

Transgender Identity & Variations in Sex Characteristics

Current hate crime legislation

Currently, section 2 of the Offences (Aggravation by Prejudice) (Scotland Act 2009 (“the 2009 Act”) includes transgender identity, which is defined as:

- a) transvestism, transsexualism, intersexuality or having, by virtue of the Gender Recognition Act 2004, changed gender, or
- b) any other gender identity that is not standard male or female gender identity.

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

Since the enactment of the 2009 Act, it has become clear that there are concerns with including ‘intersexuality’ as an aspect of transgender identity. Intersex status and transgender identity are now widely understood to be two separate and distinct characteristics. Variations in sex characteristics relate to a person’s physical and biological characteristics, and transgender identity relates to a person’s gender identity. Whilst the wording of the 2009 Act reflected understanding of the position at the time of enactment, this is no longer the case. Therefore the Bill removes ‘intersexuality’ from the definition of transgender identity given the clear differences between intersex status and transgender identities. However, so as not to lose protection for this group of people, the Bill includes ‘variations in sex characteristics’ as a separate characteristic within hate crime law.

Furthermore, the Bill will also extend the protection provided against hate crimes, through introducing new offences criminalising the stirring up of hatred against people of any existing or new characteristics, including transgender identity and variations in sex characteristics.

The terms ‘transsexualism’ and ‘transvestitism’ are also widely understood to be outdated and are therefore also removed from the definition of “transgender identity” included in the Bill, helping to ensure that the definition is up-to-date. Cross-dressing people are included in the definition within the Bill to ensure the protection provided by the word ‘transvestitism’ is not lost.

The Bill’s definition of ‘transgender identity’ includes trans men, trans women, non-binary people and cross dressing people.

Impact

The current protection afforded by the existing definition of transgender identity within hate crime legislation is not lost, with updated language provided and the creating of a new category for variations in sex characteristics. This will ensure that the language used in the Bill reflects changes over time in wider society and that the individuals who are afforded protection by the law recognise themselves in the terminology used.

Further information

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/>.