

MurrayBlackburnMackenzie statement on the Hate Crime and Public Order Bill

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Today MSPs are likely to pass into law one of the most contentious pieces of legislation considered in the lifetime of the Scottish Parliament.

Last May, we [wrote](#) of our surprise that such controversial proposals – which did not feature in the SNP's 2016 Holyrood manifesto – were being brought forward in the middle of the largest challenge faced by any recent generation of politicians in Scotland. Over the last year, over 9,000 Scottish citizens have lost their lives to the Covid pandemic, and many others have suffered unparalleled disruption to their lives and livelihoods.

The proposals to extend the criminal offence of stirring up hatred have attracted most concern, uniting the National Secular Society and the Evangelical Alliance, the Faculty of Advocates and the Scottish Police Federation, writers, artists, and feminist groups.

The bill that MSPs are considering today does not resemble the bill as introduced to Parliament little more than ten months ago. At Stage 1, the Justice Committee received 2,000 submissions – thought to be the highest number of submissions received on any bill considered by the Scottish Parliament. Ahead of an emergency oral evidence session on freedom of expression protections, a further 680 submissions were received over the course of a long weekend.

Whilst the Scottish Government has addressed some of the concerns voiced in the early days, we remain unconvinced that it has fully considered the potential impact of the bill's provisions on the already fraught debate on sex and gender identity. During the passage of the bill the Scottish Government has limited its discussions to established partners, to the exclusion of more challenging voices. It is still not clear how, or indeed if an undertaking to consult with concerned groups on the Explanatory Notes to the bill will be met. Our own [analysis](#) has demonstrated that, in considering freedom of expression amendments to the bill, the Government has privileged the views of some interest groups – particularly those it heavily funds – over and above others.

MSPs have already seen the chilling effects of the proposed legislation during the passage of Bill. The Scottish Government and MSPs hastily withdrew their respective freedom of expression amendments following a social media backlash and accusations of transphobia. The Justice Secretary [apologised](#) for any hurt caused by singling out particular characteristics: that is, for taking the tailored approach recommended by Lord Bracadale. The Justice Committee convenor [stated](#) that he was “*a little afraid*” by the response. In Committee, the Justice Secretary [refused](#) to state that there are only two sexes. That the bill will

protect men who 'cross-dress' (in its words) as women, but not biological women, remains one of many elephants in the room.

If elected representatives are unwilling to robustly defend the principle that it should not be criminal, in itself, to state that sex is binary or to assert that sex matters for fear of being labelled transphobic, it is difficult to see how ordinary Scottish citizens can be confident that the law will have their back.

The persistent dismissal of critics of the bill as being impervious to the experiences of those who are the target of crimes motivated by hatred is particularly egregious. Not for the first time, the Scottish Government has sought to achieve complex social change through high profile symbolic legislation, whilst casting those with unmet concerns about its unintended effects as uncaring and intransigent. It echoes the tactics deployed during debates about the now abandoned Named Person scheme, withdrawn after an expensive trip to the UK Supreme Court.

We maintain that the Scottish Government has missed an opportunity to make better law here by building a meaningful consensus that deals with well-founded remaining fears. The price that will be paid for that will doubtless become clear in the coming months and years.