

Engender Parliamentary Briefing for the Criminal Justice Committee on the SSI to add 'sex' as a protected characteristic to the Hate Crime and Public Order (Scotland) Act 2021

February 2026

BACKGROUND

Engender is a leading feminist policy and advocacy organisation working to secure women's social, political and economic equality and realise women's rights in Scotland. We aim to make visible the impact of structural inequalities on women and wider society, and work at Scottish, UK and international levels to produce research, analysis and recommendations for intersectional feminist legislation and policy.

Our work on eradicating violence against women and girls (VAWG) focuses on 'primary prevention' that focuses on addressing the gendered biases and norms underpinning VAWG in our society.¹ We work closely with Scotland's VAWG organisations, who see first-hand the disturbing extent to which many women and girls live with the everyday impacts of this violence, abuse and misogyny.

We are clear that a *credible, evidence-based and proportionate* criminal justice response is required to address VAWG. Alongside many women's organisations, we have worked for years with the Scottish Government on this issue and most recently, with the Independent Working Group on Misogyny and Criminal Justice in Scotland. The Working Group was commissioned by the Scottish Government and chaired by Baroness Helena Kennedy KC.

This is why we welcomed the Scottish Government's proposals² for a new Misogyny Bill in 2023. We communicated that we were ready to work with Scottish Ministers to find a legislative way forward for the Working Group's recommendations. We were then disappointed and deeply concerned when the Bill was abruptly dropped³, in favour of the far more limited approach of adding 'sex' as a protected characteristic to the Hate Crime and Public Order (Scotland) Act 2021. An approach that had been robustly discounted by the Working Group.

We submitted evidence to the subsequent consultation⁴ on the draft SSI, making clear the many concerns we have about the Scottish Government's U-turn on this issue and our

¹ Read more on Engender's Primary Prevention work here: <https://www.engender.org.uk/primary-prevention/>

² Engender, 2023, Response to the Scottish Government consultation on reforming the criminal law to address misogyny. Available at: <https://www.engender.org.uk/content/publications/Engender-response-to-the-Scottish-Government-consultation-on-reforming-the-criminal-law-to-address-misogyny.pdf>

³ <https://www.scotsman.com/news/opinion/columnists/why-snps-u-turn-on-sex-based-hate-crimes-is-dangerous-for-young-women-5132216>

⁴ Engender, 2025, Response to the Scottish Government Consultation on a draft SSI to add 'sex' as a protected characteristic to the Hate Crime and Public Order (Scotland) Act 2021. Available at: <https://www.engender.org.uk/content/publications/SG-Consultation-on-adding-sex-to-Hate-Crime-Act.pdf>

confusion about the rationale, given that there has been no material change to the evidence base outlined by Baroness Kennedy.

PURPOSE OF THIS BRIEFING

We want to urgently bring to the Committee's attention the following points in relation to why we do not think the SSI to add 'sex' as a protected characteristic to the Hate Crime and Public Order (Scotland) Act 2021 should progress:

1. **Extensive evidence from decades of research and consultation in this policy area is being actively ignored by the Scottish Government. It clearly demonstrates that adding 'sex' as a protected characteristic within Hate Crime laws cannot effectively address violence against women and girls and misogyny. The international evidence from the few jurisdictions that have taken this approach is not encouraging.⁵ Only a handful of states or territories globally have added sex to hate crimes legislation, and none have documented meaningful impact or trends in prosecution.**
2. **The findings of the 'Independent Working Group on Misogyny and Criminal Justice in Scotland', commissioned by the Scottish Government and chaired by Baroness Helena Kennedy KC, examined in detail the most effective approaches for addressing misogyny in the criminal law. The final report in 2022 concluded that a sex or gender aggravation in the Hate Crime and Public Order (Scotland) Act 2021 would be ineffective at reducing the abuse experienced by women.⁶**
3. **We urge the Committee to seriously consider the value of the SSI proposed, given that it directly contradicts the Scottish Government's own response to the Independent Working Group's findings, which endorsed and accepted the recommendations for standalone, gendered legislation.⁷**
4. **We also ask members to question why the Scottish Government claims, incorrectly, in the policy note for the proposed SSI, that it will *"in effect implement the first two recommendations of Baroness Kennedy's report, but in a gender-neutral way."*⁸ This is a gross misrepresentation of the findings, which were clear that the most effective way to protect women and girls from such abuse is through an asymmetric approach, with targeted and gendered laws.**
5. **The approach taken with the SSI to add 'sex' as a protected characteristic to the Hate Crime Act also risks significant regression in Scotland's approach to tackling VAWG and contradicts our world-leading Equally Safe strategy. It is at odds with international human rights standards and directives on how States should address**

⁵ Engender, 2019, Making Women Safer in Scotland: The Case for a Standalone Misogyny Offence. Available at: <https://www.engender.org.uk/content/publications/Making-Women-Safer-in-Scotland---the-case-for-a-standalone-misogyny-offence.pdf>

⁶ Scottish Government, 2022, Misogyny – A Human Rights Issue. Available at: <https://www.gov.scot/publications/misogyny-human-rights-issue/>

⁷ Scottish Government, 2022, Misogyny and Criminal Justice Working Group recommendations: response. Available at: <https://www.gov.scot/publications/misogyny-and-criminal-justice-working-group-recommendations-scottish-government-response/>

⁸ Scottish Government, 2025, Draft SSI to Add the Characteristic of Sex to the Hate Crime and Public Order (Scotland) Act 2021. Available at: <https://www.gov.scot/publications/draft-ssi-add-sex-characteristic-hate-crime-public-order-scotland-act-2021/pages/3/>

VAWG, set out in both the CEDAW⁹ and the Istanbul Conventions¹⁰, to which the UK is party.

6. Both the CEDAW and Istanbul Conventions require states to use asymmetric approaches to VAWG. This means refraining from developing law and policy that applies symmetry between men's and women's experiences of gender-based violence. Instead, they require approaches that reflect the deep inequality, structural injustice and power imbalances that drive VAWG. Men do not experience endemic levels of harm from women and girls, nor is this harm rooted in maintaining men's inequality. Yet the SSI will embed a parallel relationship between misogyny and misandry in law, which we believe is harmful.
7. We are also concerned about the Scottish Government's presentation of the findings from the recent public consultation on the SSI as being overwhelmingly supportive.¹¹ The presentation of submissions disingenuously weighs the larger number of individual responses against the smaller number from organisations with significant expertise on this area of policy. The Committee should be aware that over half of the organisations that responded to the consultation disagree with the introduction of this SSI. Furthermore, organisations across the VAWG Sector in Scotland are united in their opposition to this approach.
8. We ask members to recognise the significant concerns related to the definition of 'sex' as meaning 'biological sex' in the interpretive provision of the SSI. Defining 'sex' in this way in the Hate Crime Act risks undermining the centrality of 'gender' in VAWG policymaking and in efforts to address women's inequality. As recognised in *Equally Safe*, VAWG responses must look to address gendered barriers and injustice beyond those linked solely to biological differences.

We urge Committee members to robustly consider the significant concerns of the women's sector in Scotland with the SSI. Alongside many others, we have worked for years with the Scottish Government and the independent expert review of Hate Crime laws to develop a robust evidence base that is now being dismissed and ignored without justification. Instead of focusing on bringing the proposed Misogyny Bill forward, which had a much greater scope to improve women and girls' experiences of misogyny, the Scottish Government is instead opting for an unevidenced 'quick fix'. Women and girls in Scotland deserve better.

SPECIFIC CONSIDERATIONS

1. Violence against women and girls is an increasing threat

We reiterate to members the widespread and endemic nature of misogynistic behaviour, harassment, and abuse in Scotland. These behaviours, along with all forms of VAWG, are increasing:

⁹ UN Committee on the Elimination of Discrimination Against Women (2017) General Recommendation No. 35: Gender-based violence against women. Available at: <https://docs.un.org/en/CEDAW/C/GC/35>

¹⁰ Guney, 2020, "8: The Istanbul Convention: A Genuine Confirmation of the Structural Nature of Domestic Violence against Women within a Human Rights Law Framework?" In *Preventing Sexual Violence*. Bristol, UK: Bristol University Press. Available: <https://doi.org/10.51952/9781529203738.ch008>

¹¹ Scottish Government, 2025, Further protections for women and girls. Available at: <https://www.gov.scot/news/further-protections-for-women-and-girls/>

- Nearly three-quarters (71%) of women in the UK have experienced some form of harassment in a public space; this number rises to 86% among 18–24-year-olds.¹²
- Research by Zero Tolerance shows that misogynistic extremism is spreading amongst young people online, which is a growing concern in Scotland.¹³
- Research by the Young Women’s Movement found that young women increasingly feel anxious and unsafe, especially online, where misogynistic harassment, bullying, and abuse are increasingly common.¹⁴

In this context of growing threats women and girls are facing, we ask members to recognise our deep concern that the Scottish Government has chosen to suspend plans for more comprehensive legal reform that would enhance redress for misogyny offences. Women and girls deserve evidence-based, effective and meaningful action from the Scottish Government, not ‘quick fixes.’

2. Evidence-based policymaking

A stated, existing evidence demonstrates clearly that adding sex or gender as a category to hate crime law will not be effective or adequate in addressing the gendered violence and misogyny that women and girls are increasingly facing.

Our 2019 report, ‘Making Women Safer in Scotland’¹⁵ outlined how hate crime legislation offers an inadequate legal vehicle for dealing with the expansive and escalating challenge of misogyny. This work included reviewing international examples of existing hate crime laws that have integrated sex or gender aggravations in a state’s criminal law. **When exploring laws in countries including Belgium, Spain, and the United States, we found no evidence that adding gender to hate crimes legislation in any jurisdiction increased protections, improved the justice system, or enhanced state responses to VAWG.**

The ‘Independent Working Group on Misogyny and Criminal Justice in Scotland’ was then commissioned by the Scottish Government, chaired by Baroness Helena Kennedy KC. This two-year process examined in detail the most effective approaches for addressing misogyny in the criminal law, reviewing multiple international case studies, taking oral evidence from over 20 leading experts.¹⁶ It also surveyed the lived experiences of over 900 women and girls in Scotland.

The final report concluded that adding ‘sex’ as a protected characteristic to the Hate Crime Act would be ineffective for multiple reasons, including that:

- Hate crime legislation is principally designed to protect minorities, and women are not a minority group.

¹² All Party Parliamentary Group for UN Women (2021) Prevalence and reporting of sexual harassment in UK public spaces. Available at: https://www.unwomenuk.org/site/wp-content/uploads/2021/03/APPGUN-Women-Sexual-Harassment-Report_Updated.pdf

¹³ Zero Tolerance (2024) Many Good Men. Young Scots’ experiences of online misogynistic extremism and radicalisation. Available at: <https://www.zerotolerance.org.uk/resources/Many-Good-Men.pdf>

¹⁴ The Young Women’s Movement, 2025, <https://youngwomenscot.org/research-reports/status-of-young-women-in-scotland-2024-2025/>

¹⁵ Engender, 2019, Making Women Safer in Scotland: The Case for a Standalone Misogyny Offence. Available at: <https://www.engender.org.uk/content/publications/Making-Women-Safer-in-Scotland---the-case-for-a-standalone-misogyny-offence.pdf>

¹⁶ Scottish Government, 2022, Misogyny – A Human Rights Issue. Available at: <https://www.gov.scot/publications/misogyny-human-rights-issue/>

- Adding 'sex' to the Act fails to recognise that misogynistic violence is a consequence of structural sexism, where women are discriminated against to maintain patriarchal power relations.
- There is no equivalent form of engrained, generational, systemic discrimination and violence against men on the basis of their sex and gender, equivalent to that of misogyny. The SSI implies, and will in effect establish in law, that there is.
- 'Hate' is not always a helpful concept for describing the harmful conduct that men direct at women and does not fully cover the attitudes that underpin their actions.

On publication in 2022, the Scottish Government fully accepted the Group's recommendations¹⁷ and committed to creating specific, gendered legislation, which led to the publication of draft legislation¹⁸ (aka the 'Misogyny Bill') in early 2025:

*"The report does not recommend adding a sex characteristic to the Hate Crime and Public Order (Scotland) Act 2021. **We accept that these recommendations represent a new and necessary departure**, in that they specify women and girls as requiring specific protection of the criminal law, and are pivotal in challenging society's tolerance of misogyny."*

We urge the Committee to question the Scottish Government on what basis and evidence it is using to reverse its position and propose the SSI to add 'sex' to the Hate Crime Act.

We are also concerned that the Equality Impact Assessment (EQIA) published alongside the SSI¹⁹ ignores evidence raised in the recent consultation process about the weaknesses of the approach to address the violence that women and girls experience. **In fact, the EQIA fails to include any reference to evidence provided by women's organisations in Scotland to the SSI consultation and does not engage with the extensive evidence, including detailed lived experience findings, gathered as part of the Independent Working Group process.**

3. Importance of gendered policy-making and coherence with Equally Safe

The weaknesses in using a Hate Crime approach to address VAWG mean the proposed SSI is incompatible with Scotland's Equally Safe Strategy.²⁰ The central reason the Strategy is seen as a global gold standard approach to ending VAWG is because of Equally Safe's gendered analysis of this violence. Equally Safe recognises and replicates international best practice and human rights standards on VAWG in both the CEDAW and the Istanbul Conventions. A gendered approach to tackling VAWG recognises that women and girls' experiences of this violence are not symmetrical to men's.

¹⁷ Scottish Government, 2022, Misogyny and Criminal Justice Working Group recommendations: response. Available at: <https://www.gov.scot/publications/misogyny-and-criminal-justice-working-group-recommendations-scottish-government-response/>

¹⁸ Scottish Government, 2025, Reforming the criminal law to address misogyny: Analysis of Responses to Consultation. Available at: <https://www.gov.scot/publications/reforming-criminal-law-address-misogyny-responses-consultation/pages/2/>

¹⁹ Scottish Government, 2026, Scottish Statutory Instrument adding "sex" as a characteristic to the Hate Crime and Public Order (Scotland) Act 2021 Equality Impact Assessment. Available at: <https://www.gov.scot/publications/ssi-add-sex-characteristic-hate-crime-public-order-scotland-act-2021-equality-impact-assessment/>

²⁰ Scottish Government, 2023, Equally Safe Strategy. Available at: <https://www.gov.scot/publications/equally-safe-scotlands-strategy-preventing-eradicating-violence-against-women-girls/documents/>

We urge the Committee to consider how the SSI to add ‘sex’ to the Hate Crime Act sets a concerning precedent of dealing with a deeply gendered issue through a reductive, gender-neutral ‘sex’ protections framework. This type of symmetrical, gender-neutral approach in policymaking creates false equivalences in law between the experiences of men and women, frames misogynistic crimes against women as individual, isolated cases of hate, rather than contextualising acts of VAWG as driven by societal norms and stereotypes that women are subordinate to men.

It is also unclear whether the new sex aggravation in the Hate Crime Act would be used in conjunction with existing VAWG crimes set out in criminal law. Applying a sex aggravation to some existing sexual offences or domestic abuse cases, but not others, could contradict Equally Safe’s analysis that all forms of VAWG are gender-based and rooted in gender inequality. This could create unhelpful inconsistencies in how the justice system deals with gendered crimes. It would, for example, leave it up to judges to determine whether an individual case of sexual assault or stalking meets the threshold for a sex-aggravated hate crime when these crimes against women are always inherently gendered forms of violence. Baroness Kennedy’s proposals recommended that a misogyny aggravation should only be used in offences that are not already inherently misogynistic; for example, it should not apply to rape, other sexual offences or domestic abuse.

We urge the Committee to question why this basic level of analysis on VAWG has not been applied in the Scottish Government’s proposals.

4. Interpretive provision on biological sex

We ask the Committee to recognise significant concerns raised with the interpretive provision in the SSI to rely wholly on a definition of ‘biological sex’.

The Scottish Government states that it aims to “achieve equivalence with the meaning of sex in the Equality Act 2010 (EA), as determined by the Supreme Court in *For Women Scotland v Scottish Ministers*.” **The UK Supreme Court stated its judgment should not be used to define the category of a “woman” for broader purposes, beyond the definition of ‘sex’ in the Equality Act 2010 (EA). The judgment does not affect or require the definitions in the EA to be used consistently across existing and developing policies and legislation in other areas.**

Furthermore, final guidance from the Equality and Human Rights Commission has yet to be approved by the UK Parliament. There has been significant criticism that the EHRC’s approach to the ruling to date, including that the changes to the Code of Practice guidance would be difficult to implement in practice and may be in contravention of the Human Rights Act 1998.²¹ The interpretive provision risks being an overly expansive application of the Supreme Court judgment, which clearly stated that the Gender Recognition Act 2004 should continue to apply in other legal contexts.

It is our view that the Equality Act represents the floor, not the ceiling, of what we need to achieve in equality as a society. The existing Scottish Hate Crime and Public Order (Scotland) Act 2021 uses a broader range of protected characteristics than those listed in the Equality Act to ensure hate crime protections reach minorities most likely to be at risk. For example,

²¹ <https://www.libertyhumanrights.org.uk/issue/liberty-launches-legal-action-against-ehrc-over-unlawful-code-of-practice-consultation/>

protecting people with variations in sex characteristics, a group that does not appear on the EA's list of protected characteristics.

We are concerned that expanding the scope of the Supreme Court's decision beyond the EA further increases the threat to gender-based policymaking. There is a strong global consensus, underpinned by international institutions including the United Nations and the Council of Europe²², that the root cause of all forms of gender-based violence is *gender inequality*.

The CEDAW Committee (in General Recommendation No. 19²³) has **made clear that women require protection from discrimination on the grounds of both their biological differences from men and the unequal impacts they experience due to socially constructed conceptions of gender**. Such roles shape social norms and behaviours and determine women's access to social and economic power and resources through processes of gender stereotyping. **This understanding goes beyond biological differences between men and women.**

CONCLUSION

We supported the Scottish Government's proposals to reform the criminal law to address misogyny through a standalone Bill and remain clear that this is the approach that should be pursued. Rather than backing away from tackling misogyny at a time of rising threats, we need the next Scottish Government to take bold action by committing to meaningful legal reforms. This should occur alongside continued investment in a robust national strategy on primary prevention of VAWG. We need a legal framework and system that recognises the impact of sexism, misogyny and violence against women by design – not as an add-on to existing gender-neutral legislation.

We ask Committee members to take this opportunity to join us in pushing back against the proposed SSI to add 'sex' to the Hate Crime Act and assert that women and girls in Scotland deserve policy responses that will make a meaningful difference to their lives.

The presentation of this SSI by the Scottish Government as a means to plug a 'gap' in the law is undermined by their own evidence-gathering exercises, which have shown time and again that adding 'sex' to Hate Crime law will not work in practice to make women's and girls' lives safer.

FOR FURTHER INFORMATION

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ABOUT US

Engender is Scotland's feminist policy and advocacy organisation, working to increase women's social, political and economic equality, enable women's rights, and make visible the impact of sexism on women and wider society. We work at Scottish, UK and international level to produce research, analysis, and recommendations for intersectional feminist legislation and programmes.

²² Council of Europe (2011) Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic abuse. Available at: <https://rm.coe.int/ic-and-explanatory-report/16808d24c6>

²³ UN Committee on the Elimination of Discrimination Against Women (1992) General Recommendation No. 19: Violence against women. Available at: <https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>