

Criminal Justice Committee
Wednesday 24 September 2025
24th Meeting, 2025 (Session 6)

Note by the Clerk on the Super Affirmative SSI on Hate Crime and Public Order (Scotland) Act 2021

Introduction

1. At today's meeting, the Committee will consider the process - known as super affirmative - by which the Scottish Government is consulting on a draft of a Scottish Statutory Instrument (SSI). The Committee will take evidence from Angela Constance MSP, Cabinet Secretary for Justice and Home Affairs, and her officials.
2. Super affirmative SSIs are used when the changes they would make would need a particularly high degree of Parliamentary scrutiny, and the normal affirmative procedure is deemed insufficient. It affords the Parliament, and other stakeholders, the opportunity to influence the content of a draft of the instrument at an earlier stage before an affirmative SSI is laid in the normal way.

Purpose of the instrument

3. 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).
4. The Scottish Government decided at the time not to include sex in the list of characteristics covered by the offences in the Act (see sections 1(2), 4(3) and 9(a)). Instead, they decided to consult in a separate standalone offence of misogyny and to bring forward a bill on this.
5. The Scottish Government subsequently announced that it no longer wished to proceed in this manner in this parliamentary session.
6. 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) by adding this to the list of characteristics that were previously set out in the Act.

7. 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.

Further Reading

8. A [SPICe briefing](#) on the Scottish Government's proposal is available online.

Actions

9. Members are invited to discuss this issue with the Cabinet Secretary for Justice and Home Affairs.

10. In doing so, Members may like to explore the following matters:

- The process of consultation currently underway, including details of who is being consulted;
- What the Cabinet Secretary considers to be the key issues she is seeking views on
- The process of publishing any views received
- Whether the Committee can be provided with full details of what is changed after the consultation and what parts are not changed
- Future timetables after the current consultation
- Whether the Scottish Government would have any plans to revisit the issue of a misogyny bill in the future
- Whether there would be increases in the number of prosecutions under the Hate Crime and Public Order (Scotland) Act 2021 because of the change proposed and whether additional resource is needed for bodies affected by this change

11. Once the Scottish Government lays the final version of the instrument, the Committee will consider it under the usual process for scrutinising an affirmative instrument. Further decisions on what scrutiny consists of will be taken at that time.

**Clerks to the Criminal Justice Committee
September 2025**