

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUPPLEMENTARY SUBMISSION FROM FOR WOMEN SCOTLAND

We wish to address the arguments in Tim Hopkins' supplementary note [1] relating to the inclusion of cross-dressers in the Bill, and also the definition of the sexual orientation characteristic.

Cross-Dressers

Mr Hopkins' argument for this appears to be that an attacker might claim he only hates cross-dressers, but would not attack a "real" trans person. We question whether a court would be likely to accept as plausible that someone would hold a hateful attitude only towards cross-dressers, and had based an attack on a careful prior assessment of whether a person was a cross-dresser or a "real" trans person.

The definitions of other characteristics are not expanded to include groups who might be used as an excuse in this way (football affiliations are not included in the definition of religion, for example). If the courts can be trusted to deal with "excuse categories" sensibly for other characteristics, then it is difficult to see a good reason to include this one. If cross-dressers as a group are included in the definition of people protected, it should be because the Parliament explicitly agrees that prejudice against cross-dressers of itself should carry additional penalties.

By including cross-dressers as a general category, but not sex, as an aggravator the Parliament would be saying that criminal acts motivated by hatred towards women are less serious than criminal acts motivated by hatred of men who wear women's clothing purely for recreational reasons, including for sexual gratification.

We strongly dispute Mr Hopkins' assertion that cross-dressing is not an overwhelmingly male activity. We notice that the Beaumont Society, established in 1966 as an organisation particularly for transvestites, in its own words, and now describing itself as an organisation for transgender people and cross-dressers, was set up for a male membership and though technically open to both sexes still appears to follow that pattern, with all its the executive committee members and regional organisers[2] being MtF. "Beaumont Partners",[3] a support group for partners of Society members, is described as having an all-female membership.

Also, cross-dressing as a sexual paraphilia has been observed to be many times more common among men than women. For example, a large scale study from Sweden[4] found:

Almost three percent (2.8%) of men and 0.4% of women reported at least one episode of transvestic fetishism [sexual arousal from cross-dressing]. ... A positive

attitude to this sexual practice and paraphilia indicators--sexual arousal from using pain, exposing genitals to a stranger, and spying on others having sex--were particularly strong correlates to the dependent variable.

Another study[5] using Swedish clinical data from adolescents referred clinically for transvestic fetishism found that all the subjects referred were male.

Allowing for this and for the much greater difficulty in determining what it means for a woman to “cross-dress”, we think any assertion that protection for cross-dressing would not in practice overwhelmingly benefit men, including some men engaged in an activity purely for sexual pleasure, is simply unbelievable. Because of the inclusion of transgender identity in Part 2, the Bill also offers those men as a group better protection against hostile speech than women. We question the symbolism that would have as a fact of Scottish law.

We understand that transvestitism was originally included in the 2009 Act. The point of this Bill is to revisit and modernise existing legislation. The Committee should not feel its hands are tied by decisions taken by a different group over a decade ago, and that the only way it can redraw lines is by expanding coverage. It is entitled to decide that the coverage of 2009 Act would benefit from being tightened in places.

We think that one obvious case to revisit is the inclusion of all men, as it will overwhelmingly be, who cross-dress, for whatever reason; and particularly so if sex continues to be excluded as a protected characteristic in the Bill.

Definition of the Sexual Orientation Characteristic

In a similar vein, we dispute Mr Hopkins claim that it is important to use “different sex” rather than “opposite sex” to ensure that those who are in a relationship with a non-binary person are not excluded from protection.

Non-binary is not a sex; there is no third sex. The use of “different” rather than “opposite” implies that there are more than two sexes and there is no scientific evidence that this is the case. Furthermore, suggesting that non-binary identity is a sex class runs counter to the statement made by Shirley-Anne Somerville on the GRA in June 2019[6] and risks further conflation of sex and gender in Scots Law.

Both the Offences (Aggravation by Prejudice) (Scotland) Act 2009 and the Equality Act 2010 use the terminology “opposite sex”, and although legislation has been passed since then using “different sex”, this is not sufficient reason for the Committee to be bound by it for this Bill. Definitions in legislation should be precise and factual and this is a timely opportunity to ensure the Bill reflects this and not further embed inaccuracies.

For Women Scotland
30 November 2020

References:

- [1] https://www.parliament.scot/S5_JusticeCommittee/Inquiries/JS520HC1775_EqualityNetwork.pdf
- [2] <https://www.beaumontsociety.org.uk/meet-our-people.html>
- [3] <https://www.beaumontsociety.org.uk/partners/>
- [4] <https://pubmed.ncbi.nlm.nih.gov/15859369/>
- [5] <https://pubmed.ncbi.nlm.nih.gov/22390530/>
- [6] <https://news.gov.scot/speeches-and-briefings/statement-on-gender-recognition>