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Hate Crime and Misogyny

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This briefing seeks to inform consideration of the Scottish Government's proposal to add sex to the characteristics covered by the Hate Crime and Public Order (Scotland) Act 2021.



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Summary

The Hate Crime and Public Order (Scotland) Act 2021 (the 2021 Act) allows the Scottish Government, using secondary legislation, to extend hate crime provisions to cover the characteristic of sex (male and female).

On 28 August 2025, the Scottish Government published a consultation paper on a draft Scottish Statutory Instrument to add sex to the characteristics already covered by the 2021 Act. The consultation closes on 10 October 2025.

The Scottish Government had planned to introduce a Bill criminalising misogynistic conduct, but subsequently decided not to proceed with such a Bill in this parliamentary session.

Introduction

Criminal behaviour involving hatred or prejudice towards people because of their sex is not currently classed as hate crime in the same way as crime linked to a range of other characteristics (e.g. race or religion). Whether sex should be treated in a similar way to those other hate crime characteristics was debated during parliamentary scrutiny of the Bill which became the [Hate Crime and Public Order \(Scotland\) Act 2021](#) (the 2021 Act).

Section 12 of the 2021 Act allows the Scottish Government, using secondary legislation, to extend hate crime to cover the characteristic of sex (male and female). Section 12 provides that any relevant Scottish Statutory Instrument (SSI) is subject to what is sometimes called super-affirmative procedure: ¹

“ Super-affirmative SSIs are used when the changes they would make need a lot of consideration by the Parliament. Super-affirmative SSIs are looked at by the Parliament before they are made. The Scottish Government sends the Delegated Powers and Law Reform (DPLR) Committee a draft of the SSI and any more information it has. The DPLR Committee will then look at the SSI. A lead committee can also look at it, but it does not have to. They can also hear from people who are interested in the SSI.”

An independent [Misogyny and Criminal Justice Working Group](#), ² chaired by Baroness Helena Kennedy, was established in February 2021 to help inform debate on whether sex should be added to the characteristics covered by hate crime. As well as looking at hate crime, the Working Group was tasked with considering whether any weaknesses in the law should be dealt with by a new offence specifically aimed at tackling misogynistic behaviour.

The Working Group's report, [Misogyny - A Human Rights Issue](#) ³ was published in March 2022. It recommended criminal justice legislation focused on tackling misogyny in preference to adding sex to the characteristics covered by the 2021 Act.

In April 2022, the Scottish Government provided an initial [response to the Working Group's report](#) stating that: ⁴

“ We accept 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.”

At its [meeting on 27 April 2022](#), ⁵ the Scottish Parliament's Criminal Justice Committee took evidence from Baroness Helena Kennedy on the Working Group's report.

A commitment to introduce a Bill criminalising misogynistic conduct appeared in the annual [Programme for Government](#) ⁶ published by the Scottish Government for 2023-24. This commitment also appeared in the Programme for Government for 2024-25, but not in the one for 2025-26.

The Scottish Government confirmed its current legislative plans in this area in May 2025, in response to a [parliamentary question seeking an update on its legislative programme](#): ⁷

“ The Scottish Government is committed to ensuring people are protected from misogynistic abuse and we had previously committed to the introduction of a Misogyny Bill. This is a complex area of policy and law, and it would be necessary that any Bill which brought misogyny into criminal law contained clear and unambiguous provisions in regard to the circumstances in which they apply. This would include the implications of the recent Supreme Court Judgment. Given the short time left in this parliamentary session, there is insufficient time for a Bill to be finalised and introduced in this session, therefore the Scottish Government has decided not to proceed with this Bill in this parliamentary session.”

“ To ensure there are protections for women and girls in law, we will therefore lay an SSI by September to add the protected characteristic of sex to the Hate Crime and Public Order (Scotland) Act 2021 so that they have the same protections as other groups protected by that Act. This SSI is subject to super affirmative process and will therefore be subject to consultation.”

The above reference to the Supreme Court is to its judgment in the case of [For Women Scotland Ltd v The Scottish Ministers](#), given on 16 April 2025.⁸ In that judgement the Court held that, for the purposes of the Equality Act 2010, 'sex' refers to biological sex (with the terms 'woman' and 'man' being interpreted in the same way).

On 28 August 2025, the Scottish Government published a [consultation paper](#)⁹ on a draft Scottish Statutory Instrument to add sex to the characteristics already covered by the 2021 Act. The consultation closes on 10 October 2025. In an [accompanying new release](#),¹⁰ the Cabinet Secretary for Justice and Home Affairs (Angela Constance MSP) stated that:

“ Adding the characteristic of sex to the Hate Crime Act will ensure that women and girls have the same protections as victims who are targeted because of a specific characteristic, such as age, religion or disability. Men and boys will also be protected, however, we know that women and girls suffer significantly more from threats, abuse and harassment based on their sex, so they are likely to benefit most from these new legal protections.”

Hate Crime and Public Order (Scotland) Act 2021

Behaviour involving hatred or prejudice towards people can, in some circumstances, be prosecuted as a hate crime. The [Hate Crime and Public Order \(Scotland\) Act 2021](#) (the 2021 Act) consolidated and extended hate crime legislation in Scotland.

The main provisions of the 2021 Act were brought into force on 1 April 2024.

Information relating to the [Hate Crime and Public Order \(Scotland\) Bill](#) ¹¹ (which became the 2021 Act following Royal Assent) is available on the Scottish Parliament's website. This includes a short briefing providing a [summary of parliamentary consideration of the Bill](#). ¹²

Existing provisions

The following characteristics are currently covered by the provisions of the Hate Crime and Public Order (Scotland) Act 2021 (the 2021 Act):

- age
- disability
- race (including colour, nationality, and ethnic or national origins)
- religion
- sexual orientation
- transgender identity
- variations in sex characteristics.

In relation to these hate crime characteristics, the 2021 Act sets out:

- statutory hate crime aggravations covering all of the characteristics - proof of an aggravation can make an offence (e.g. assault) more serious
- offences of stirring up hatred covering all of the characteristics
- an offence of racially aggravated harassment.

In addition to the specific offence of racially aggravated harassment, the approach taken to race differs from the other hate crime characteristics in that the terms of the stirring up racial hatred offence are somewhat broader.

Whether the sex of a person should be added to the list of hate crime characteristics was debated during parliamentary scrutiny of the Bill which became the 2021 Act (e.g. see paras 269 to 300 of the then Justice Committee's [Stage 1 report](#)). ¹³ Although it was not added, section 12 of the 2021 Act allows the Scottish Government, using secondary legislation, to extend hate crime to cover sex.

Characteristic of sex

The Scottish Government's [consultation paper](#)⁹ on adding sex to the characteristics already covered by the Hate Crime and Public Order (Scotland) Act 2021 (the 2021 Act) includes a draft Scottish Statutory Instrument (SSI). It provides for:

1. **Aggravation of offences by prejudice** - the addition of sex to the other characteristics covered by the statutory hate crime aggravation set out in section 1 of the 2021 Act.
2. **Offence of stirring up hatred** - the extension of the offence to cover the characteristic of sex. Section 4 of the 2021 Act sets out two offences of stirring up hatred. One applying to race and a somewhat narrower one applying to the other hate crime characteristics. Sex would be added to the narrower offence.
3. **Protection of freedom of expression** - the extension of a provision in section 9 of the 2021 Act, which is intended to help protect freedom of expression in relation to the discussion or criticism of matters relating to various characteristics, to also cover sex. The provision currently applies to the characteristics of age, disability, sexual orientation, transgender identity and variations in sex characteristics. Somewhat wider protections for freedom of expression apply to religion.
4. **Definition of sex** - the addition to section 11 of the 2021 Act of a definition stating that references to the characteristic of sex are to biological sex (male or female) at birth.
5. **Reporting requirements** - the extension of current reporting requirements, in sections 14 and 15 of the 2021 Act, to also require information on whether sex based hate crime was targeted at females or males.

Misogyny and Criminal Justice Working Group

As noted earlier, an independent [Misogyny and Criminal Justice Working Group](#) (the Working Group),² chaired by Baroness Helena Kennedy, was established in February 2021 to consider:

- whether sex should be added to the list of hate crime characteristics in the Hate Crime and Public Order (Scotland) Act 2021
- whether there should be a new offence aimed specifically at tackling misogynistic behaviour.

Information on the [Working Group's report](#) and the [Scottish Government's response](#) is set out below.

The Working Group is no longer active.

Working Group report

The Working Group's report, [Misogyny - A Human Rights Issue](#)³ was published in March 2022. It recommended specific legislation to provide protection against harmful conduct which has its roots in misogyny.

In doing so, the report argued for this approach in preference to adding sex to the characteristics covered by the Hate Crime and Public Order (Scotland) Act 2021. It stated that (p 7):

“ we feel that misogyny is so deeply rooted in our patriarchal ecosystem that it requires a more fundamental set of responses.”

Misogyny

In their report, the Working Group defined misogyny as follows (p 29):

“ 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.”

They noted that whilst the definition would cover behaviour motivated by a hatred of women, it is not limited to a hatred of women (e.g. also covering prejudice, malice, or contempt towards women).

This definition of misogyny was used by the Working Group in considering the degree to which current laws protect women from misogynistic behaviour. However, the report emphasised that simply holding misogynistic beliefs should not be a crime (p 10):

“ We were very clear from the outset that misogyny itself must not be criminalised as it is a way of thinking and freedom of thought must remain sacrosanct. 'Thought crime' is the stuff of totalitarianism and people in a free society have to be free to think the unthinkable.”

Instead, in recommending new criminal laws, the report sought to focus on harmful conduct which has its roots in misogyny.

Proposals for criminal legislation

The Working Group's report argued that the need to protect women and girls from misogynistic conduct justifies having legislation created specifically for their protection (p 61):

“ The Working Group considered the appropriateness of gendered – ‘women only’ law and whether it can be justified. The Working Group's view, ultimately, was that the idea of the neutrality of law is largely a fiction. When law is created which is designed to protect men as well as women, it usually creates a blur around the ways in which women's lives can be markedly different from those of men and an ignorance of the life experiences of women, in terms of threat and fear in the public space. This blurring, or denial of difference of experience and of offender profiles, is never adequately challenged. And by seeking to tackle misogyny through neutral law, the Working Group would be advocating for a solution that suggests that the problem is a neutral one. In fact, the evidence is clear that there is a pressing social need to address behaviours towards women.”

The report recommended legislating to create:

- an offence of public misogynistic harassment
- an offence of issuing threats of, or invoking, rape or sexual assault or disfigurement of women and girls online and offline
- a statutory misogyny aggravation operating separately from hate crime legislation
- an offence of stirring up hatred against women and girls.

It added that the proposals were "intended as a holistic response, not menu of options" (p 64).

In their report, the Working Group also argued that "legislative change is essential but insufficient to address the insidious problem of misogyny" (p 64). They recommended that the Scottish Government should involve all relevant stakeholders in implementation of the legislation, as well as providing resources for:

- education and training within the criminal justice system and for multi-agency support and awareness (e.g. health and education sectors)
- the development of any new interventions such as training required for prosecution diversions to social workers
- social work and other interventions as required by prosecution policy
- technology capability and police officer capacity for recording and reporting

- campaigning and awareness within public institutions, workplaces and education
- learning from projects and good practice elsewhere.

Scottish Government response

The Scottish Government provided an initial [response to the Working Group's report](#)⁴ in April 2022. In relation to the Working Group's legislative proposals, the response stated that:

“ We accept 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. In particular, it is important to focus on men's tolerance of misogyny, and ensures a clear message that male attitudes which emanate from prejudice and misogyny have no place in a modern equal Scotland.”

Following this, in March 2023, the Scottish Government published a [consultation on reforming the criminal law to address misogyny](#).¹⁴ Its proposals for legislation, although based on those put forward by the Working Group, differed in some ways. For example, instead of a single offence of public misogynistic harassment, the consultation proposed:

- separate offences of misogynistic harassment and misogynistic behaviour (with the harassment offence focused on behaviour directed against a particular woman or group of women)
- neither of the offences would be limited to conduct in a public place.

The Scottish Government published an [analysis of responses to its consultation](#)¹⁵ in May 2025.

Also in May 2025, as outlined in the [introduction to this briefing](#), the Scottish Government stated that it would not be introducing a Misogyny Bill in this parliamentary session. It would instead seek to add sex to the characteristics covered by the Hate Crime and Public Order (Scotland) Act 2021.

Experience of misogyny

Lived experience survey

To help inform the deliberations of the Misogyny and Criminal Justice Working Group, analysts in the Scottish Government carried out an online survey to provide a lived experience perspective of misogynistic behaviour in Scotland. An [analysis of the survey](#)¹⁶ was published in February 2022.

The survey was circulated via a range of bodies, including local authorities and third sector organisations. A total of 930 people responded. As intended, most of those responding were female (93.7%). Most reported having had both personal experience of misogynistic behaviour and of witnessing such behaviour (for example, only 4.6% reported never having experienced misogynistic behaviour).

Working Group's report

In their [report](#),³ the Misogyny and Criminal Justice Working Group highlighted some of the evidence on misogyny provided by the lived experience survey and other relevant material. This included a selection of quotes from women and girls speaking of their experiences, a few of which are reproduced below:ⁱ

“ [I was called] a fucking whore when I politely told the man chatting me up in the pub that I was married.”

“ Since I have become disabled this [harassment] happens so much more. I had a man on a train telling me 'ooh love did someone fuck you too hard and now you're broken?'. I was so scared.”

“ There were so many instances of sexual harassment and assault at school, it's hard to even know where to begin.”

“ I have been whistled at and catcalled numerous times in the street, once a group of men passed me and one of them grabbed their crotch and asked if I wanted a taste of their sausage.”

“ I have experienced death/violence/rape threats on-line for speaking up about street harassment. One man tweeted that they would love to watch me getting my teeth kicked in, many others said I was too unattractive for my experiences to be true, they didn't believe it had happened.”

In relation to such examples, the Working Group's report commented that (p 31):

“ It is tempting to think of them as extremes or exceptions – the rare occasions when the fabric of society has become stretched and torn. But the evidence presented to the Working Group suggests differently.”

The report highlighted a range of such evidence. For example (p 31-32):

ⁱ The quotes in this briefing are taken from pages 30 to 31 of the Working Group's report. The analysis of the lived experience survey provides many other examples.

“ A Girlguiding research brief, tellingly named 'It Happens All the Time', found that 67% of girls and young women have experienced sexual harassment from other students at school. The brief also reports that the chance of girls experiencing harassment significantly increases as they progress through secondary school, with 59% of girls aged 13 to 16 having experienced harassment and 83% of 17- and 18-year-olds having suffered some form of harassment.”

“ UN Women UK's research published in March 2021 found that only 3% of 18-24 year olds reported having not experienced any of the types of sexual harassment listed in the survey. The most common forms of harassment experienced were catcalling/wolf whistling, being stared at in a way that made them feel unsafe or uncomfortable, unwelcome touching, body rubbing or groping and in-person comments or jokes that made them feel unsafe or uncomfortable. More than 95% of women did not report these incidents.”

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