



Sex/Gender

Current hate crime legislation

Currently, sex/gender is not included as part of the hate crime legislative framework. Offences motivated by prejudice toward someone's sex/gender are not - at present - considered by Scots law to be hate crimes.

What the Hate Crime and Public Order (Scotland) Bill will do

The Bill includes an enabling power to add 'sex' to the Bill's lists of characteristics. This could be done at a later date, by regulations, once the Bill has completed its passage through Parliament and attained Royal Assent.

In practice, this means that – if 'sex' were added – the Bill would treat the characteristic of sex in the same way as the other characteristics such as race, religion and sexual orientation. The enabling power provides the option to add the characteristic of sex into the new statutory framework for offences aggravated by prejudice and/or for offences relating to stirring up hatred.

Impact

The term 'sex' is being used within the Hate Crime Bill, as opposed to 'gender', in order to remain consistent with the Equality Act 2010. If 'sex' were to be added to the legislative framework at a later date it would provide protection on an inclusive basis given that the application of hate crime legislation is based on the motivations of the perpetrator (and thus not on whether a victim actually shares one of more of the characteristics protected by the Bill).

For example, a statutory aggravation in relation to 'sex' would apply where the offender evinces malice and ill-will based on their perception that the victim was a woman irrespective as to whether the victim was born female or not, a trans woman or a non-binary person. The statutory aggravation on sex could also be applied if a person was targeted because they have an association with women.

Whilst Lord Bracadale recommended the addition of 'gender hostility' to the hate crime legislative framework, a number of women's organisations were strongly opposed to this approach. Some organisations believe that the development of a specific offence would recognise that the reality of violence against women is a complex issue and requires a considered approach. They are not convinced that the hate crime framework provides an appropriate model for dealing with gender-based violence.

Working Group on Misogynistic Harassment

Recognising that there is a clear need to tackle misogyny and gender based prejudice in Scotland, the Scottish Government is committed, in principle, to developing a standalone offence on misogynistic harassment.



Therefore a working group will be established to look at how the criminal justice system deals with misogyny, including whether there are gaps in the law that could be filled with a specific offence on misogynistic harassment.

In addition to considering the development of a standalone offence on misogynistic harassment, the working group will also consider whether 'sex' should be included within the legislative framework on hate crime. The Scottish Government will reflect on the conclusions reached by the Working Group and will report to Parliament with agreed next steps

Further Information

The ongoing focus of the Scottish Government is on responding to the coronavirus outbreak. However, the remit and membership of the Working Group on misogynistic harassment will be announced at the earliest date possible and the work of the Group will begin shortly thereafter.

Further information about the Hate Crime and Public Order (Scotland) Bill can be found on the Scottish Government webpage <https://www.gov.scot/policies/crime-prevention-and-reduction/hate-crime/>.