Scottish Lesbians response to the Scottish Government consultation on adding 'sex' as a characteristic to the Hate Crime and Public Order (Scotland) Act 2021.

17th October 2025.

Question 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?

We strongly support the extension of the aggravation of offences to cover the characteristic of sex.

We believe that the Hate Crime and Public Order (Scotland) Act 2021, having to date covered other characteristics but excluded sex, has already had a chilling effect on women's free speech and fostered a wholly unjust belief that women are able to commit hate crimes against other groups, but not able to be victims of this type of crime. Since the 2021 Act began to be enforced we have anecdotally become aware of women leaving their communication devices at home, thereby increasing the risks towards women and reducing their ability to contact emergency services, for fear that this Act will be weaponised against women. The proposed extension may offer some reassurance that offences aggravated on the basis of sex will be taken as seriously as offences aggravated on the basis of other characteristics.

To understand the differential impact this Act - and the communication campaign used in its launch - has had on different groups, it is essential to understand the misogynist culture underpinning it.

The omission of sex to date has created a hierarchy of characteristics, and also a sense that women as a group are not only less important, but also more likely to adopt the role of offenders. This omission has likely already had an impact on factors including data collection and reporting of crime incidences and patterns, informing police responses, public safety campaigns and so on. It is important to say that the extension to include sex is just the beginning of levelling things and achieving fairness within the Act, but women are already lagging behind due to the original omission of sex.

Regarding the offence of stirring up of hatred, we did not support the addition of other characteristics beyond race. However, in the interest of equality, we would suggest either that all characteristics beyond race should be removed, or that sex should be added; there should be no difference in how sex is treated compared to the other characteristics.

Question 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?

We agree that is is very important that the freedom of expression provision is applied.

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

Yes. We note that the biological definition of sex is used, as per the recent Supreme Court clarification of the meaning of sex in the Equality Act 2010. We also note that there is a clear distinction drawn between sex and transgender identity and that the two are correctly treated as separate characteristics.

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

Yes

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

The proposals will help what is currently an unequal Act move towards upholding the human rights of women.

Question 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?

Sex interacts with some of the above characteristics, in terms of understanding and analysing patterns of criminal behaviour. The inclusion of sex in the Act will allow a greater understanding where there is criminality on the grounds of ‘sex and age’ or ‘sex and race’, for example.