

# **The Hate Crime and Public Order (Scotland) Act 2021 (Characteristic of Sex) (Amendment and Transitional Provisions) Regulations 2026 - Business and Regulatory Impact Assessment – January 2026**

The Hate Crime and Public Order (Scotland) Act 2021 (Characteristic of Sex) Amendment Regulations 2026 add the characteristic of sex into the Hate Crime and Public Order (Scotland) Act 2021

# Introduction

This Business and Regulatory Impact Assessment (BRIA) accompanies the Scottish Statutory Instrument (SSI) adding the characteristic of 'sex' to the Hate Crime and Public Order (Scotland) Act 2021 ("the 2021 Act") which was laid in Parliament on 28 January 2026.

It sets out the impact on business, public sector and third sector bodies of the addition of the characteristic of sex to the 2021 Act.

## Executive summary

### Issue and why it needs to be addressed

The 2021 Act consolidated, modernised and extended existing legislative protections against offences aggravated by prejudice relating to disability, race, religion, sexual orientation, variations in sex characteristics and transgender identity, and added the characteristic of age.

The 2021 Act also included a power to add the characteristic of sex to the Act via a Scottish Statutory Instrument (SSI) subject to affirmative procedure. As announced by the Scottish Ministers in May 2025, it has been decided to use that power to add the characteristic of sex to the 2021 Act to ensure that women and girls have the same protections in relation to hate crime as people with the other characteristics covered by the 2021 Act.

This in general terms implements two of the recommendations contained in the report published in 2022 by the Working Group on Misogyny and the Criminal Law which was chaired by Baroness Helena Kennedy KC. These were the creation of a statutory sentencing aggravation concerning misogyny and the creation of a specific offence of stirring up hatred against women and girls. The SSI does so in a gender-neutral way, reflecting the way in which the power to add the characteristic of sex is framed, so that men and boys receive new protections as well as women and girls.

### Intended outcomes

To deliver new legal protections for women and girls within the hate crime legislative framework.

### Options

The following options were considered

Option 1: 'Do nothing'

Option 2: 'To add the characteristic of sex to the 2021 Act'

This would mean using the power at section 12 of the 2021 Act to add the characteristic of sex to the legislative framework set out in that Act. This means that the provision at section 1 of the Act concerning aggravation of offences by prejudice will be extended to cover prejudice relating to the characteristic of sex and the offence of stirring up hatred.

## Sectors affected

The SSI will affect bodies involved in administering the criminal justice system: Police Scotland, the Crown Office and Procurator Fiscal Service, the Scottish Legal Aid Board, the Scottish Courts and Tribunals Service and the Scottish Prison Service, as well as local authorities and some organisations that support third party reporting.

## Engagement completed, ongoing and planned

In 2017, the Scottish Government appointed Lord Bracadale to conduct an independent review of hate crime law in Scotland. He published his final report in 2018. The Scottish Government undertook a consultation on the report's findings between 14 November 2018 and 24 February 2019. A total of 1,051 responses were received. Consultation responses and analysis can be found at [Consultation on Scottish Hate Crime Legislation - Scottish Government consultations - Citizen Space](#).

Following the Cabinet Secretary for Justice and Home Affairs' announcement in May 2025 that the Scottish Government would use the power at section 12 of the Hate Crime and Public Order (Scotland) Act 2025 to add the characteristics of sex to that Act, in August 2025, the Scottish Government published a consultation paper seeking views on a draft SSI to give effect to this. A total of 365 responses were received. Consultation responses and analysis can be found at [SSI to add "sex" as a characteristic to the Hate Crime and Public Order \(Scotland\) Act 2021 - Scottish Government consultations - Citizen Space](#) and [www.gov.scot/isbn/9781806434152](http://www.gov.scot/isbn/9781806434152).

## Anticipated impacts (intended and unintended, positive and negative) and mitigating actions

**Benefits:** The creation of a statutory aggravation relating to the characteristic of sex should provide the public, and, in particular, victims, with reassurance that the fact a crime was motivated by malice and ill-will relating to the victim's sex is accounted for in sentencing. The creation of an offence of stirring up hatred against a group of people defined by reference to their sex will provide new powers to prosecute those who stir up hatred against women and girls (and men and boys) which it is hoped will have a deterrent effect on those who might otherwise commit such crimes.

**Costs:** The addition of the characteristic of sex to the 2021 Act will result in one-off costs for justice system bodies in terms of updating of IT systems, training and guidance for employees. While the statutory aggravation does not criminalise any behaviour, and the offence concerning stirring up of hatred largely relates to behaviour which is already criminal under existing law, there will also be on-going costs if the addition of the characteristic of sex leads to increased reporting of crimes and higher custodial sentences being imposed than would otherwise be the case.

The offence of stirring up of hatred against women and girls does expand the existing criminal law. However, to a large extent, the behaviour criminalised by this offence would already amount to an existing offence of, for example, threatening or abusive behaviour. Based on experience of the use of existing offences concerning stirring up of hatred, it is anticipated that the number of prosecutions and convictions for this offence will be low. These are estimated in this BRIA.

## **Enforcement/ compliance**

As a criminal law measure, enforcement is via the criminal justice system. Police will be responsible for investigating alleged offences and reporting to COPFS for consideration of prosecution. Where COPFS decide that there is sufficient evidence to bring a prosecution and that it is in the public interest to do so, it will be for the independent courts to determine guilt or innocence. Where individuals are convicted/receive the statutory aggravation, disposals are imposed by the court including custodial sentences and community sentences.

## **Recommendations/ implementation plans**

Option 2 is recommended: to add the characteristic of sex to the 2021 Act creating a new statutory aggravation where an offence is motivated by, or demonstrates, malice and ill-will relating to the characteristic of sex, and a new criminal offence of stirring up hatred against a group of people defined by reference to their sex.

## **Evaluation and monitoring of implementation/ review of BRIA**

Once the changes contained in the SSI take effect, ongoing monitoring will be done via the collection and consideration of police recorded crime and court proceedings statistics and through the publication of specific reports on hate crime as required by sections 14 and 15 of the Act.

# Section 1: Background, aims and options

## Background to policy issue

In 2017, the Scottish Government appointed Lord Bracadale to conduct an independent review of hate crime law in Scotland. Lord Bracadale published his final report in May 2018. The report recommended that laws concerning the aggravation of offences by prejudice should be consolidated and standardised. It also recommended that there should be new stand-alone offences of stirring up hatred applying to all the characteristics covered by the aggravation of offences by prejudice.

Lord Bracadale's report recommended that hate crime legislation should cover the characteristic of 'gender'.

The majority of Lord Bracadale's recommendations were accepted by the Scottish Government and formed the basis of the 2021 Act. However, informed by responses to the Scottish Government's consultation on Lord Bracadale's report, the Scottish Government did not adopt its recommendation to add the characteristic of gender to the Act.

Instead, a power was included in the 2021 Act to enable Ministers to introduce an order in Parliament to add the characteristic of 'sex' to the Act, subject to the agreement of Parliament.

Further to the Parliamentary consideration of hate crime legislation in 2021, the Scottish Ministers appointed Baroness Helena Kennedy KC to chair a Working Group on Misogyny and the Criminal law to consider how the criminal law deals with misogynistic behaviour, including whether there are gaps in legislation that could be filled with a specific offence or offences, and whether the characteristic of sex should be added to the 2021 Act.

The Working Group's Report was published in 2022 and recommended

- Creating a new Statutory Misogyny Aggravation which operates outside of the Hate Crime and Public Order (Scotland) Act 2021;
- Creating a new offence of Stirring Up Hatred Against Women and Girls;
- Creating a new offence of Public Misogynistic Harassment; and
- Creating a new offence of Issuing Threats of, or Invoking, Rape or Sexual Assault or Disfigurement of Women and Girls online and offline

The Scottish Government had previously planned to introduce a stand-alone Misogyny Bill to implement these recommendations. However, as set out in the Cabinet Secretary for Justice and Home Affairs letter to the Convener of the Criminal Justice Committee on 2 May 2025<sup>1</sup>, the Scottish Government concluded that there was insufficient time for a Bill to be finalised and introduced in the current Parliamentary session. Therefore, to ensure there are protections for women and girls in law, the Scottish Ministers announced that they would lay an SSI to add the characteristic of sex to the 2021 Act so that they have the same protections as other groups protected by that Act.

The SSI is subject to super-affirmative procedure. A draft SSI was laid in Parliament prior to the final version being laid in Parliament on 28 August 2025.

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<sup>1</sup> [Letter from the Cabinet Secretary for Justice and Home Affairs regarding an update on introduction of a Misogyny Bill.](#)

The Scottish Government undertook a public consultation seeking views on the draft SSI<sup>2</sup>.

## **Purpose/ aim of action and desired effect**

The purpose of adding the characteristic of sex to the 2021 Act is to ensure that the stirring up of hatred against women and girls is treated in the same way as stirring up hatred against other groups protected by the 2021 Act, and that offences which demonstrate or are motivated by prejudice against women and girls are treated in the same way as offences motivated by or demonstrating prejudice relating to the other characteristics covered by the Act. While there is little evidence that there is a significant problem with stirring up of hatred against men and boys or crimes motivated by, or demonstrating, prejudice against men and boys, the SSI is gender-neutral and provides the same protection to men and boys.

The aim of the SSI is to ensure that crimes of this kind are treated and recorded in the same way as crimes motivated by prejudice relating to the other characteristics covered by the Act and seek to change public attitudes to misogyny by sending a clear signal that prejudice and hatred against women and girls is just as unacceptable as prejudice relating to, for example, race, religion, or sexual orientation.

## **Options**

The following options were considered:

Option 1: 'Do nothing'.

This would mean that there would continue to be no specific laws in place to extend to crimes motivated by, or demonstrating, hatred relating to the characteristic of sex.

Option 2: 'To add the characteristic of sex to the Hate Crime and Public Order (Scotland) Act 2021 ("the 2021 Act")'

This would mean adding the characteristic of sex to the 2021 Act, so that it becomes a criminal offence to stir up hatred against a group of people defined by reference to their sex, and the statutory aggravation concerning offences aggravated by prejudice applies where, when there is a specific victim, the offender demonstrates malice or ill-will towards the victim because of their sex, or, regardless of whether or not there is a specific victim, the offender is motivated to commit the offence because of malice and ill-will towards a group of people defined by reference to their sex.

## **Sectors/ Groups affected**

The legislation will affect criminal justice agencies: Police Scotland, the Crown Office and Procurator Fiscal Service, the Scottish Legal Aid Board, the Scottish Courts and Tribunals Service and the Scottish Prisons Service as well as local authorities and some organisations that support third party reporting centres.

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<sup>2</sup> [SSI to add "sex" as a characteristic to the Hate Crime and Public Order \(Scotland\) Act 2021 - Scottish Government consultations - Citizen Space](#)

## **Section 2: Engagement and information gathering**

### **Engagement approach**

The impact of the SSI is anticipated to fall largely on the justice system. SG officials have engaged with justice bodies on impact. The 2021 Act followed review by Lord Bracadale and public consultation on his recommendations. A public consultation was undertaken on a draft version of the SSI to add characteristic of sex to the 2021 Act.

### **Internal SG engagement/ engagement with wider Public Sector**

#### **Internal SG engagement**

Engagement internal to the Scottish Government has included policy leads in Justice and Equality, Inclusion and Human Rights Directorates as well as relevant Analytical Services Divisions and teams that have an interest in the impact assessments carried out as part of policy development.

#### **Wider Public Sector**

The Scottish Government has engaged with justice sector bodies including Police Scotland, COPFS and the Scottish Courts and Tribunals Service as part of policy development.

### **Business / Third Sector engagement**

There have been discussions with various third sector bodies during the process of finalising policy relating to the SSI. The consultation sought views on the impact of the SSI on third sector bodies and businesses.

The previous BRIA undertaken to accompany the Hate Crime and Public Order (Scotland) Bill did not reveal any impacts on business arising from the content of that Bill. The new statutory aggravation does not criminalise conduct but simply provides that where an existing offence is aggravated by prejudice relating to sex, this will be treated as a statutory sentencing aggravation. The offence of stirring up hatred on grounds of sex is committed where an offender behaves in a threatening or abusive manner with the intention of stirring up hatred against a group of people defined by reference to their sex. It is not expected that the addition of the characteristic of sex to the 2021 Act will have any impact on lawful businesses.

### **Public consultation**

The addition of the characteristic of sex to hate crime law was recommended in Lord Bracadale's Report on Hate Crime Law, which was published in May 2018. The Scottish Government consulted on Lord Bracadale's findings between 14 November 2018 and 24 February 2019, prior to the introduction of the Hate Crime and Public Order (Scotland) Bill in

Parliament in 2020. A total of 1,051 responses were received from individuals and 108 responses from organisations.

A further consultation was undertaken on the addition of the characteristic of sex to the 2021 Act. There were 365 responses to that consultation.

The great majority of responses supported adding the characteristic of sex to both the stirring up of hatred offence and the aggravation.

However, there was a significant division between individual respondents, and responses from organisations. Nearly 90% of individual respondents supported adding the characteristic of sex to the 2021 Act by an SSI, with many highlighting that they thought it was important to address what they saw as a rising problem of misogynistic behaviour directed towards women and girls. By contrast, only around half of organisations that responded to the consultation supported doing so with a roughly equal number opposed to doing so. There were divergent views among organisations about whether the legislative framework of the 2021 Act was appropriate for dealing with hate crime motivated by misogyny, with a number of organisations responding to the consultation specifically stating that they thought that the recommendations of Baroness Helena Kennedy's Working Group on Misogyny and the Criminal Law were better suited to dealing with the issue.

The consultation was also used to seek the views of consultation respondents on any financial impacts that the SSI may have.

## **Section 3: Costs, impacts and benefits**

### **Quantified costs to businesses**

The main costs that will arise from adding the characteristic of sex to the 2021 Act will fall on criminal justice system agencies. These can be separated into one-off costs arising from the need to update training materials, guidance and IT systems and on-going costs that may arise from additional cases being prosecuted in the courts as a result of the new stirring up hatred offence and statutory aggravation.

#### **Training and implementation costs**

The creation of a new statutory aggravation and stirring up hatred offence will require certain updates to be made to IT systems operated by justice system organisations. These are not expected to incur significant costs and these bodies will have processes in place to ensure that such systems are updated to reflect changes to the criminal law.

There will also be training costs associated with these changes. These are expected to fall mainly on Police Scotland and COPFS as police officers will be responsible for investigating alleged offences and, where appropriate, reporting these to COPFS. COPFS will then be required to make decisions on the prosecution of offences reported to them.

The one-off costs relating to training and guidance and changes to IT systems for individual organisations are set out in more detail below.

#### **Ongoing costs**

There will be on-going costs arising from the creation of a new statutory aggravation where offences are aggravated by prejudice relating to the characteristic of sex, and a new offence of stirring up hatred against a group of people defined by reference to their sex.

The Financial Memorandum<sup>3</sup> accompanying the 2021 Act sought to model the impact of the creation of new offences concerning stirring up of hatred and new statutory aggravations to offences involving prejudice relating to the characteristics of age and sex<sup>4</sup>. Within the context of age now being included in the operation of hate crime law, this has been used to estimate the impact specifically of adding the characteristic of sex to the 2021 Act in this BRIA.

#### ***Statutory Aggravation***

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<sup>3</sup> [Financial Memorandum](#)

<sup>4</sup> Though the characteristic of sex was not included in the Bill at introduction, the financial impact of its inclusion was modelled in view of the fact that the Bill contained a power for the Scottish Ministers to add the characteristic of sex at a later date.

The Financial Memorandum took account of a number of different factors that could lead to increased costs as a result of the creation of new statutory aggravations. These were:

- evidence that a higher proportion of aggravated crimes are prosecuted in court than crimes without a statutory aggravation.
- evidence that aggravated crimes are more likely to result in the court imposing a custodial or community sentence when the accused is convicted.
- the possibility of increased reporting of cases that do not currently get reported because some victims perceive that the justice system is taking these crimes more seriously.

The Financial Memorandum developed in 2020 modelled three scenarios for additional costs arising from additional aggravated offences as a result of the creation of the new aggravations of age and sex.

**Table One**

Scenario	Total Additional Aggravations	Of which relate to existing reported crimes	Of which relate to newly reported crimes
One	50	40	10
Two	100	80	20
Three	200	160	40

At this point in time (November 2025) following the introduction of age as a characteristic into hate crime law in April 2024, the Scottish Government does not yet hold any data on the total number of cases in which the age aggravation has been libelled or proven as official statistics are not yet available for 2024-25. However, in June 2025, COPFS published data on the number of crimes reported with hate crime aggravations in 2024-25<sup>5</sup>. This found that 88 charges with an age aggravation had been reported to them in 2024-25.

The 2020 Financial Memorandum did not try to separate out the impact of adding the characteristic of sex from the characteristic of age, but did note at paragraph 58 that “Stakeholder engagement suggested that sex was likely to lead to a higher number of additional aggravations than age would, although this was anecdotal.”

For the purpose of estimating the impact of adding the characteristic of sex, it has therefore been assumed that 80% of additional aggravations arising from addition of age and sex into hate crime will relate to the characteristic of sex.

While the number of charges reported to COPFS has typically significantly exceeded the number of cases prosecuted<sup>6</sup>, for the purpose of making an estimate of the number of cases involving ‘sex’ aggravation we have used this figure of 88 age-

<sup>5</sup> [Hate Crime in Scotland 2024-25 data tables | COPFS](#)

<sup>6</sup> This may be for a combination of reasons – it may be that COPFS conclude that some of the aggravations were wrongly recorded, and/or that there is insufficient evidence to justify libelling the aggravation, and/or that one accused may be charged with several aggravated offences in a single charge.

related hate crime charges reported to COPFS as a ‘central estimate’ to estimate the effect of adding the characteristic of sex:

**Table Two**

Scenario	Total Additional Aggravations	Of which relate to existing reported crimes	Of which relate to newly reported crimes
One	175	140	35
Two	350	280	70
Three	700	560	140

***Offences of stirring up hatred***

The SSI adds the characteristic of sex to the offences concerning stirring up of hatred at section 4 of the 2021 Act. This will result in an increase in the number of offences of stirring up of hatred that are investigated and prosecuted. While this is difficult to quantify, it is expected that the number of such offences will be very small.

This is based on data concerning the offences of stirring up racial hatred, currently contained in the 2021 Act, and previously contained in the Public Order Act 1986 and offences of stirring up religious hatred during the 7 years in which the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 was in effect. This shows in the 10 years between 2013/14 and 2022/23 there were 5 people proceeded against for offences of stirring up racial hatred, and in the 7 years that the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 was in effect, 7 people were proceeded against for offences of stirring up religious hatred at section 6(5) of that Act.

The 2020 Financial Memorandum modelled scenarios estimating the impact of there being between 1 and 3 “new” charges as a result of the introduction of new stirring up hatred offences<sup>7</sup>. For the purpose of this assessment of the impact of adding the characteristic of sex to the 2021 Act, it has been assumed that doing so will result in one new charge for an offence of stirring up hatred each year being brought that would not otherwise have been prosecuted using an existing offence<sup>8</sup>.

We have set below the impact of these additional cases on affected bodies

Police Scotland

There will be one-off costs in updating the training and standard operating procedures to reflect the addition of the characteristic of sex to the 2021 Act. Police Scotland have estimated that these costs to be around £395,500 in total. Of this, £40,000 relates to technical work to amend the National Crime and Case Model and £357,500 of ‘opportunity cost’ in terms of staff resource requiring to be reallocated. Of those, £85,000 is for the resourcing of the project to manage work relating to the addition of the characteristic of sex to the 2021 Act, and £272,500 relates to police time for the training of all officers up to the level of Chief Inspector.

<sup>7</sup> See page 25 and table 13 of [Financial Memorandum](#)

<sup>8</sup> based on the available information about the number of prosecutions for offences of stirring up racial hatred (less than one a year on average in the ten years to 2022/23) this may, if anything, be an overestimate

The creation of an offence of stirring up hatred against a group of people defined by reference to their sex may result in more incidents being reported to the police. While most, if not all, of these incidents would almost certainly amount to another existing criminal offence (in particular, threatening and abusive behaviour or breach of the peace) increased awareness may lead to a greater willingness to report to the police.

Equally, the creation of a statutory aggravation relating to sex may raise awareness of hate crime of this kind and lead to an increase in reports being made to the police. However, as set out in table 2 these numbers are likely to be very small when set against the overall volume of police business and can be accommodated within their normal day-to-day activities.

#### The Crown Office and Procurator Fiscal Service

There will be one-off costs for COPFS in updating their training materials, guidance and providing training to staff on the effect of the addition of the characteristic of sex. They will also need to update the COPFS Case Management System and Police Scotland 'Criminal History System' interface, which is an interface between the COPFS and Scottish Courts and Tribunals Service (SCTS) systems. It is estimated that the maximum costs associated with these changes would be around £55,000.

Using the figures provided in the Financial Memorandum for the Hate Crime Bill and adjusting for inflation, it is estimated that the annual recurring additional costs to COPFS of prosecuting offences aggravated by the characteristic of sex will be between £92,000 and £368,000 and the annual recurring costs of prosecuting offences of stirring up hatred on grounds of sex will be £3,000.

#### The Scottish Prison Service

There will be small one-off costs for the Scottish Prison Service as they may require to update their hate crime Equality and Diversity course notes and guidance and may need to update their procedures and IT systems to reflect the change in the criminal law. These changes should be incorporated into routine review and update processes to ensure that systems are up-to-date and reflect changes to the criminal law.

There may also be costs if the new aggravation and stirring up of hatred offence lead either to increases in the length of prison sentences and/or the number of offenders sentenced.

Using the figures provided in the Financial Memorandum for the Hate Crime Bill and adjusting for inflation, it is estimated that the annual recurring costs to SPS of additional prison places for people convicted of offences aggravated by the characteristic of sex is estimated to be between £280,000 and £1,112,000 and the annual recurring costs of additional prison places for people convicted of offences of stirring up hatred on grounds of sex will be £8,000.

#### The Scottish Courts and Tribunals Service

The Scottish Courts and Tribunals Service (SCTS) will have to update staff guidance and training materials but associated costs for these aspects will be absorbable within current budgets. No changes will be required to the criminal case management system, given the extensive work which took place as part of the 2021 Act implementation therefore there should be no significant one-off costs.

There will be recurring costs arising from the requirement to state and record the reasons for differences in sentence as a result of the aggravation of offences relating to sex. This will result from additional court time and associated judicial and SCTS staff and accommodation resources that would be required in response to an increase in the number of court cases.

Using the figures provided in the Financial Memorandum for the Hate Crime Bill and adjusting for inflation, it is estimated that the annual recurring additional costs to SCTS relating to the extension of the statutory aggravation to the characteristic of sex will be between £70,000 and £280,000 and the annual recurring costs arising from the creation of an offence of stirring up hatred on grounds of sex will be £2,000.

#### Scottish Legal Aid Board

There may be costs if the new aggravation and stirring up hatred offence increase the number of people who are granted criminal legal aid. Based on the estimates for the increase in the number of cases set out above, and using the figures provided in the Financial Memorandum for the Hate Crime Bill adjusted for inflation, it is estimated that the annual recurring costs for the Scottish Legal Aid Board from the addition of the characteristic of sex to the statutory aggravation will be between £96,000 and £384,000 and the annual recurring costs arising from the extension of the offence of stirring up hatred to the characteristic of sex will be £2,000.

#### Local Authorities and the Third Sector

The addition of the characteristic of sex to the 2021 Act may result in additional costs for local authorities due to an increase in the number of Community Payback Orders that will be undertaken by the Scottish Criminal Justice Social Work Services. (SCJSWS).

Using the estimates contained in the Financial Memorandum for the Hate Crime Bill for the 2021 Act adjusted for inflation, it is estimated that the annual costs for SCJSWS of the addition of the characteristic of sex to the statutory aggravation will be between £35,000 and £140,000 and the annual recurring costs arising from the extension of the offence of stirring up hatred to the characteristic of sex will be £1,000.

### **Summary of estimated costs**

Addition of characteristic of sex to aggravation of offences by prejudice – recurring costs

	<b>Low</b>	<b>Medium</b>	<b>High</b>
<b>COPFS</b>	£92,000	£184,000	£368,000
<b>SCTS</b>	£70,000	£140,000	£280,000
<b>SPS</b>	£280,000	£560,000	£1,120,000
<b>SLAB</b>	£96,000	£192,000	£384,000
<b>SCJSWS</b>	£35,000	£70,000	£140,000
<b>Total</b>	<b>£573,000</b>	<b>£1,146,000</b>	<b>£2,292,000</b>

Addition of characteristic of sex to offence of stirring up of hatred – recurring costs

<b>COPFS</b>	£3,000
<b>SCTS</b>	£2,000
<b>SPS</b>	£8,000
<b>SLAB</b>	£2,000
<b>SCJSWS</b>	£1,000
<b>Total</b>	<b>£16,000</b>

One-off Implementation costs

Police Scotland - £395,000  
COPFS - £55,000

Total = £450,000

## **Other impacts**

### **Scottish firms' international competitiveness**

When the Hate Crime and Public Order (Scotland) Bill ("the Bill") was being developed, the Scottish Government undertook a full public consultation prior to introducing the Bill in Parliament. This did not identify any grounds on which this legislation would affect Scottish firms' international competitiveness.

### **Benefits to business**

The addition of the characteristic of sex to the 2021 Act is not anticipated to have any direct impact on businesses either positive or negative.

### **Small business impacts**

The addition of the characteristic of sex to the 2021 Act is not anticipated to have any direct impact on small businesses.

### **Investment**

The addition of the characteristic of sex to the 2021 Act is not anticipated to have any direct impact on investment in Scotland.

## **Workforce and Fair Work**

The addition of the characteristic of sex to the 2021 Act will not have any direct impact on the workforce or Fair Work First principles.

## **Climate change/ Circular Economy**

The addition of the characteristic of sex to the 2021 Act will have no direct impact on businesses' ability to contribute to climate and circular economy targets.

## **Competition Assessment**

The addition of the characteristic of sex to the 2021 Act will have no competitive impacts; therefore a competition assessment has not been completed.

## **Consumer Duty**

The addition of the characteristic of sex to the 2021 Act will have no direct impact on the price of goods and services.

## **Section 4: Additional implementation considerations**

### **Enforcement/ compliance**

The addition of the characteristic of sex to the 2021 Act has the effect of creating a new criminal offence of stirring up hatred against a group of people defined by reference to their sex and introducing an aggravation relating to the characteristic of sex.

As these are criminal law measures, enforcement is a matter for Police Scotland, COPFS and the courts, which are independent of the Scottish Ministers.

The Scottish Government will monitor the effect of these changes through the usual mechanisms for monitoring and reporting on matters relating to the criminal justice system including annual publications concerning Police Recorded Crime and Criminal Proceedings in Scottish Courts. The 2021 Act as amended will also include a requirement on the Scottish Ministers to produce reports to Parliament containing more detailed information on recorded offences and prosecutions which will extend to the characteristic of sex.

### **UK, EU and International Regulatory Alignment and Obligations**

#### **Internal Market/ Intra-UK Trade**

The addition of the characteristic of sex to the 2021 Act does not have any implications for the internal market or intra-UK trade. The creation of a statutory aggravation relating to sex does not change the criminal law, and we cannot envisage circumstances in which the creation of an offence of stirring up hatred on grounds of sex would criminalise commercial activity which would otherwise be lawful.

#### **International Trade Implications**

The addition of the characteristic of sex to the 2021 Act does not have any implications for international trade.

#### **EU Alignment consideration**

The addition of the characteristic of sex to the 2021 Act does not have any implications for EU alignment. Different member states of the EU take a range of different approaches to hate crime law in terms of the legislative framework in place and the characteristics covered by such legislation.

#### **Legal Aid**

The SSI will not add new procedures or rights of appeal to a court or tribunal or change policy or practice in a way which may lead people to consult a solicitor.

As statutory aggravations can only apply if there is a pre-existing criminal offence, the addition of a new statutory aggravation for sex will not of itself result in additional criminal cases. However, as charges with a statutory aggravator are less likely to be dealt with via a

non court disposal and are more likely to be prosecuted in court, some additional legal aid costs may be incurred. These are set out above.

The addition of the characteristic of sex to the offences of stirring up hatred may result in additional costs. However, as the number of such prosecutions is anticipated to be very small and for the most part, such prosecutions would relate to behaviour that would otherwise have been prosecuted using existing criminal offences, any additional legal aid requirements will be minimal.

## **Digital impact**

No digital impact is expected. The 2021 Act has no provisions specifically relating to digital or online content. The aggravation does not criminalise conduct that would not otherwise be a criminal offence. Stirring up of hatred offences that are motivated by prejudice relating to sex are capable of being committed online but there is nothing that indicates that the existing stirring up of hatred offences have had a disproportionate impact on either online or off-line businesses.

## **Section 5: Next steps and implementation**

### **Recommendations/ preferred options**

It is recommended that we proceed to use the power at section 12 of the 2021 Act to add the characteristic of sex to the 2021 Act. The costs associated with this will fall mainly on justice system agencies as a result of a possible increase in the number of cases reported to COPFS for consideration of prosecution by Police Scotland, and the possibility that cases with a statutory aggravation by prejudice will be more likely to be prosecuted rather than being diverted from prosecution.

The costs are considered proportionate to the aim of ensuring that crimes committed against people, mainly women and girls, who are motivated to commit the crime by prejudice relating to the victim's sex, are treated in the same way crimes motivated by prejudice relating to e.g. religion, disability or sexual orientation.

### **Implementation considerations/ plan**

If passed by Parliament, the SSI will come into effect on 5 April 2027.

### **Post implementation review**

The Scottish Government will monitor the effectiveness of the 2021 Act on an ongoing basis, taking account of police recorded crime and criminal proceedings statistics and the more detailed reports required to be published by the Scottish Ministers under sections 14 and 15 of the 2021 Act.

If Parliament votes to approve the SSI to add the characteristic of sex to the 2021 Act, the SSI will amend the statutory reporting requirements so as to ensure that monitoring will include consideration of the impact of this.

# Declaration

I have read the Business and Regulatory Impact Assessment for the addition of the characteristic of sex to the Hate Crime and Public Order (Scotland) Act 2021. I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

I am also satisfied that officials have considered the impact on consumers as required by the [Consumer Scotland Act 2020](#) in completion of the Consumer Duty section of this BRIA.

Signed: **ANGELA CONSTANCE MSP**

Date: 27 January 2026

Minister's name: Angela Constance

Minister's title Cabinet Secretary for Justice and Home Affairs

Scottish Government Contact point: Patrick Down, Criminal Justice Division.



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