

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM RESISTERS UNITED

ReSisters United network of over thirty grassroots feminist groups, comprising several hundred members throughout the UK and Ireland, who campaign to uphold women's sex-based rights and against the indoctrination of children into Gender Identity ideology.

We have grave concerns about how the passing of the Hate Crime and Public Order bill would impact both Scottish women, and citizens more broadly, as well as its potential knock on effect for the rest of the UK. In particular, the passing of Part 2 of this legislation would be very likely to make it harder, if not untenable, for groups like ourselves to continue our campaigning work to protect women's legal rights, and give voice to women's concerns on how legislation like the proposed Gender Recognition Act reform impacts us as a group.

This bill represents an extremely serious chilling effect on women's speech and the freedom to discuss and debate sensitive issues, which we must value and protect in a democratic system. Several recent court rulings on cases related to censorship and the sex self ID debate have brought to light the conflict between the behaviour of extremist Transgenderism ideologues and democratic rights to freedom of speech and belief. In *Miller versus Humberside Police 2020*, Justice Julian Knowles acknowledged Humberside police's phone calls and visits to Miller to reprimand him for tweets, which were reported to the police as transphobic, as: "disproportionate interference with the claimant's right to freedom of expression because of their potential chilling effect."¹ Researcher Maya Forstater failed to have her contract renewed by Centre for Global Development due to tweeting about her belief in the material reality of 2 biological sexes. In the employment tribunal she brought and lost against CGD Europe, the judge ruled that her beliefs, which are in reality representative of those of the majority of the population, were: "not worthy of respect in a democratic society."²

We agree with political journalist Stephen Daisley's assessment that this proposed bill represents: 'the most sweeping and authoritarian law of the devolution era.' It could only exacerbate existing barriers to women joining debate or discussion on issues of self ID and Gender Identity ideology, due to state led aggressive and authoritarian responses to viewpoints that challenge the new orthodoxy on sex self ID. At a time when women's sex based rights are under serious threat due to legal reforms being sought by a powerful and influential Transgender Lobby, eroding the ability for women to safely object and campaign against the dismantling of single sex spaces, services and sports would have a devastating impact on women and girls. ReSisters United believes Part 2 of this bill MUST therefore be scrapped in its entirety.

¹ <https://uk.news.yahoo.com/fair-cop-founder-wins-partial-110626007.html>

² <https://lawandreligionaustralia.blog/2019/12/20/losing-a-job-for-believing-that-biological-sex-is-immutable/>

Part 1.

1.a) This section states:

‘An offence is aggravated by prejudice if—(a) where there is a specific victim of the offence—

- (i) at the time of committing the offence, or immediately before or after doing so, the offender evinces malice and ill-will towards the victim, and**
- (ii) the malice and ill-will is based on the victim’s membership or presumed membership of a group defined by reference to a characteristic mentioned in subsection (2), or**

(b) whether or not there is a specific victim of the offence, the offence is motivated (wholly or partly) by malice and ill-will towards a group of persons based on the group being defined by reference to a characteristic mentioned in subsection (2).

There are several causes for concern with this clause. Firstly, section b) states it is not necessary for there to be any ‘victim’ of this offence. This leaves the door open to scenarios where a non member of relevant protected group brings the complaint on behalf of said group, regardless of whether a majority of members of said group agree that reported speech or action is likely to stir up hatred against them. Further concerning is Section 1.4. wherein the low bar of proof required to evidence such prejudice is clearly stated:

‘(4) Evidence from a single source is sufficient to prove that an offence is aggravated by prejudice.’

As the National Secular Society has stated: ‘if we wish to apply criminal sanctions to protect people from feeling “abused” when someone criticises or attacks their beliefs, it is obvious that the beliefs themselves, as well as the individual who feels insulted or abused, are being protected. People should be protected by law, but beliefs should not.’ An example of a ‘victimless’ hate speech civil complaint previously taking place in the UK is the non trans identified individual Dr Adrian Harrop’s successful protest to have a Liverpool billboard advertisement of feminist campaigner Posie Parker removed. It read, ‘Woman: Adult Human Female,’ which Harrop claimed demonstrated mal-intent towards trans people.³ He stated in a Sky News interview that although there was nothing offensive about the dictionary definition of the word woman, ‘this is about what that particular poster presented in that particular way, that particular location represents and what the underlying meaning and the thinking that was driving putting up that poster.’ Stickers displaying this very same definition were flagged up by the manager of Scottish Trans Alliance, who encouraged reporting them to the police as a hate crime, adding, “we need the

³ <https://www.youtube.com/watch?v=y8nViKYmEhU&t=70s>

stats”.⁴ In these instances, the legislation could become a tool for ideologues to force conformity to their point of view on others, rather than a means of protecting vulnerable groups from hate and prejudice.

Secondly, the idea of showing ‘malice or ill-will’ at the time of committing an offense is worryingly subjective, and leaves the accused open to bad faith interpretations of their motives and beliefs by offended parties. This is something that occurs frequently in the sex self identification debate, wherein women’s concerns about lack of built in safeguards against bad faith male actors in proposed legislation are alleged to be ‘secretly’ motivated by fear and hatred of trans identified people.^{5 6} An example of the type of women’s activism that could be deemed hate crime (the potential aggravating offense being criminal damage) in Scotland under this new legislation is Liverpool ReSisters, ‘Women Don’t Have Penises’ stickering action.⁷ Legislating to criminalise such activism under hate crime law would represent unacceptably totalitarian controls on women’s rights to self determine and to campaign for biological women to retain recognition of existing as a separate group to biological men for legal and statistics gathering purposes. It would also contravene Article 9 of the Human Rights Act: the right to Freedom of thought, belief and religion.

1.2.

The bill lists the protected characteristics of offenses aggravated by prejudice as:

‘a)age,

(b)disability,

(c) race, colour, nationality (including citizenship), or ethnic or national origins,²⁰

(d) religion or, in the case of a social or cultural group, perceived religious affiliation,

(e) sexual orientation,

(f)transgender identity,

(g)variations in sex characteristics’

Sex

It omits the (Equality Act 2010) protected characteristic of ‘sex’ from the given list of groups with protected characteristics in Section 1.2. Although it is stated in an addendum this characteristic may be added at a later undetermined date, this elision reveals the woeful lack of priority the Scottish government has given, both in prior

⁴ <https://forwomen.scot/wp-content/uploads/2020/07/Hate-Crime-Bill-call-for-views-FWS-response-19Jul2020.pdf> (Page 9)

⁵ <https://fairplayforwomen.com/pride/>

⁶ <https://fairplayforwomen.com/pcc/>

⁷ <https://www.pinknews.co.uk/2018/08/19/liverpool-mayor-remove-anti-trans-women-penises-stickers/>

discussion and debate and in this proposed legislation to sexist, abuse and threats which are rampant.⁸ Leaving 'sex' out from the protected categories is overtly sex discriminatory as women would then remain the only protected group without recourse to the law in cases of hate motivated offenses directed against them for being female. That a man who claimed a female gender identity would merit protection under the 'transgender identity' characteristic, but a biological woman would not, is clearly a case of sexist discrimination and privileging of the male group of 'women' over the female group. This is a continuation of centuries old sexist tradition of treating women as less worthy than men of legal rights and protections. It is also at odds with the Scottish government's commitment to 'prevent and eradicate violence against women and girls' in their Equally Safe Strategy.⁹ Moreover it would also put Scotland behind with the rest of the UK on the matter of women's legal protections, as progress is currently being made towards adding misogyny as an aggravating motivation to offenses, in both English hate crime law and anti domestic violence legislation.¹⁰

Hateful and dehumanising speech against women and girls is on a spectrum of abuse against women, which in its most serious form includes the crimes of domestic violence, forced prostitution and sex trafficking, female genital mutilation and gynocide (homicide of women.) Domestic violence related crime in Scotland fractionally increased in 2018-19, from 2017-2018,¹¹ and is likely to worsen again over 2020, assuming Scotland follows the same trend seen nationally¹² and internationally,¹³ likely due to effects of the lockdown. The abuse women in the UK and Scotland are subjected to for speaking out on issues relating to women's rights and position in society has also become increasingly prevalent and serious in recent years, up to including assault and intimation in public spaces.¹⁴ It is more crucial now than ever, therefore, that the Scottish government treat the issue of misogyny motivated actions perpetrated against women and girls with the grave consideration it deserves.

If passed, the bill MUST include sex as an aggravated offense category.

Variations in Sex Characteristics

We do not support the inclusion of variation in sex characteristics being a protected characteristic, since Developmental Sexual Disorders are largely undetectable and therefore do not commonly invite prejudicial or hateful reactions from others. There are arguably many other medical conditions which are more likely to attract hate and prejudice, such as obesity or skin conditions like severe psoriasis or acne. There is no good reason for selecting out DSD for inclusion in legislation. Moreover the

⁸ <https://terfisaslur.com/>

⁹ <https://www.gov.scot/publications/equally-safe/>

¹⁰ <https://www.theguardian.com/uk-news/2020/jul/05/labour-mayors-back-plan-to-make-police-record-misogyny-as-hate>

¹¹ <https://www.bbc.co.uk/news/uk-52433520>

¹² <https://www.heraldscotland.com/news/18584704.opinion-kirsty-strickland-must-not-ease-war-domestic-abuse/>

¹³ [://www.bbc.co.uk/news/av/world-53014211/coronavirus-domestic-violence-increases-globally-during-lockdown](https://www.bbc.co.uk/news/av/world-53014211/coronavirus-domestic-violence-increases-globally-during-lockdown)

¹⁴ https://fairplayforwomen.com/misogyny_hate_silencing/#a1.0

percentage of the population who fall into this category is minuscule, discrimination or prejudice against DSD individuals is hardly a pressing societal problem. We agree with For Women Scotland that: 'Given that DSD conditions were only included in the Offences (Aggravation by Prejudice) (Scotland) Act 2009 due to this conflation with transgender identity-which the Scottish Government has now acknowledged as inappropriate-this should be followed through with the complete removal of DSD from the Bill. In order to firmly close the door on allowing for the concept of a "female penis" to be regarded as just a variation in sex characteristics we would also like to see the category referred to with the more accurate name of differences of sex development.'¹⁵

Sexual Orientation

If the bill is passed, we would support the inclusion of sexual orientation as an aggravating offense. The bill uses the terminology, 'different sex.' This must be changed and brought in line with the Equality Act's more accurate phrasing of, 'opposite sex attraction,' as there are only 2 sexes, and 'different' implies more than two. Anti-lesbian motivated offense perpetration continues to be a serious problem in Scotland and the UK.^{16 17} Given that much crime against lesbian women is motivated by the simultaneous dual prejudices of hatred of women and hatred against homosexuals, we would like to see 'sexual orientation' prejudiced hate crimes figures recorded and categorised into the separate groupings of: 'gay/bisexual men' 'lesbian/bisexual women' in the public release of these figures by the Crown Office and Procurator Fiscal Service (COPFS)¹⁸ This would allow statistics on Scottish females who are victims of both misogynistic and homophobic aggravated hate crime to be tracked.

Transgender Identity

This protected characteristic should be changed to 'Gender Reassignment' to bring it in line with the Equality Act 2010. The concept of 'Gender Identity' signifies an internal, subjective and in some cases fluctuating sense of one's gender, rather than a material and objectively verifiable category like sex or disability. In many instances, ignoring a person's gender identity and treating them according to their correct biological sex (almost always identifiable in social contexts from a person's appearance and voice) may be necessary and even essential. For example, in many medical contexts, or in making a missing person's report. This should not leave the relevant party open to accusations of hate or prejudicial behaviour for correctly sexing said individual for reasons unrelated to prejudice or malice. This may be an adverse effect of social changes that such legislation would contribute to. Moreover many feminists reject gender identity as a concept, and claim their self perception of their gender is simply that of a human being living in a sexed body. Making Transgender Identity a protected characteristic, in conjunction with Article 3 of this bill, which criminalises communications deemed, 'likely to stir up hatred' against a relevant group could have a terribly chilling effect on women's ability to speak about sexism and women's political interests. As campaign group Fair Play

¹⁵ <https://forwomen.scot/wp-content/uploads/2020/07/Hate-Crime-Bill-call-for-views-FWS-response-19Jul2020.pdf> (Page 2)

¹⁶ <https://www.bbc.com/news/uk-england-london-48555889>

¹⁷ <https://www.thegayuk.com/homophobic-hate-crime-continues-to-soar-in-scotland/>

¹⁸ <https://www.copfs.gov.uk/images/Documents/Statistics/Hate%20Crime%20in%20Scotland%202019-20/Hate%20Crime%20in%20Scotland%202019-20.pdf>

For Women has pointed out, women are stakeholders in the debate on changing legal definitions of who is included in the legal category women.¹⁹ We agree with political journalist Stephen Daisley that:

‘Many radical feminists believe sex is a biological fact of life and cannot be changed either by self-identification or surgical intervention. They contend that men who believe themselves to be women are not in fact women, even if they live their lives as such. Some contend, moreover, that transgender ideology is harmful and rooted in misogyny.

The expression of these views, not least on the instant aggression generator that is Twitter, may well strike some trans people as abusive, and a police officer or procurator fiscal surveying the evidence might agree. There is a reasonable likelihood this legislation, unless more clearly defined, could criminalise one side in an ongoing public discussion about the law.’

Forcing people to adopt gender ideology - which many perceive to be science denialist - on penalty of potential criminalisation would represent a contravention of Article 9 of the Human Rights Act: the rights to freedom of thought, belief and religion. Furthermore, included in the category of males who self identify as women, number many dangerous sex and violent offenders.²⁰ Scenarios where women are forced to publicly use female pronouns for abusers such as rapists whom they perceive to as male (because doing otherwise may constitute ‘hate.’) would comprise a form of state complicity in and sanctioning of male abuse of women and girls and could potentially retraumatise victims of sex crime. This must not be allowed to happen.

PART 2

ReSisters United have grave concerns with every aspect of Part 2 of the bill and demand this section be scrapped. Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 already outlaws threatening or abusive behaviour against anyone where such behaviour would be likely to “cause a reasonable person to suffer fear or alarm.” Whats more: potentially criminalising feminist speech which is critical of Gender Identity Ideology, (such speech is frequently purported to be hateful towards trans identified people) would create legal conflict between existing Equality Act legislation, which upholds women’s right to access single sex spaces, services and sports on grounds of privacy, safety and fairness. It would be a bizarre and dystopian scenario were women to be rendered unable to publicly discuss the existing rights they hold in law and why we wish to retain them.

The primary effect of this aspect of the legislation, rather than protecting vulnerable groups from harm, would be to chill the speech of any Scottish opponents of the transgender lobby, transgender campaign groups and trans rights activists and render it unfeasible to organise and campaign against the legal and social changes they are pressing for. Given the level of support transgender campaign groups have enjoyed from many senior politicians through the proposed GRA reform period, it is difficult to believe this was not, at least partly, the intent of this piece of legislation.

¹⁹ (<https://fairplayforwomen.com/pcc/>)

²⁰ www.transcrimeuk.com

Under Section 3.1 ‘Offences of stirring up hatred,’ the bill states:

‘(1)A person commits an offence if— (a)the person—

(i)behaves in a threatening, abusive or insulting manner, or

(ii) communicates threatening, abusive or insulting material to another person, and

(b)either—

(i)in doing so, the person intends to stir up hatred against a group of persons based on the group being defined by reference to race, colour, nationality (including citizenship), or ethnic or national origins, or

(ii)as a result, it is likely that hatred will be stirred up against such a group.’

The phrasing ‘behaves in an insulting manner’ or ‘communicates threatening, abusive or insulting materials to another person,’ is deeply disquieting. To insult someone, as well as being a highly subjective scenario, is a very low bar at which to criminalise actions. Being impolite to others should certainly not merit up to 7 years prison time in a free and democratic society. We agree with the Scottish Secular Society that no-one has the absolute right not be offended, especially when what may offend them are truthful biological facts.

Section 3.2 of the bill states:

(2)A person commits an offence if—

(a)the person—(i)behaves in a threatening or abusive manner, or

(ii)communicates threatening or abusive material to another person, and

(b)either— 10

(i)in doing so, the person intends to stir up hatred against a group of persons based on the group being defined by reference to a characteristic mentioned in subsection (3), or

(ii)as a result, it is likely that hatred will be stirred up against such a group.

Once again, this bill does not even require malicious intention be present for potential criminalisation of communications a person makes about a relevant group. The term abusive is, again, subjective and not legally defined. As pointed out in a recent article in the Press and Journal,²¹ despite her careful and balanced presentation of her views in a recent essay on the sex self ID debate, JK Rowling received a torrent of accusations of ‘spreading hate against trans people’ by trans

²¹ <https://www.pressandjournal.co.uk/fp/news/politics/scottish-politics/2338172/jk-rowling-could-end-up-in-the-dock-if-new-hate-crime-laws-are-passed-critics-warn/>

rights activists.²² If this legislation was passed, it is likely it could lead to criminal prosecution of the speaker in such high profile cases.

Section 2.5 & 2.6 of the bill, as follows, are some of the most chillingly draconian throughout Part 2:

2.5 ‘Offences of possessing inflammatory material

(1) A person commits an offence if— (a) the person has possession of threatening, abusive or insulting material with a view to communicating the material to another person, and

(b) either— (i) the person intends, in doing so, to stir up hatred against a group of persons based on the group being defined by reference to race, colour, nationality (including citizenship), or ethnic or national origins, or

(ii) it is likely that, if the material were communicated, hatred would be stirred up against such a group.

2.6 Powers of entry etc. with warrant

(1)A sheriff or justice of the peace may grant a warrant under this section authorising a constable or a member of police staff to enter premises if the sheriff or justice of the peace is satisfied, by evidence on oath, that there are reasonable grounds for suspecting—

(a) that an offence under section 3 or 5 has been, or is being, committed at the premises, or

(b)that there is evidence at the premises of the commission of an offence under section 3 or 5.35

(2)A warrant granted under this section may authorise a constable or a member of police staff to—

(a) enter the premises by force if necessary,

(b) search the premises and any person found in the premises,

(c) seize and detain any material found on the premises, or on any person in the premises, if the constable or member of police staff has reasonable grounds for suspecting that it may provide evidence of the commission of an offence under section 3.

It is difficult to see any sound justification for the extensive authoritarian powers granted here to enter private property and seize communication materials, simply on the grounds that someone suspects ‘insult’ *may* be caused to an unknown party in future through materials communicated about the relevant group.’ In fact it is only a

²² <https://variety.com/2020/film/news/jk-rowling-transphobic-tweets-controversy-1234627081/>

modicum away from a form of Thought Policing. In addition possession of such materials is treated as an offense. This cannot be allowed to pass into legislation in a democratic country if we hold proper respect for the importance of free speech and freedom of belief. We agree with Andrew Tettenborn, Professor of Commercial Law's assessment of the likely spill over effect on speech in the rest of the UK: "Put yourself in the position of someone running a paper, magazine or blog which is published in England but read both sides of the border. If you are told that something which would never be prosecuted in England might lead the police to visit your Edinburgh distributors or even possibly land your company in the Edinburgh Sheriff Court, you are likely to modify your conduct accordingly." ²³

Not only is Part 2 of this bill unnecessary, it represents a serious threat to freedom of expression in the arts (Section 3.4) journalism and publishing, in all public spaces and threatens the existence of campaign groups like ourselves. It must be stopped and we will continue to campaign to achieve this end.

ReSisters United
24 July 2020

²³ https://www.spiked-online.com/2020/04/30/the-snps-war-on-free-speech/amp/?__twitter_impression=true