

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM WOMAN'S PLACE UK

Woman's Place UK (WPUK) was established in September 2017 to enable the voices of ordinary women to be heard in the debate about reform of the Gender Recognition Act 2004. We are a grassroots campaign group, founded by women in the labour and trade union movement. We believe in the right of everyone to live their lives free from discrimination and harassment.

Since then our campaign has broadened out to uphold and extend women's sex-based rights more generally. In January 2019, we published five [new year resolutions](#) and in July 2019 we published a [manifesto](#) with demands across a range of policy areas that we would like to see taken up widely.

We welcome the opportunity to submit evidence on the draft Hate Crime and Public Order (Scotland) Bill. Our comments relate to the proposal to enable the inclusion of sex as a protected characteristic in the list of statutory aggravations and the proposal to extend the offence of stirring up hatred to all listed protected characteristics.

Violence against women and girls

Violence against women and girls (VAWG) is endemic and both a cause and consequence of inequality between the sexes:

- Levels of domestic abuse recorded by Police Scotland have remained consistent since 2011-12, with between 58,000 to 61,000 incidents a year¹.
- The police recorded 60,641 incidents of domestic abuse in 2018-19, 2% more than the previous year².
- Where sex was recorded, around four out of every five incidents of domestic abuse in 2018-19 had a female victim and a male accused. This proportion has remained consistent since 2011-12³.
- Figures for many crimes in Scotland are decreasing, however reports of sexual offences are rising. Sexual crimes have been on a long-term upward trend in Scotland since 1974, and have increased each consecutive year since 2008-09. Sexual crimes are at the highest level seen since 1971, the first year for which comparable crime groups are available⁴.
- 13,547 sexual offences were reported in 2018-19, – an increase of **8%**, from the 12,487 sexual offences recorded the previous year⁵.
- In Scotland, in the year ending March 2017:
 - 91% of prosecutions for serious assault were of males
 - 98% of prosecutions for sexual violence were against males.

¹ <https://www.gov.scot/publications/domestic-abuse-scotland-2018-2019-statistics/>

² Ibid

³ Ibid

⁴ <https://www.gov.scot/publications/recorded-crime-scotland-2018-19/>

⁵ Ibid

- Speeding offences had a conviction rate of 98% in Scotland in 2016-17. However, despite an increase in conviction rates to 47%, the lowest conviction rate continues to be for rape and attempted rape (47%)⁶.
- In 2018 there were 1,878 rapes and attempted rapes reported to the police in Scotland but only 98 convictions⁷.
- In the UK, since 2009 on average a woman is killed by a man every three days. A woman is killed by a partner or ex-partner every four days. ([Femicide Census](#))

Adding 'sex' as a protected characteristic

The Scottish Government [cites as its rationale](#) for the Bill the need to send a message to vulnerable groups at risk of being targeted on the basis of hatred. Therefore, the exclusion of 'sex' in the list of statutory aggravators sends a stark message to women. The Scottish Government evidently regards crimes perpetrated against women as being in a different category to other crimes motivated by hate, illustrated by the fact that it intends to set up a parallel working group to consider whether or not to add 'sex' as a protected characteristic under hate crime law (or whether to create a standalone offence of 'misogyny'). It is certainly true that crimes in which women are the victim are most usually committed by men, whereas crimes where men are the victim are most usually committed by other men. Women also differ from other protected groups covered by the draft legislation in that they are not a minority group but in fact constitute a majority of the Scottish population.

WPUK believes that crimes committed against women should and must be treated more seriously by our criminal justice agencies than they are at present. For instance, so low is the conviction rate for sexual assault and rape that the men who perpetrate these crimes can do so in the knowledge that they are highly unlikely to face punishment. However, we have a number of concerns about approaching violence and other harms perpetrated against women and girls solely through the lens of hate crime.

The nature of harms against women

Harms perpetrated against women by men differ from most other hate crimes because they habitually take place within intimate relationships. Crimes of domestic and sexual violence are often difficult to prosecute for that reason. Nor are we aware of any substantive evidence which demonstrates a reduction in harms perpetrated against women in jurisdictions which have legislated for hate crimes against women.

Failure to tackle underlying causes

We are also concerned that the framing of harms perpetrated against women as 'hate crimes' is a distraction from tackling the underlying causes of violence against women and girls (VAWG). For example:

⁶ <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2020/03/criminal-proceedings-scotland-2018-19/documents/crime-justice-criminal-proceedings-scotland-2018-19/crime-justice-criminal-proceedings-scotland-2018-19/govscot%3Adocument/crime-justice-criminal-proceedings-scotland-2018-19.pdf>

⁷ https://www.bbc.co.uk/news/uk-scotland-43210970?fbclid=IwAR1OFVJOEOxrb7v8g3mccyQ14i_crO9jF1_cfh5WTHnT3jX1qKQNQjV41WQ

- The failure of criminal justice agencies to deal with perpetrators.
- The failure of policymakers to ensure that women have the economic means to flee violent partners. For instance, women's over-representation in low paid employment, the lack of access to affordable housing, women's caring responsibilities.
- The failure to adequately fund the women's sector to provide refuge and support to women who are the victims of male violence.
- The failure to tackle male socialisation which leads to a sense of entitlement and underpins male violence towards women. This in turn is perpetuated and magnified by the proliferation of pornographic imagery both online and in mainstream culture.

Whilst we are concerned at the exclusion of 'sex' as a statutory aggravator, as part of its Stage 1 deliberations, we would like to see the Committee explore how helpful the concept of hate crime is in framing harms committed against women on the basis of their sex and whether hate and misogyny "provides an adequate explanation or theoretical framework for understanding *all* violence against women" ([Liz Kelly](#)).

Creation of new offence of stirring up hatred

WPUK opposes the proposal to extend of the offence of stirring up hatred to all protected characteristics listed in the draft bill, on the grounds that it has the potential to curb Article 10 and 11, rights of freedom of expression and assembly.

Currently, the offence of stirring up of hatred is confined to those who are targeted on the basis of race. In its [Policy Memorandum](#), the Scottish Government explains that the origin of this offence relates to the "*historical and structural nature of racism, the prevalence and seriousness of race hate crime and the impact this has on community cohesion*". Racially motivated crime can also be differentiated from other forms of hate crime by the degree of political organisation. For that reason, it merits a bespoke response in law and WPUK supports the retention of the offence of stirring up racial hatred.

The debate on women's rights and the rights of trans people, and the conceptualisation of sex and gender identity in law and policy, has become a flashpoint over the past few years. It is our view that, across the UK, public authorities and civic institutions have abrogated responsibility for creating space to debate this conflict of rights. Governments at all levels and other public authorities have also failed to make clear statements about the parameters of existing anti-discrimination legislation. Until that situation changes, it is likely that the debate about these issues will continue to be highly charged.

A desire to create fora where ordinary women could engage in the debate about proposals to reform the Gender Recognition Act (GRA) 2004 is what prompted the establishment of WPUK. Since September 2017, WPUK has organised 27 public meetings around the UK, including a one-day conference in London in February this year which was attended by just under 1,000 people. In total, over 6,000 people have participated in our events, at which women have discussed proposals from both the UK and Scottish Governments to reform the GRA to enable individuals to change their legal sex by means of a statutory declaration and the potential impact on single sex spaces, services and other sex-based protections.

We have been persistently mischaracterised as a ‘hate group’ and nearly every one of our events has been hosted in the face of substantial obstacles including aggressive and intimidating protests, attempts to shut the meeting down and threats of violence, including a bomb threat. An account of our experiences of organising each of these events can be found [here](#) and evidence of accusations levelled at WPUK can be found at the end of this submission.

We are concerned that the introduction of an offence of stirring up hatred on the basis of transgender identity will have a chilling effect on the ability of WPUK and other groups of women to debate and discuss these critical issues.

The bar for what constitutes an offence of stirring up hatred on the basis of transgender identity appears to us to be very low. The legal threshold for the proposed new offence extends beyond behaviour or communication that is intended to stir up hatred to behaviour and communication that is likely to stir up hatred. And whilst there is a clause protecting freedom of expression for the offences of stirring up hatred on the basis of religion and sexual orientation, there is no such clause for the offence of stirring up hatred on the basis of transgender identity. Those factors, combined with the fact that the legislation contains no parallel offence for stirring up hatred on the basis of sex, gives us real cause for concern.

Based on our experience of organising meetings over the past three years, we regard it as highly likely that this new offence would have grave consequences for the ability of women to engage in debates about the way in which policy and law impacts upon their sex-based rights, a fundamental tenet of any democracy.

We call on the Committee to give careful consideration to the proposals contained in this Bill and the ways in which it might adversely impact upon women, who constitute a majority of the Scottish population.

Woman’s Place UK
23 July 2020