted remedy than the creation of a statutory aggravation. The systemic nature of misogynistic behaviour requires a stronger response. A standalone offence is likely to be more effective in ensuring that such crimes were treated with appropriate seriousness within the justice system.

The failure to take forward any legislation in relation to tackling misogyny leaves a significant legislative gap. The GVAWP is therefore supportive of including the Stirring up of Hatred Offence and the Aggravation of Offences by Prejudice.

Stirring up of hatred is a serious matter and we need a robust and proportionate legal response to it. The introduction of the SSI to include characteristic of sex would acknowledge the seriousness of such conduct and the impact it has on the individuals targeted. It would also send a clear message about the unacceptability of such behaviour. There is a significant gap in addressing the behaviours of those who denigrate women and girls and who currently do so with impunity and zero legal or social consequences.

We support the extension of the aggravation of offences by prejudice to cover the characteristic of sex, providing consistency and continuity across all protected characteristics. It is necessary to bring hate crime based on an individual's sex in line with other hate crime, to provide the same type of protection to women and girls as is available to people with other protected characteristics. A statutory aggravation would be able to deal with offences with a misogynistic element.

We agree that the statutory aggravation, includes the offence by prejudice, where the perpetrator's perception to the victim's identity rather than their actual identity which is relevant.

Over and above the introduction of the SSI into current Hate Crime legislation the Scottish Government must commit to 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.

For women and girls to exercise their rights in relation to the proposals they must understand what their rights are. All Women and girl regardless of ethnicity or background, 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 inclusion of the SSI.

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

☐ No

Please give reasons for your answer.

The GVAWP supports stirring up hatred being extended to include stirring up hatred based on sex. Other gender-based hostility is already covered by the recognition of transgender identity in the Offences (Aggravation by Prejudice) Act 2009. In including the aggravation of “sex” in the consolidated legislation, hate crime perpetrated against men based on their sex would also be recognised.

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 on gender justice and freedom of expression to United Nations General Assembly. In her report she noted.

‘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 the SSI must support women and girls the opportunity to assert their collective voice, to state their truth and their experiences and those seeking to silence them to be held accountable for their 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.

We are mindful of the complex and evolving digital landscape:

- **Tech-Facilitated Abuse (TFVAWG)** is becoming increasingly sophisticated:
 - AI-generated deepfake intimate image abuse (first prosecution in Scotland)
 - Sex buyers using deception and chargebacks
 - Location tracking via AirTags and SIM swapping
- **Youth Exposure:** Violent and misogynistic content on TikTok is rising, especially among boys aged 9–12
- **Intersectional Harms:** Digital abuse intersects with racism and extremism
- **Misinformation & Radicalisation:** Vulnerable women targeted by conspiracy theories and right-wing campaigns.

It is important that misogynistic threats arising in the virtual world are within the scope of the consolidated legislation.

Question 3

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

☒ Yes

☐ No

Please give reasons for your answer.

We are supportive the interpretative provision of sex as a group of persons defined by reference to—

- (a) their biological sex being female, or
 - (b) their biological sex being male,
- and references to sex are to be construed accordingly.

In this section, “biological sex” means sex at birth.

This addition reflects the need to ensure protections for women and girls and that there is separate provision in the Act for the characteristic of transgender identity which covers the stirring up of hatred against people with a transgender identity, and offences motivated by hostility concerning transgender identity.

Question 4

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

☒ Yes

☐ No

Please give reasons for your answer.

Patriarchy, male entitlement and misogyny are woven into the fabric of our society, and prevalent across all cultures, largely it is rendered invisible. While there is general acceptance misogyny and hate crimes against women and girls is an increasing threat to women and girls as a sex and a pervasive harm to our communities, the available data is scant.

The mandatory collection and analysis of data on reports and outcomes that allows the SSI once enacted to be monitored and measured is important. This should also include post enactment scrutiny which allows us to better understand the impact of the SSI.

Furthermore, it creates continuity across all protected characteristics, requiring information to be recorded of victims’ and the offenders’ sex, providing vital statistical information on the extent of the harms being caused to groups on the grounds of prejudice against women and girls.

Question 5

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

The GVAWP are of the view is that in a democratic and diverse society, a variety of opinions co-exist and that the right to express these views is legitimate and should be protected, in line with Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This includes the right to make criticisms of religious beliefs and practices, providing that they don't interfere with the rights of individuals to hold and manifest their religious views, and criticism of the actions of others because they are incompatible with one's religious doctrine, again providing that this does not interfere with other rights.

We are of the opinion the introduction of the SSI is an opportunity for all women and girls, to realise and assert their human rights. It should be recognised that misogyny is a breach of a victim's human rights, under Article 1 of the European Convention of Human Rights, the UK is required to convey the Convention Rights and fundamental freedoms of 'everyone within their jurisdiction'. A failure to protect a woman from misogyny may breach: Article 2 (her right to life); Article 3 (her right to be free of inhuman and degrading treatment); Article 4 (her right to be free of slavery and servitude).

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 sexual orientation?

We are of the view there is no damaging or detrimental impact on protected characteristics listed in the question, it will introduce a continuity of response across all protected characteristics.

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 important that children and young people received the same protection in law as other groups. The SSI as proposed does not conflict with the UN Convention on the rights of the Child. We know that there is unrelenting societal, virtual and media pressures on children and young people, which can result in children being exposed to harmful male influences, toxic masculinity including 'incel' propaganda, which is damaging, violent and exploitative.

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 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.

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 sex and 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 all children and young people to become the adults, they have the right to be.

The proposed consolidation of Hate Crime legislation 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 78 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?

The GVAWP are of the view that those living in rural and island communities are best placed to consider any impacts.

The GVAWP do have comment to make on the wider socio-economic inequalities experienced by women and girls from all cultural backgrounds whether they live in a city or in rural communities

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 heterosexual, able bodied men.

Over the years there has been activity which has advanced the need to challenge inequality, still it prevails, 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 are perceived by others and the personal expectations they have for themselves. All this feeds inequality and influences their educational attainment, poverty, health mental and physical and the status women and girls have in society.

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 and require flexibility in employment.

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.

Consolidating existing Hate Crime legislation to address misogyny 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 homes, in our communities and political life.

Question 9

Please provide any further comments on the proposals set out in this consultation in the box below.

Patriarchy gives permission for entitlement, inequality, sexism, toxic masculinity and misogyny to thrive in many different environments. 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, night-time economy, on public transport, in parks, in education, in places of worship, 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 is important that the behaviour is criminalised in all settings with no space being considered less harmful an environment for misogyny to take place.

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.

Baroness Helena Kennedy in her report 'Misogyny a Human Rights Issue' 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, learn 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 perception of entitled behaviour and a 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 or challenged this led to escalating aggression.

What is proposed should be considered the beginning of a requirement working towards 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 deliver accessible awareness raising and prevention programmes to ensure that women and girls are supported, encouraged and have confidence to exercise their right in law to be protected from misogynistic harassment, behaviour, and stirring up hatred towards them.

For women and girls to have confidence accessing the consolidated legislation, all the actors