

Consultation Response

Hate Crime and Public Order
(Scotland) Act 2021 –
Draft SSI to add 'sex' as a
characteristic: consultation

October 2025



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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Criminal Law Committee welcomes the opportunity to consider and respond to the Scottish Government consultation: Hate crime and public order (Scotland) Act 2021 - draft SSI to add 'sex' as a characteristic.¹ The Committee has the following comments to put forward for consideration.

General Comments

We have no comments to make in response to the questions posed in the consultation.

We welcome the Scottish Government taking steps to recognise and address criminal behaviour based on a person's sex or presumed sex. However, we have some concerns about the proposed method of doing so by adding the protected characteristic of sex to the Hate Crime and Public Order (Scotland) Act 2021.

1. We provided written and oral evidence during Stage 1 scrutiny of the Hate Crime and Public Order Bill In our [written evidence to the Scottish Parliament's Justice Committee \(July 2020\)](#) at page 15 we indicated that "In any event, though paragraph 38 of the Bill's policy memorandum indicates that the Working Group on Misogynistic Harassment may decide in due course that the characteristic of sex should be added by regulations to the list of characteristics where that enabling provision is included in the Bill. We do not consider that this should be left to secondary regulations as that does not provide the level of scrutiny and debate required. The issue should be resolved as part of the Bill". The Working Group subsequently recommended creating a new Statutory Misogyny Aggravation which operates outside of the Hate Crime and Public Order (Scotland) Act 2021. The Working Group concluded that "We do not recommend the addition of Sex as a characteristic to the Hate Crime and Public Order Act (Scotland) Act 2021 as we feel that misogyny is so deeply rooted in our patriarchal ecosystem that it requires a more fundamental set of responses." ² We note

¹ <https://consult.gov.scot/justice/ssi-to-add-sex-as-hate-crime-characteristic/>

² <https://www.gov.scot/publications/misogyny-human-rights-issue/pages/1/>

that the Scottish Government has nonetheless chosen to introduce the characteristic of sex into the Act by way of secondary legislation, and we maintain our concern that this will not allow for the level of scrutiny and debate necessary.

2. We have concerns about the efficacy of introducing new criminal offences without an assessment of whether similar offences, such as in relation to racially motivated aggravations of existing offences, have had a positive impact on changing attitudes.



For further information, please contact:

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