

Cabinet Secretary for Justice and Home Affairs
Rùnaire a' Chaibineit airson Ceartas agus Cùisean na
Dùthcha
Angela Constance MSP/BPA



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Scottish Trans
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Our Reference: 202600506159
Your Reference: How do you want to be remembered?

5 March 2026

Dear Scottish Trans,

I am writing to you in response to your recent campaign encouraging supporters to contact the Government regarding 'how the Scottish Government wants its actions to be remembered in the future' in regard to LGBTQI+ equality and in particular the definition of "sex" used in the Scottish Statutory Instrument (SSI) to add sex as a characteristic to the Hate Crime and Public Order (Scotland) Act 2021.

Given the high level of correspondence received, I am writing directly to you and would be grateful if you could share this response with individuals who have supported your campaign.

The Scottish Government accepts the Supreme Court ruling. In light of this decision, I fully acknowledge how difficult the resulting uncertainty has been for many in the LGBTQI+ community, particularly for trans people, and the fear and anxiety it has caused. We do not underestimate the impact that this period of uncertainty has had on people's daily lives.

As you note, Scotland has indeed been at the forefront on LGBTQI+ equality in the UK for the past 25 years, and I am proud of the progress Scotland has made in pursuing equality and human rights for all. I would like to reiterate that the Scottish Government remains committed to advancing equality for the LGBTQI+ community.

I recognise your concerns about the use of the term "biological sex" in this SSI.

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Tha Ministearanna h-Alba, an luchd-comhairleachaidh sònraichte agus Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

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Using this definition does not reduce in any way protections long since afforded to trans people under hate crime legislation. Hostility relating to transgender identity has been and will remain fully and explicitly covered, and nothing in this SSI alters that. I want to be absolutely clear that trans men and women are valued in our society, and we remain firmly committed to ensuring their rights are upheld, and that they feel safe, included and protected from prejudice. Hate crime law can continue to be used to help deliver these protections.

In approaching the SSI in the way we have, our aim is to ensure that the legislation is as clear and unambiguous as possible, particularly given the consequences of criminal law that is unclear. Clarity is essential so that people are properly protected and so that the justice system can apply the law fairly and consistently.

Defining sex as we propose provides legal certainty about the specific gap the SSI is intended to fill, which is to address crimes motivated by hostility related to a person's sex. With transgender identity already covered, an approach using the definition of sex based on biological sex, defined as meaning sex at birth, is specific to how hate crime law operates.

The Scottish Government remains committed to ensuring that the lived experience of LGBTIQ+ communities continues to shape how we tackle all forms of hatred and prejudice, and we do this in close partnership with the Hate Crime Strategic Partnership Group. This includes ensuring that the purpose, intention and implications of this SSI are clearly explained to the communities it is designed to protect.

We want to work closely with a range of stakeholders, including those representing the LGBTIQ+ community, to help people fully understand the protections available to them under the legislation. Our ongoing engagement with members of the Hate Crime Strategic Partnership Group and communities is central to our approach to tackling hate crime in all of its forms.

Finally, I want to address your concern about precedent. The Scottish Government will always consider relevant policy which relates to sex as a characteristic on a case by case, informed by the specific policy context arising as is the case with hate crime law. Our commitment to ensuring that trans people feel safe, respected and protected from hate crime is unchanged and hate crime law will continue to be used to ensure the long-standing protections on the basis of transgender identity can be used to protect trans people.

I do hope the supporters of the campaign find this information useful.

Yours sincerely,



ANGELA CONSTANCE

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