



Justice Committee Clerks,
Room T2.60,
The Scottish Parliament,
Edinburgh,
EH99 1SP
justicecommittee@parliament.scot

cc: Humza Yousaf MSP, Cabinet Secretary for Justice

Via email only

28th January 2021

Dear Convener,

Proposed Stage 2 Amendments to the Hate Crime and Public Order Bill

Following oral evidence at Stage 1 from Engender and Scottish Women's Aid on the Hate Crime and Public Order Bill, we were pleased to welcome the Committee's consensus that giving the Working Group on Misogyny time to consider the complex issues of sex and hate crime was the most appropriate way to protect women from misogynistic harassment and abuse.

In the interest of absolute clarity, following Stage 1 the Bill currently contains a provision that would enable 'sex' to be added to the list of protected characteristics covered by the Bill at a later date, using secondary legislation. We note that amendments to the Bill have been lodged that would reverse this. They will instead add 'sex' to the list of aggravation characteristics now and remove the enabling power to add 'sex' as an aggravation characteristic after the Working Group, chaired by Baroness Kennedy of the Shaws, has had time to consider how best to approach the problem of misogynistic harassment in the context of hate crime and violence against women.

Our four organisations take this opportunity to restate that our support for further consideration before 'sex' is added to the list of protected characteristics in the Bill is purely practical and based on collective ambition for the best possible justice response to violence against women, including misogynistic harassment. In our view, a symbolic inclusion of 'sex' in the Hate Crime and Public Order Bill will not be matched by any practical outcomes for women's safety and justice. Instead, we see a number of risks in including 'sex' as a characteristic in this Bill and it is not clear that these can be adequately dealt with within the far too short Bill process.

To reiterate, our concerns remain as follows:

- Equally Safe, Scotland's world-leading violence against women strategy, may be undermined by the inclusion of a 'sex' aggravation. It is fundamentally contradictory

under Equally Safe's understanding of violence against women to say that some incidents of violence against women are a product of discrimination or animus on the ground of sex, and some are not.

- Human rights frameworks that Scotland is committed to, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Istanbul Convention, are clear that there should be a presumption against gender-neutral laws to address harms to women, such as a sex aggravation or stirring-up offence. Instead, laws should be shaped around women's lived experience.
- There is harm in promising rights in legislation that are not actually enforceable in practice and will not improve women's lives. There is a risk that reaching for a solution that is easy but does not work will prevent us creating policy and legislation that is new, distinctive and, crucially, effective.
- Evidence from similar legislation and practice, including from within the UK, shows that hate crime and hate speech are poorly understood in the context of women. This means that women simply do not report hate crimes aggravated by sex, and they are not adequately investigated or prosecuted. Rushing to legislate risks entrenching those misunderstandings in our criminal justice systems and public understandings of violence against women.
- That perpetrators may use the threat of criminality and the symmetrical protection of a 'sex' aggravation as part of a pattern of coercive control in order to prevent women from interacting with criminal justice systems.

Should the Committee elect to reverse its Stage 1 position it will signal that these issues have now been adequately considered. Before making this decision, we would ask that members satisfy themselves:

- **That Equally Safe's world-leading analysis of violence against women will be sustained** and that any extension of hate crime to crimes committed on the basis of sex will not undermine its implementation. Crucially, police and other criminal justice bodies must continue to understand that all violence against women is a cause and consequence of women's inequality. Sentencing should therefore not treat some instances of the same forms of violence against women as more aggravated on the basis of sex than others.
- **That implementation of a law on hate crime on the basis of sex be resourced at levels that will deliver real impact for those affected.** Scotland should avoid repeating the negative experience of other jurisdictions in substituting symbolic legislation for an effective criminal justice response, which means that significant investment will be needed to develop a clear understanding of what hate crime on the basis of sex is, and how it should be prevented, reported, investigated, and prosecuted.
- That the **Working Group on Misogyny will have all options available to it in considering how to tackle egregious misogynistic harassment and abuse**, and not be restricted by the presence or implementation of a sex aggravation.

- That **CEDAW and the Istanbul Convention implementation is not undermined** by adopting a gender-neutral 'sex' aggravator, which ignores the social context of men's violence against women, in direct contravention of their jurisprudence.
- The Bill is properly amended to **protect victim-survivors of domestic abuse from foreseeable harm.**

We do not believe that there are any ready solutions to these problems within the accelerated timetable available to pass this particular Bill. We continue to advocate for the Working Group's expert analysis to be instructive of the best way forward. This, of course, may give the next Justice Committee longer to reflect on an effective response to misogynistic harassment and abuse, which has not been the basis for discussion during this Bill process. Women deserve a solution to violence and inequality that actually works and has not been tagged onto a process designed to address other social harms without adequate consideration.

Regardless of the outcome of this Bill process, we hope that the Working Group deliberations will provide an effective solution to misogynistic harassment by enabling all those who care deeply about women's safety, rights, and equality to contribute expertise and analysis. The Scottish Parliament has passed 'gold standard' domestic abuse legislation from which other jurisdictions are drawing inspiration. We remain hopeful that the Scottish Parliament can similarly find an appropriately radical and world-leading response to the rise in misogynistic harassment, abuse, and radicalisation.

Yours sincerely,



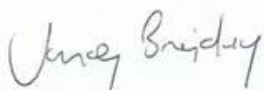
Emma Ritch

Executive Director
Engender



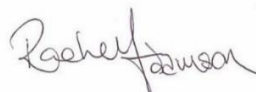
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