

Scottish Women's Convention
response to the Scottish
Government's consultation on:

Reforming the Criminal Law to Address Misogyny



June 2023

Premise

Misogyny was found to be ever-present by the Independent Working Group on Misogyny and Criminal Justice in Scotland, chaired by Baroness Kennedy QC. This taskforce was asked to assess what could be added to the law to prevent misogyny, and as a result recommended the creation of 'gendered law' – which is specifically intended to protect women and girls. They stated that seeking to tackle misogyny through gender-neutral law would not provide a solution, as it would suggest that the problem is a neutral one, rather than targeted towards women and girls. As a result of the Working Group's report the Scottish Government have proposed 5 recommendations:

- The creation of an offence of misogynistic harassment
- The creation of an offence of misogynistic behaviour
- The creation of a statutory aggravation concerning misogyny
- The creation of an offence of threatening or abusive communications to women and girls that reference rape, sexual assault or disfigurement
- The creation of an offence of stirring up hatred against women and girls

The consultation is based around these recommendations and asks whether there is support for the creation of such laws, and the potential impacts on individuals in Scotland. After the Scottish Government have received all consultation responses, they shall consider alterations that are required and rectify their plan accordingly – incorporating suggestions made.



The Scottish Women's Convention (SWC)

The SWC is funded to engage with women across Scotland to ensure that their views are represented in policy and decision-making processes. The SWC uses the views of women to respond to a variety of parliamentary, governmental, and organisational consultation papers at Scottish, UK and international levels.

The SWC gathers information using different methods, including roadshows, thematic conferences, surveys, and both in-person and online roundtable events. This submission presents the views of a range of women, reflecting their opinions, ideas and lived experience. Working together with many other equalities organisations and community groups, we use our broad network to ensure that women from a range of backgrounds are heard and acknowledged. We are continually reviewing innovative ways of engaging with women and developing our trauma-informed and culturally sensitive practice to support vital contributions from as many women as possible.

An Offence of Misogynistic Harassment

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

Women we have consulted with were generally supportive of the idea of creating an offence of misogynistic harassment which relates to harassment of an identified victim or victims. They stated that this would assist in reducing targeted behaviour against individuals, but there was some trepidation surrounding how this would be enforced, with the onus of proof remaining with the potential victim. This mirrors women's experiences when reporting other forms of gender-motivated crimes, such as domestic abuse and sexual assault, with consistently poor responses from police officers weakening women's trust in the justice system. Therefore, it is vital that this offence is fully enforced to properly protect women in Scotland.

- "In principle I support this law, but I worry about how it will be evidenced."
- "I think there is merit in this proposal...but I think it could be difficult to convict"
- "...I have serious concerns about the police and the legal system's ability to tackle misogynistic harassment in any constructive way. This is based on my own experiences of dealing with the police, as well as a deep scepticism about Scotland's police history"

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?

When we spoke with women about the potential effects on a victim of misogynistic harassment, they explained that this should be taken into account when considering sentencing: with serious offences, facing larger punishments. These effects included those listed, but also encapsulated physical attacks and threats.

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

Yes

By ensuring that there is the inclusion of all spaces, public and private, the Scottish Government can keep women safe throughout their lives. Women believed that the idea of including this would allow for behaviour within the home, and online, to be better regulated, with 73% of respondents to our survey agreeing with this proposal. Some women held reservations around the ability to prove that offences in private spaces had occurred, however, despite this, believed that it should still be included within the legislation.

- "I agree with that, I think it's the corroboration of it... the actual proving of it that'll be difficult."
- "...I guess it would be a protective measure, because people may be more comfortable if they hear something going on, like they may hear something misogynistic and phone the police... so it could be a protective measure when it comes to domestic violence issues"

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

We welcome the inclusion of 'imprisonment' as a penalty to this crime. Women generally believed that the maximum penalty should be in direct relation to the seriousness of the offence but were satisfied to see that imprisonment has been included, rather than fines or community orders. They stated that by attaching imprisonment to misogynistic harassment, the importance of this law can be highlighted, and should act as a deterrent to future and current perpetrators alike. There was some apprehension from women surrounding the 7 years, however, with women pointing to overcrowded prisons, which has resulted in many convicted individuals not serving their full sentences. It was the worry of women that prisoners would be released within 3-4 years, and that they would not receive reform programmes during this time period. The benefits of mandatory reform programmes were continually highlighted by women, with many stating that education for misogynists would be a vital tool in tackling misogyny. Therefore, despite imprisonment being welcomed, and in many cases required in cases of misogyny, the main aim should be rehabilitation and reformation, to create a Scotland that allows everyone to thrive.

- "...I think it should be case by case. The harm it's caused, the intention behind it, those all have to come in."
- "...it has a penalty of imprisonment, and that's the main thing you need for this"
- "So, we're talking about imprisonment, but also, I feel what will that do? You want reform, you don't just want punishment, because what does that actually show? It would be important to have something that's mandatory for the people who are misogynistic to learn what they've done; they do need to learn."

It was also highlighted however, that major work has to be carried out to properly advertise the release of this law. Women explained that they were concerned that sensationalised headlines had already been released, sowing misinformation. For example, the Scottish Daily Express ran with 'Wolf-Whistling Set to be Classed as a Crime under Scotland Misogyny Law Crackdown' in April of this year. Headlines such as this trivialise important legislation, and ultimately have misogynistic undertones, which can result in a lack of understanding and support across the country. Therefore, we recommend a robust media campaign is created to fully distribute relevant information relating to the details of the law, as well as information surrounding its development and importance. Women regularly pointed to the recent 'Don't be that Guy' campaign, ran by Police Scotland, stating that this provided an example of good practice. It was however also emphasised that despite good intentions, it lacked impact, with the majority of followers of the campaign's Instagram page being women.

- "...how do we make sure that campaigns are effective? Because yeah, if we have the law to back it up that's great, but how do we actually get the word out there? How many people are going to know that this law has went through?"
- "...the 'Don't be that Guy' campaign was a really great idea, awesome campaign...Looking at their Instagram following, it's all women, there are no men."

Do you agree with the inclusion of a reasonable defence to the offence of misogynistic harassment?

Yes

Our hope at the SWC is that this new law will reduce the likelihood of misogynistic harassment in Scotland. However, we also believe that every individual in Scotland is entitled to a fair trial, and as such the inclusion of a reasonable defence to this offence is integral to the running of a good justice system.

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

Creating an offence which does not require that the behaviour be directed at a specific victim would work towards reducing misogynistic behaviour at large. The justifications given by Baroness Kennedy's report align with the views of women, with the general opinion being that a large-scale cultural change is required to properly reduce misogyny in Scotland. Such an offence aligns with macro-level aims to tackle such misogyny, focusing the offence on the motivations behind an action, rather than the action itself.

- "From where I'm standing, a law to criminalise misogyny and misogynistic harassment and behaviour is a positive step...but we need to tackle the culture that encourages misogyny permeating the fabric of our society."
- "I see a direct correlation between harassment and a lack of respect for women...Rape culture is then created, allowed and maintained by this harassment."

An Offence of Misogynistic Behaviour

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

Yes

We would like to cite the reasons given previously with regards to misogynistic harassment in both public and private places.

Do you agree with the inclusion of a freedom of expression provision setting out, for the avoidance of doubt, that certain

Yes

Similarly, to the comments made surrounding the inclusion of a reasonable defence, we believe it is vital that those accused are treated fairly. Therefore, the inclusion of a freedom of expression provision is integral to ensuring that all parties involved have a reasonable opportunity to present their arguments.

An Offence of Threatening or Abusive Communications to Women or Girls that Reference Rape, Sexual Assault or Disfigurement

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

Women were in strong support of such an offence, with this being of particular value when applied to the online world. It was unanimously felt by women that online misogyny is a growing problem which is not adequately policed or regulated, with some comparing it to the 'wild west'. Some women we spoke with have explained that the regular abuse that they or others receive prevents them from actively taking part in online spaces, with some limiting their interactions. This has been accredited to targeted abuse, alongside a generally toxic, misogynistic culture that has been bred across sites such as Twitter and Reddit. This culture is dominated by incel mentalities, which actively promote the degradation and abuse of women and girls, while simultaneously pushing for explicit gendered roles across society. This particular proposal will go some way in creating boundaries for these online spaces, which are sorely needed, and will hopefully protect women and girls more effectively.

- "But you see it rife on forums like Twitter, Reddit, etc. They comment on celebrity women's posts, this rise of incel culture"
- "...you definitely see misogyny everywhere online, and there are certain sites like Reddit that aren't as spoken about because they're very male-dominated, they like breed misogyny, because it's all that's there...it ends up becoming toxic, it's that incel culture that's getting worse and worse that really worries me."
- "Incel culture is becoming more prevalent, and I believe that women/girls (trans women included) are in more danger now than ever."

Do you have any comments on the approach taken in the draft offence to the harms of rape, sexual assault and disfigurement?

As stated above, the creation of an offence that includes a message of threatening or abusive language, and those which refer to rape, sexual assault or disfigurement, would be a deterrent against such behaviour. Creating law to reduce this issue is key, as it creates a framework within which service-providers can work from. Some women did highlight that it is important that these elements are properly expressed however, as it is possible that if not enforced properly, this law could be ineffectively utilised. This was expressed as worry for their children, in particular their sons, who may use misogynistic language outside of the home due to immaturity, or peer pressure. Some women were concerned that young men could be further ostracised if there is no further education done with boys, so that they can be fully informed before entering the adult world.

Moreover, it is vital that this education piece is created alongside changes to legislation, with women stating that this would be the real way in which to reduce misogyny in Scotland. Despite welcoming the proposed law, women were pushing for a cultural change which they believed would start at primary school level. Women explained that lessons which tackled misogyny could be integrated with social studies, alongside relationship education, with there being a real emphasis from women that this may reduce violence against women and girls, including domestic abuse.

- “My son has just turned 18, and up until last year, my son didn't know what misogyny was, or what it meant...It doesn't get spoken about, it's not explained.”
- “Yeah, some boys don't understand either, their friends egg them on, there's peer-pressure, there's so much online. They need to educate the boys, give them relationship education.”
- “...we need to tackle the culture that leads to prevalent misogyny...Educating the future generation on how to treat one another with respect and dignity”
- “Our 9 and 10 year old sons already know about Andrew Tate, they're already starting that programming. It needs to be younger; it needs to be across the board...the earlier the better.”

A New Statutory Aggravation Relating to Misogyny

Do you support the recommendations in Baroness Kennedy's report that there should be a statutory aggravation concerning misogyny?

Yes

The creation of a new statutory aggravation concerning misogyny aligns with the wants of women. Some explained that they were disappointed misogyny and sex as a characteristic had not been included within the existing Hate Crime Bill, and as such this aggravation fills this gap. Furthermore, the inclusion of 'contempt' goes further than the previous Hate Crime Bill, securing the importance of tackling the ever-present misogynistic culture present across Scotland.

- “I think that sex as a characteristic should have been included within the hate bill”

Do you agree with the Working Group's recommendations that the statutory aggravation should not be capable of being labelled for certain offences because these offences are inherently misogynistic, and this would already be taken into account of when sentencing the offender?

Yes

It is vital that the proper protections remain in place for those who have experienced inherently misogynistic crimes, such as domestic abuse or rape. We, therefore, believe that the Working Group's recommendations would provide these protections, limiting the ability of perpetrators to manipulate the law for their own benefit. Women did state that they were concerned surrounding this issue, with some explaining that they felt that an entirely new law wasn't required, and instead gaps should be filled in existing law to prevent the manipulation from legal teams that happens consistently. This relates with wider concerns surrounding the implementation of such a law, with women stating that they are unsure that the police have the resourcing and training to enforce. Women were generally supportive of the overall changes to legislation; however, they were concerned it was a 'pipedream', and that without sufficient financial backing, it would achieve the desired effect.

- “...just because we have a misogyny bill doesn't mean that we need any less evidence...so, the phrase: 'criminalised serious misogynistic harassment, filling gaps in the existing laws'. No. Fill the gaps in the existing laws, don't make a whole new piece

of legislations, where legislators and the offenders, and their legal teams, will absolutely find loopholes”

- “...the intent is always going to be the issue. How do you prove that? Use existing legislation, so everyone knows where it sits. It’s the same as the hate, the race, whatever”
- “I’m just thinking resource-wise, how are we going to manage this, in an already poor budget? We don’t have enough police, look at what’s happening with the courts, we already have long waits for people in really difficult circumstances, the investment has to follow”

An Offence of Stirring Up Hatred Against Women and Girls

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

Yes

Similarly, to the above points surrounding the creation of an offence which focuses on issuing threats of rape, sexual assault or disfigurement of women and girls online and offline, women were highly supportive of an offence which considers the stirring up of hatred against women and girls. This was, again, felt to be incredibly important in the fight against misogynistic online behaviour. It was suggested by women that this legislation could assist in prosecuting men, such as Andrew Tate, who use their position to influence young people into dangerous doctrine.

- “I’ve noticed that one of my friends gets serious trolling on her tweets...the comments are just trying to be nasty and they’re trying to be misogynistic, they’re not doing it accidentally, they’re trying to be hateful, and trying to get a reaction. When you look at Andrew Tate as an example, he stirs a lot of hatred against women.”
- “The internet and these influencers have such a grasp on men and boys”
- “People are highly influenced, and we can see that via the commotion from Andrew Tate and young boys. People follow and people make money out of these things, and stirring up hatred may eventually result in violence.”

Impact Assessments

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

Due to consistent underfunding of the police and wider justice system in Scotland, as well as engrained misogynistic attitudes, women are being failed. Conviction rates for gender-motivated crimes are shockingly low, and there is some concern from women that this new law will prove no different. Women are not fully convinced that these proposals will have real-life impacts, and that despite providing a further tool for the empowered, the disenfranchised across Scottish society will remain excluded. The intersectional nature of misogyny cannot be forgotten, creating multiple levels of disadvantage and potential sources of abuse. Women from ethnic minority and LGBTQ+ communities have stated that they have experienced intense levels of misogyny, and that this abuse has not been limited to their gender. Reducing these

behaviours goes alongside the education piece discussed above, with women stressing that without this, failure is inevitable.

- “Yeah, we have to realise that people are getting picked because they’re a woman, or because they’re a minority group, there’s that intersectionality at play.”
- “For someone women it’s not just that they’re a woman, it’s that racism that goes alongside that...I got spat on at the train station...the train was packed that day, and I don’t know what was going on in his head, but he picked me”
- “I am constantly harassed and have even been stalked online...Me being a queer woman upsets them the most – they’ve even sent me death threats.”

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

Women residing across the Scottish Islands have stated that due to continual centralisation of services, they do not feel adequately protected by justice services. They have explained that despite low crime levels, they do not have sufficient access to police officers, and that the officers on islands cannot be dispatched without go-ahead from the mainland. This has caused significant delays in response times and has worsened difficult situations for women. Due to the poor justice provision across the Scottish Islands, it is unlikely that a new law will create significant change for these groups, and rather moves must be made which include local people in decision-making.

- “I had a situation in my store a few weeks back, where a very drunk man came in from off the ferry, and he wouldn’t leave. I phoned 999 and they took all my details, and they phoned back and said that it was ‘going like a fair up’ there, so they couldn’t send anyone”
- “...the police can’t go anywhere unless they get permission from the mainland...It just made you feel like you didn’t matter, that they’re not going to bother with your wee problem.”

Conclusion

Having listened to women, our three key recommendations on this topic are:

- Educational programmes for young people which focus on misogyny are needed to create a cultural change.
- An intersectional approach to tackling misogyny must be taken to properly protect women who belong to minority groups.
- Those who have been convicted of misogynistic crimes should have to complete mandatory reform programmes surrounding misogyny.

The SWC is grateful for the opportunity to respond to the Scottish Government's consultation on **Reforming the Criminal Law to Address Misogyny**. As an organisation, we will continue to work with women from across Scotland to gather voices and experiences relating to this topic and its effects on women's equality.

For further information or to share your views, please contact:

Email - info@scottishwomensconvention.org

Telephone - 0141 339 4797

Website – www.scottishwomensconvention.org

Facebook, Twitter & Instagram - @SWCwomen



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