

Reforming the criminal law to address misogyny

Response by Free Church of Scotland

Chapter 1 - An offence of misogynistic harassment

Do you support the proposal to create an offence of misogynistic harassment which relates to harassment of an identified victim or victims?

Yes

As Christians, we recognise the value, dignity and respect of all human beings who are made in the image of God. We also recognise the need to speak up for the vulnerable within our society. In a society which did not value women as equal with men, Jesus challenged social norms by elevating women and celebrating them as individuals. The Bible gives special protection to women in the Old Testament law and calls on us to see the often-overlooked abuse that goes on. The Apostle Paul said, "Let there be no filthiness nor foolish talk nor crude joking, which are out of place, but instead let there be thanksgiving." (Ephesians 5:4).

For all these reasons we welcome the proposals to criminalise misogynistic harassment as having no place in our society or any other society. While some existing laws could be applied to these types of behaviour the specific offence calls out abuse and makes a clear statement that these kinds of behaviour are completely unacceptable.

Do you have any comments on the list of effects on the victim (fear, alarm, degradation, humiliation and distress) that trigger the offence being committed?

We welcome the longer list of effects on the victim as an important step to recognise in law the horrendous effects that misogynistic harassment can have on women. The Government has taken care to understand the experiences described by women and we commend them for this.

We also note the important qualification that women do not have to have actually experienced the effects but rather a reasonable person would consider the effects likely. In speaking with women within the Free Church of Scotland some described the ways in the past they would behave stoically in response to such behaviour but that does not mean the offender should not still be guilty of a criminal offence.

Do you agree that the offence of misogynistic harassment should be capable of being committed in all places (public and private)?

Yes

We agree with the report that misogynistic harassment is always wrong regardless of where it is committed. We also agree with the need to make sure that online behaviour can be prosecuted under this legislation as increasingly this is where the worst misogynistic harassment is taking place.

Do you have any views on the proposed maximum penalty of 7 years imprisonment for the offence of misogynistic harassment?

We do not have strong views on the proposed maximum penalty but believe there should be consistency with other similar offences. However, we would also hope that educational provision might be available at sentencing to help combat the attitudes that led to the offence being committed in the first place and discourage repeat offending.

Do you agree with the inclusion of a reasonableness defence to the offence of misogynistic harassment?

Yes

We also struggle to see when a reasonableness defence would operate, however, it seems a good approach to provide the defence which may cover a scenario we have not yet thought of.

Do you have any other comments on the offence of misogynistic harassment?

We do note that the consultation paper uses the example of “showing extreme pornography on a phone to a group of women in a nightclub”. We do not believe the word “extreme” is necessary – in our view showing any pornography to women in public can amount to misogynistic harassment. We note that the word “extreme” is not always used in the rest of the report and would hope the qualifier was not applied in any guidance documents relating to the new offence. We also are concerned by the way pornography can normalise harmful misogynistic relationships.

Chapter 1 (cont.) - An offence of misogynistic behaviour

Do you support the proposal to create an offence of misogynistic behaviour which does not require that the behaviour is directed at a specific victim?

Yes

Given the behaviour intended to be criminalised here is essentially the same behaviour covered by an offence of misogynistic harassment, although not directed at specific individuals, we fully support and commend the Scottish Government for their proposals to criminalise this kind of behaviour. Arguably the existing law is not sufficient to regulate this kind of abusive conduct in the absence of a defined victim but it is right that the law takes action to protect women who may be exposed to this kind of behaviour which is just as offensive even if not specifically directed to a particular individual.

Do you have any comments on the list of effects on the victim (fear, alarm, degradation, humiliation and distress) that trigger the offence being committed?

For the same reasons we supported this list of effects in relation to the offence of misogynistic harassment we think it is an appropriate list here that describes women’s experiences of these kinds of behaviour.

Do you agree that the offence of misogynistic behaviour should be capable of being committed in both public and private places?

Yes, on the basis that “if such behaviour” is wrong in public, it is also wrong in private.

Do you have any views on the proposed maximum penalty of 7 years imprisonment for the offence of misogynistic behaviour?

We do not have strong views on the proposed maximum penalty but believe there should be consistency with other similar offences. However, we would also hope that educational provision might be available at sentencing to help combat the attitudes that led to the offence being committed in the first place and discourage repeat offending. We would hope that education could prevent misogynistic behaviour becoming misogynistic behaviour and prevent other women having to experience this type of conduct.

Do you agree with the inclusion of a reasonableness defence to the offence of misogynistic behaviour?

Yes

While again we struggle to see when a reasonableness defence would operate it seems a good approach to provide the defence which may cover a scenario we have not yet thought of. We do also wonder if the defence is more likely to be used in relation to private behaviour although do not have any specific examples.

Do you agree with the inclusion of a 'freedom of expression' provision setting out, for the avoidance of doubt, that certain behaviour does not constitute the offence of misogynistic behaviour?

Yes

We support the inclusion of a freedom of expression provision to make clear that discussions of policy issues relating to women is not to be automatically considered abusive. As Christians we believe men and women are completely equal in worth and value (Galatians 3:28) but that does not mean we think men and women are identical. We do hold that certain offices (particularly the office of minister) are restricted to men. We believe the freedom of expression clause makes clear we are entitled to hold and discuss these issues in an open manner without fear of being found guilty of misogynistic behaviour.

Do you have any other comments on the offence of misogynistic behaviour?

N/A

Chapter 2 - An offence of threatening or abusive communications to women or girls that reference rape, sexual assault or disfigurement

Do you support the proposal to create a specific offence of 'threatening or abusive communications to women and girls which reference rape, sexual assault or disfigurement?'

Yes

We are sadly aware of how common these kind of abusive communications are to women and girls and fully support the proposals of the Scottish Government to address this behave. There can never be any justification for these kind of communications. It is difficult to prosecute some of this kind of behaviour under existing law and a specific offence sends a clear message that these kind of messages are always wrong.

Do you agree that the offence should be committed where a message is threatening or abusive, or both, and makes reference to rape, sexual assault or disfigurement?

Yes

We believe this is a helpful definition that avoids a perpetrator avoiding liability through the use of coded language. Where a message is threatening or abusive and makes reference to rape, sexual assault or disfigurement the clear intention is to imply a threat of rape, sexual assault or disfigurement and that is never acceptable.

Do you have any comments on the approach taken in the draft offence to the harms of rape, sexual assault and disfigurement?

Again, we believe this is a helpful approach which prevents someone avoiding liability through the use of coded language when the intention is clear.

Do you have any comments on the approach taken in the draft offence about the two different ways in which the offence can be committed?

We agree with the approach taken due to the complexities of the online environment where it can be hard to know exactly who you are communicating with.

Do you have any comments on the proposed defences to the offence?

We support the “reasonableness” defence, particularly in allowing the reporting of the behaviour of others where clearly the person sending the message does not agree with the content.

We do not see the need for a defence of “improbability”. In the same way we do not see a distinction between public and private spaces in relation to misogynistic harassment or behaviour we do not see why the fact it was unlikely the message would be conveyed to the person to whom it relates should be a defence. The behaviour is still completely wrong – no one should ever be threatening to rape, assault or disfigure anyone – and conveying that message to a third party is just as offensive as conveying it to the person themselves.

We also believe these kind of messages contribute to an abusive and misogynistic culture and accordingly a defence of “improbability” seems entirely inappropriate in recognition of the harm is done by anyone receiving these kinds of messages.

Do you have any comments on the proposed maximum penalty of 5 years imprisonment for the offence?

While not having strong view on maximum penalties we do question why there is not consistency between this offence and other offences proposed in this consultation. We would also hope that educational provision might be available at sentencing to help combat the attitudes that led to the offence being committed in the first place and discourage repeat offending.

Do you have any other comments on the proposed offence of threatening or abusive communications to women and girls that reference rape, sexual assault or disfigurement?

N/A

Chapter 3 - A new statutory aggravation relating to misogyny

Do you support the recommendation in Baroness Kennedy's report that there should be a statutory aggravation concerning misogyny?

Yes

Given the law recognises statutory aggravation in relation to other protected characteristics it would be unjust not to recognise a statutory aggravation in relation to misogyny.

Do you agree with the approach contained in the draft provision that an offence is aggravated by misogyny if:

Yes

We believe this is a helpful definition to ensure that a broad range of motivations are taken into account when determining where there is a statutory aggravation of an existing offence.

Do you agree with the Working Group's recommendation that the statutory aggravation should not be capable of being libelled for certain offences because these offences are inherently misogynistic and this would already be taken into account of when sentencing the offender?

Yes

We support the recognition that certain offences are inherently misogynistic and that accordingly it is appropriate to include a statutory aggravation.

Do you have any comments on the list of offences in the schedule in response of which the misogyny aggravation cannot be labelled?

We believe this is a comprehensive list but do not know if every relevant offence has been captured as that is beyond our expertise.

Do you have any other comments about the statutory aggravation relating to misogyny?

N/A

Chapter 4 - An offence of stirring up hatred against women and girls

Do you agree with the report's recommendation that there should be an offence of stirring up hatred of women and girls?

Yes

For the same reasons given in support of other offences in this consultation response we do not believe stirring up hatred against women and girls is ever acceptable and so fully support this proposed offence.

Do you agree with the report's recommendation that the offence should be committed where a person behaves in a threatening or abusive manner or communicates threatening or abusive material, with the intention of stirring up hatred?

Yes

We do support this definition alongside the freedom of expression clause. We want to make clear that simply communicating material, particularly historical material, which expresses misogynistic attitudes is not intended to be caught by this offence on the basis the intention is not to stir up hatred.

Do you have any comments on the proposed approach to freedom of expression set out in the draft provisions?

We believe this is vital to allow free and frank discussion of a range of material which otherwise could be seen as automatically stirring up hatred.

Do you have any other comments on the draft offence of stirring up hatred of women and girls?

N/A

Chapter 5 - Impact Assessments

Do you have any views on potential impacts of the proposals in this consultation on human rights?

We believe the proposals would strengthen the protection of women and girls.

Do you have any views on the potential impacts of the proposals in this consultation on equalities and the protected characteristics set out above?

We believe the proposals would strength the protection of women and girls.

Do you have any views on the potential impacts of the proposals in this consultation on children and young people as set out in the UN Convention on the Rights of the Child?

We believe the proposals would strength the protections afforded to girls and are fully compatible with the UN Convention on the Rights of the Child.

Do you have any views on the potential impacts of the proposals in this consultation on socio-economic inequality?

N/A

Do you have any views on the potential impacts of the proposals in this consultation on communities in the Scottish islands?

N/A

Do you have any views on the potential impacts of the proposals in this consultation on privacy and data protection?

N/A

Do you have any views on the potential impacts of the proposals in this consultation on business and the third sector?

N/A

Do you have any views on the potential impacts of the proposals in this consultation on the environment?

N/A