

## The Hate Crime and Public Order (Scotland) Act 2021 (Characteristic of Sex) (Amendment and Transitional Provisions) Regulations 2026

Members will shortly be asked to approve an SSI to add 'sex' as a characteristic to the Hate Crime and Public Order (Scotland) Act 2021.

The Lead Committee's report on the SSI is [here](#).

Here are three key problems that we see with the SSI.

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1. We agree with the women's sector, and the [expert report](#) published by the Misogyny Working Group chaired by Baroness Helena Kennedy, that adding 'sex' as a characteristic to hate crime legislation is not an effective way to tackle violence against women and girls. It may even be counter-productive and harmful. What is needed is a bespoke Misogyny Bill that properly addresses the violence that women and girls face. Read more in [Engender's briefing to the Criminal Justice Committee](#).
2. The Scottish Government have copied and pasted the definition of "biological sex" from the Supreme Court ruling last April about the meaning of sex in the Equality Act 2010. But the Court said that ruling applied only to the Equality Act. One reason the Government provided for not introducing the Misogyny Bill was uncertainty of how to proceed following that ruling, which we agree left more questions than answers. So why did the Government copy the definition into this SSI, which has not undergone the same level of consultation or parliamentary scrutiny that primary legislation would? The Government should not be rushing to replicate a definition that has already [caused harm to trans people](#) and [raised questions about our human rights](#) in Scots law. Read more in our [campaign to ask the Scottish Government why they took this decision](#).
3. We think that the new definition will change the existing definition of 'sexual orientation' in the HCPOA. That definition was always meant to be inclusive of trans and non-binary people, as the Cabinet Secretary for Justice [confirmed to the Criminal Justice Committee](#). We do not think that the Scottish Government's answers about whether the new definition of "sex" that they are adding through this SSI to the HCPOA will apply to the 'sexual orientation' characteristic are at all clear. We think the SSI may be outwith powers, as it is not allowed to modify existing characteristics.