

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

SSI to add "sex" as a
characteristic to the
Hate Crime and Public
Order (Scotland) Act 2021



October 2025

Premise

This consultation seeks views on new criminal law measures to be added into the hate crime legal framework. The effect of the new measures is to add new protections for women and girls as well as men and boys where behaviour is undertaken displaying prejudice in relation to the characteristic of sex.

They seek views on the following:

- Introduction of an aggravation relating to the characteristic of sex
- Creation of a stirring up hatred offence relating to the characteristic of sex
- Provision for the protection for freedom of expression in relation to the stirring up hatred offence for the characteristic of sex
- Interpretative provision concerning the characteristic of sex
- Reporting of information on offences aggravated by prejudice concerning the characteristic of sex or stirring up of hatred against people defined by reference to the characteristic of sex
- Views on matters relating to impact assessments to accompany the final SSI

The draft SSI does not include a commencement date. The commencement date for the SSI that is laid in Parliament will be agreed in consultation with justice agencies considering the views collected, with relevant information considered.



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.

Questions

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?

The SWC **supports** the extension of both the stirring up of hatred offence and the aggravation of offences by prejudice to cover the characteristic of sex. This legislative step is both timely and necessary and aligns closely with the SWC's foundational objectives of embedding gendered legal protections across Scottish law to improve outcomes for women and girls.

The Hate Crime and Public Order (Scotland) Act 2021, as implemented in April 2024, provides robust statutory mechanisms to address hate crimes motivated by characteristics such as race, disability, sexuality, and age, but had, until now, omitted sex. This created a demonstrable gap in protection—one heavily evidenced by the lived experiences of women in Scotland who report disproportionately high rates of gendered harassment, abuse, and violence in both public and private spheres. We believe that this should have been covered by separate legislation in the form of the Misogyny bill but support this being added until the Misogyny Bill can be legislated for.

Adding sex as a protected characteristic explicitly recognises that **hostility and prejudice based on sex—particularly against women and girls—are systematic realities which require dedicated remedies in law**. This extension also operationalises the recommendations of the Scottish Government's independent reviews, such as the Bracadale Review, and responds to persistent calls from women's organisations, academic experts, and the United Nations to ensure legal parity across all protected groups.

Furthermore, the evidence base supporting this change is clear: hate crimes—whether online or offline—target women for their sex, with a profound and lasting impact on safety, well-being, and participation in societal life. This issue is exacerbated, as repeatedly raised in SWC consultation exercises and roadshows, by a criminal justice system widely perceived as inaccessible and disempowering for women survivors, particularly in cases linked to misogyny and abuse.

SWC's own research and engagement—including thematic conferences and lived experience testimonials—demonstrate an urgent need for comprehensive legal tools that allow for robust recording, prosecution, and public condemnation of offences rooted in hostility towards women and girls on the basis of their sex. These findings are further reinforced by broader hate crime data from Scottish authorities, which signal ongoing gaps in the protection and recognition of gender-based hate.

Although the women who spoke to the SWC support the incorporation of sex as a characteristic for both the stirring up of hatred offence and the aggravation of

offences by prejudice. They feel disappointed and frustrated that this is being added as a characteristic instead of being a standalone piece of legislation as determined by the review by Baroness Helena Kennedy KC of a Misogyny Bill. Women feel that although this will advance justice and equity for women and girls in Scotland and bring hate crime law more fully into line with Scotland's equality ambitions and obligations under both the Equality Act 2010 and international human rights standards. That a separate piece of legislation around Misogyny would be more effective in tackling the cultural bias and the systems that create prejudice towards women and contribute to the violence they face every day.

- “I am so angry and frustrated that they have chosen to drop the misogyny bill. All that work and evidence which proves the misogyny bill was needed to change the attitudes of society and to help women gain equality and they are just scraping it”
- “They just don't listen to us; we advised that the hate crime bill was not the way to go forward with tackling misogyny and that it needed to be a separate piece of legislation but no after years they just decide to tack it on. I suppose it's better than nothing but i am so disappointed”

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?

SWC is content that, **if the stirring up hatred offence is extended to the characteristic of sex, the freedom of expression provision at Section 9 should apply.** However, this support is grounded in a clear recognition that the operation of Section 9 must balance the right to free speech against Scotland's overarching commitments to equality, dignity, and protection from harm.

Section 9 of the Hate Crime and Public Order (Scotland) Act 2021 is designed to clarify that behaviour or material is not, by default, considered threatening or abusive solely because it includes discussion or criticism regarding a protected characteristic—extending to age, disability, sexual orientation, transgender identity, variations in sex characteristics, and now, under the draft SSI, sex.

Thus, the law maintains Scotland's obligations under Article 10 of the European Convention on Human Rights (ECHR), protecting freedom of expression, but it **does not confer license for hate speech, threats, or material intentionally inciting hatred.** The threshold for criminality remains appropriately high: it must be shown that the conduct was threatening or abusive and intended to stir up hatred, with a statutory defence for “reasonableness” and explicit judicial guidance to consider freedom of expression.

The SWC stresses that the application of this provision must be clearly communicated to both the public and to law enforcement. There is a **real risk**—as noted in both SWC research and legal commentary—that chilling effects or misinterpretations could unintentionally deter legitimate discourse, advocacy, or even robust criticism of gender roles and expectations. Conversely, overbroad or poorly signposted application could undermine the protective intent of the law, especially if used maliciously against those amplifying women’s lived experiences and calling out structural sexism.

It is therefore essential that judicial and police training, public education, and the operational guidance around Section 9 are clear: the law must protect against invidious hatred and incitement, **not silence necessary debate or women’s testimony about their lived experiences of misogyny, discrimination, or abuse.**

SWC will continue to monitor and, if required, challenge how Section 9 is interpreted in practice, to ensure the balance between upholding free speech and robustly challenging violence and hate against women and girls is maintained.

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

The SWC is **content with the interpretative provision relating to the characteristic of sex** as proposed in the draft SSI. The definition is clear, operationally sound, and aligns with the recent unanimous Supreme Court ruling in *For Women Scotland v Scottish Ministers*, which holds that, for the purposes of the Equality Act 2010, “sex” refers to “biological sex at birth”.

The **draft SSI’s interpretative clause stipulates** that a group defined by reference to sex is determined by their biological sex at birth, meaning the law will clearly apply to those born female and those born male, as appropriate. This approach reduces confusion, aligns with wider legal frameworks, and ensures **no overlap or conflict with the protected characteristic of transgender identity**, which remains separately defined and protected under both the Equality Act 2010 and the Hate Crime and Public Order (Scotland) Act 2021. As explained in the SSI policy note, this precludes legal uncertainty, especially in light of the Supreme Court’s affirmation that “sex” cannot be equated with gender identity or legal gender acquired via a Gender Recognition Certificate (GRC) for these purposes.

Importantly, the aggravation by prejudice will apply on the basis of the perpetrator’s perception of the victim’s sex at the time of the offence, not the victim’s actual sex or gender identity. This ensures that the law continues to protect individuals who are harassed or abused due to perceptions about their sex—regardless of their actual or legal gender—and supports the aims of intersectional protection.

SWC notes the importance of clear messaging around this provision to alleviate confusion in communities and amongst professionals, especially those supporting individuals with complex or intersecting identities, such as trans women or non-binary people. The interpretative clarity is essential for data collection, the application of legal protections, and public confidence in the legislation.

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

The SWC is **content with the proposed provisions on data collection related to the characteristic of sex**, with the express caveat that the implementation and reporting must be consistently resourced, comprehensive, and publicly transparent.

The draft SSI requires that, **when sex is the characteristic in question (either under stirring up hatred or aggravation by prejudice), data is reported and published by sex (i.e. whether the offence targeted the female or male sex)**. This is an essential step: it will enable Parliament, the public, advocacy organisations, and the government to track trends, allocate resources, and assess the impact of legal change on both women and men, as well as on intersectional and other subgroups.

Women have consistently highlighted to the SWC the importance of high-quality, gender-disaggregated data in shaping evidence-based policy and advocacy work concerning violence against women and girls, misogyny, and gender-based hate. **Accurate data collection empowers communities by revealing the scale and nature of harm, enabling public accountability and resource allocation.**

However, robust data collection requires:

- Standardised, nationwide recording protocols
- Consistent police and justice system training (with a particular focus on trauma-informed and victim-centred practice)
- Investment in digital infrastructure to allow for interface between police, prosecution, and third-sector databases
- Clear provision for intersectional data capture (e.g., identifying when sex aggravation co-occurs with other protected characteristics)⁴

The SWC further highlights the importance of third-party reporting avenues and the need for trust-building with women and girls, many of whom have previously reported a lack of faith in formal justice systems to handle gendered hate crime fairly, safely, or competently.

In summary, SWC supports the proposed data collection provisions but reiterates that effective monitoring, ongoing review, survivor input, and adequate resourcing are essential to realise their potential.

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

The SWC thinks that the extension of the stirring up hatred offence and aggravation by prejudice to sex, as set out in the draft SSI, is **consistent with and supportive of Scotland's domestic and international human rights obligations**, including those under the Human Rights Act 1998, the ECHR, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Right to be free from hatred, violence, and discrimination: The UN and Council of Europe have repeatedly called for states to take robust legislative, policy, and educational measures to address hate speech and gender-based violence. Scotland's failure to extend explicit hate crime protection on the grounds of sex would have been out of step with international best practice and the trajectory of human rights jurisprudence. The draft SSI helps close these protection gaps, especially in the aftermath of the post-pandemic increase in misogynistic speech and behaviour documented in digital and real-world spheres.

Freedom of expression (Article 10, ECHR): The SSI, via the application of Section 9, preserves the lawful exercise of free speech, ensuring that permitted discussion or criticism of the concept of sex, gender, or related issues is not criminalised unless it crosses the specific threshold of threatening or abusive conduct intended to incite hatred. The law, as drafted, therefore upholds this right, balancing it with effective remedies against hate and harm.

Recognition and redress for intersectional harms: Women facing intersecting discriminations (such as those relating to age, disability, ethnicity, migration status, or religion) are currently less likely to see their experiences adequately reflected or addressed in data, policy, or prosecution. The new legal recognition of misogyny and hate against women as specifically sex-based offences, with improved data collection and reporting, strengthens access to justice for all women and advances the goals of intersectional justice.

Article 6 (Right to a fair trial) and Article 8 (Right to respect for private and family life): The implementation of the SSI should be monitored to ensure that victims' privacy is respected throughout criminal justice processes and that robust procedural safeguards, including for accused persons, are maintained.

SWC's lived experience reports demonstrate that the new provisions are not only human rights-compliant but will help **advance women's ability to live free from violence, free from fear, and able to participate fully in public life.**

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/or sexual orientation?

The SWC is fully committed to supporting Scotland's Public Sector Equality Duty to eliminate discrimination, advance equality of opportunity, and foster good relations between people sharing protected characteristics and those who do not.

Impacts on the protected characteristic of sex: The most profound positive impact will be on women and girls, who are disproportionately the victims of sex-based hate, misogyny, and gendered violence. Targeted harassment, abuse, and public hate contribute to broader patterns of exclusion from public life, poverty, and health disparities—issues already prioritised within SWC's intersectional work. The new legal protections acknowledge these realities and send an unequivocal message: hostility on the grounds of sex will not be tolerated.

Other protected characteristics: SWC recognises that misogyny, gender-based hate, and intersectional discriminations do not operate in isolation. Women from ethnic minorities, disabled women, women of various sexual orientations, and those with gender reassignment histories may be especially vulnerable to overlapping forms of hate and hostility. The Act's clear definitions and robust data collection (with intersectional tracking) are essential to ensure these groups are not further marginalised or become invisible.

SWC notes concerns expressed in the UK Law Commission review about the risk of hate crime frameworks inadvertently complicating prosecutions for VAWG (violence against women and girls) offences or creating a hierarchy among offences based on evidence of "hostility." However, the Scottish approach as detailed in the SSI—excluding neither domestic or sexual offences from hate crime aggravations and providing clear statutory guidance—should hopefully avoid these pitfalls and preserve a coherent and accessible legal landscape.

Potential risks: There remains a risk that, without careful implementation, the extension of hate crime protections to sex could in some circumstances be weaponised against women (e.g., those raising legitimate gender-critical views or pointing out sex-based injustices) or misapplied in cases of misandry. Ongoing judicial, police, and public sector training must be provided to mitigate these concerns, centring trauma-informed, survivor-focused practice and lived experience.

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?

The SWC welcomes and endorses the extension of hate crime protections to sex as a contribution to upholding the rights of children and young people, particularly **in the context of increasing evidence of online misogyny influencing school environments and peer cultures.**

Alignment with the United Nations Convention on the Rights of the Child (UNCRC):

With the passing into force of the UNCRC (Incorporation) (Scotland) Act 2024, children's human rights are now directly embedded in Scots law. Article 19 (protection against violence, abuse, neglect) and Article 13 (freedom of expression), among others, mandate that Scotland actively protect children—including girls—from discrimination and harm on the basis of sex.

When working with young women they have told us through their lived experience that **girls are subject to harassment, bullying, and abuse in schools and online**—and that these experiences often go unreported or unaddressed due to institutional disbelief, social pressure, and a lack of accessible reporting mechanisms.

- “This boy pushed me down the stairs in front of a teacher and they did nothing about it, they said boys will be boys even though he was telling me he hated me when he did it”

Moreover, “incel” cultures and online hate incubators are actively shaping boys' attitudes in a way that drives real-world harm.

The inclusion of sex as a protected characteristic:

- **Improves access to justice and support for young women experiencing harassment, bullying, or violence.**
- Establishes a clear statutory basis for challenging and preventing misogynistic behaviours in educational and youth contexts.
- Provides a platform for better police, school, and youth worker training on gender-based hate crime and enhances support pathways for survivors.

Crucially, the effectiveness of these legal changes—as with all impacts on children—will depend on **ensuring young people's voices are heard, respected, and meaningfully engaged in the shaping of policy, guidance, prevention campaigns, and reporting systems.**

8. Do you have any views on the potential financial or other impacts of the draft SSI on businesses, government and the third sector?

The SWC recognises that the extension of hate crime protections to sex will have diverse but manageable impacts across government, statutory agencies, the justice system, and the vital third-sector organisations supporting women and survivors.

Government and Police

The most significant operational change will fall on Police Scotland, the procurator fiscal service, and the courts, who will need to:

- Embed the new legal definitions and recording requirements in all reporting systems.
- Train staff to identify and correctly categorise hate crimes relating to sex.
- Resource, monitor, and evaluate the implementation process, including supporting new complaint avenues and data publication protocols⁶¹⁰.

This change will **require upfront resource investment**, but the infrastructure is already in place to handle additional hate crime aggravations for existing characteristics; previous data transformation efforts on disability and transgender identities provide a blueprint.

Third Sector

Third-sector organisations—which play an indispensable role in supporting survivors, reporting hate crime, and advocating for change—will undoubtedly feel increased demand and expectation as new legal protections encourage more women and girls to seek justice. Work we have done at the SWC points to staff and resource strain, exacerbated by short-term funding streams and growing complexity in service delivery.

The most effective mitigation is not only legislative change but the **provision of sustainable, long-term funding** for third sector and community organisations, so they can participate fully in combating hate and supporting those affected. There must be ongoing engagement with the third sector on the rollout of the SSI, especially for ongoing policy review and impact assessment.

9. 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?

Socio-Economic Inequality

As women repeatedly tell the SWC **gender-based hate crime disproportionately compounds existing socio-economic inequality**. Women living in poverty, in insecure housing, or with care responsibilities face overlapping barriers to reporting and redress for hate and harassment. Any extension of legal protections must prioritise:

- Preventing the law from inadvertently penalising the most disadvantaged (e.g. through inappropriate fixed penalty fines).
- Ensuring access to support, advocacy, and redress is available regardless of income or location.
- Embedding trauma-informed, culturally competent reporting avenues in all communities.

Scottish Island Communities

For Scotland's island communities and remote rural areas—where services may be less accessible and community dynamics are often more tightly interwoven—there is a risk that **hate crime (including that which targets women) is underreported or poorly addressed due to stigma, lack of anonymity, or limited police and support services**. The SSI's implementation strategy must include targeted outreach, training, and capacity-building for island authorities, schools, and local advocacy partners, with sensitivity to local context.

Privacy and Data Protection

The data collection and publication requirements introduced by the SSI are, in the SWC's view, robust and appropriate, provided that all reporting continues to comply fully with the UK GDPR/Human Rights Act and data protection law. Data must be gender-disaggregated and anonymised when necessary to ensure individuals cannot be identified, particularly in smaller communities or where hate crime numbers are low.

The provisions must also be kept under regular review, with clear avenues for individuals to challenge any misuse, mistakes, or inappropriate disclosure of sensitive personal information.

Women have told the SWC that they need the following:

- **Gendered legal protections:** Recognition of sex-based prejudice and hatred is an essential foundation for broader strategies to prevent violence against women and

girls, and to build a society in which women's rights and dignity are fully respected and upheld in law.

- **Amplification of lived experience:** at the SWC we emphasise that lived experience data is just as impactful and relevant as formal academic or governmental reports. Lived experience must be embedded throughout the justice system—from legal definitions and data reporting through to ongoing monitoring of impacts and the adequacy of support services. Only then can the barriers to justice, trust in public institutions, and policy effectiveness be fully addressed.
- **Intersectional justice:** The law must work not just for women as a category, but for all women, including those facing multiple forms of discrimination and disadvantage (for example, disabled women, women of colour, lesbian and bisexual women, migrant women, and those at the intersections of poverty and social exclusion). Intersectionality is not simply a theoretical ideal, but a lived daily reality, and must be an explicit part of both statutory language and operational policy in all contexts where hate crime is addressed.

The SWC remains committed to collaborating with government, Parliament, Police Scotland, partners across the public and voluntary sectors, and women across all walks of life to make the new hate crime protections effective, understood, accessible, and just.

Anything else

Do you have any other views?

The Scottish Women's Convention reiterates its support for the extension of stirring up hatred and aggravation by prejudice offences to the characteristic of sex within the Hate Crime and Public Order (Scotland) Act 2021. These measures will create safer, more equitable environments for women and girls, address longstanding harms, and bring Scotland into closer alignment with international human rights and gender equality obligations. Their successful implementation will depend on robust data collection, ongoing engagement with lived experience, continuous public and professional training, and adequate investment in support and prevention services across Scotland. The SWC urges the Scottish Government and Parliament to proceed with the draft SSI, and to maintain active dialogue with women's organisations, affected communities, and experts to ensure the law achieves its intended outcomes for all but are disappointed that the Scottish Government have not taken forward the recommendations made by Baroness Helena Kennedy KC to make Misogyny a standalone offence.

Many women have expressed their dissatisfaction that we are adding sex to the hate crime legislation instead of tackling the culture of Misogyny. Baroness Helena Kennedy's

report recommended the creation of three new criminal offences: Public Misogynistic Harassment; Threatening or invoking rape, sexual assault or disfigurement of women and girls on and offline; and Stirring up hatred of women and girls. The report also recommended a new statutory sentencing aggravation concerning misogyny. The report's recommendations were considered by the Scottish Government who proposed five new criminal laws in response to these recommendations. The women who have spoken to the SWC for this consultation believe that this would have been a better avenue to tackle the culture of misogyny in Scotland and help in the fight of ending Violence against Women and Girls. They feel disillusioned and let down that we are including this in a Bill they believe is less effective than the Misogyny Bill would have been.

Conclusion

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

- Incorporate "sex" into the hate crime framework to combat systemic prejudice against women and girls.
- Create specific laws against stirring up hatred based on sex, clearly condemning gender-based hate.
- Implement tools and services that empower victims to report and seek justice for sex-based hate crimes, making the criminal justice system more accessible for women.

The SWC is grateful for the opportunity to respond to the Scottish Government's consultation on **SSI add Sex as a Characteristic to The Hate Crime and Public Order (Scotland) Act 2021**. 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:

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