



## HOUSE OF LORDS BRIEFING - MARCH 13 2021

### Don't support amendment 87B to the Domestic Abuse Bill

1. Amendment 87B to the Domestic Abuse Bill will be debated on Monday 15th March 2021. It is being promoted as an amendment to make “misogyny a hate crime” but, like the MOMA Bill, when it was introduced in February, it has erased the word women.

The amendment "gender neutralises" misogyny, and in doing so introduces language that, if adopted, will harm women's services and the ability to talk about women's lives.

This briefing for Members of the House of Lords accompanies our [published blog post](#) on the topic.

#### Background:

2. The Domestic Abuse Bill is designed to be “gender neutral”. Victoria Atkins, the Home Office Minister, said that the Government had considered “very carefully whether to make the definition [of domestic abuse] reflect the fact that the majority of victims are female” and decided “we wanted the definition to reflect that men can be victims of domestic abuse as well, albeit that it is still a gendered crime.”

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Sex Matters is a UK based not-for-profit organisation. We campaign, advocate and produce resources to promote clarity about sex in public policy, law and culture. We have a singular mission: to reestablish that sex matters in rules, laws, policies, language and culture.

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The Government solution to recognising that the risk of domestic abuse faced by women is to deflect that in the accompanying statutory guidance.<sup>1</sup>

3. The requirements for the statutory guidance are set out in clause 73:

73 (3) Any guidance issued under this section must, so far as relevant, take account of the fact that the majority of victims of domestic abuse in England and Wales ... are female.

This is the *only* place the word female appears in the bill.

4. Amendment 87B is proposed to be inserted directly before clause 73 and it is set out as below: .

***Guidance on domestic abuse and offences involving hostility based on sex or gender***

*(1) The Secretary of State must issue guidance under this section which takes account of evidence about the relationship between domestic abuse and offences involving hostility **based on sex or gender**.*

*(2) In preparing guidance under subsection (1) the Secretary of State must require the chief officer of police of any police force to provide information relating to—*

*(a) the number of relevant crimes reported to the police force; and*

*(b) the number of relevant crimes reported to the police force which, in the opinion of the chief officer of police, have also involved domestic abuse.*

*(3) In this section— “chief officer of police” and “police force” have the same meaning as in section 70 of this Act; “relevant crime” means a reported crime in which— “relevant crime” means a reported crime in which—*

*(a) the victim or any other person perceived the alleged offender, at the time of, or in a recent period before or after, the offence, to demonstrate hostility or **prejudice based on sex or gender**, or*

*(b) the victim or any other person perceived the crime to be motivated (wholly or partly)*

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/772202/CCS1\\_218158068-Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/772202/CCS1_218158068-Web_Accessible.pdf)

*by hostility or prejudice towards persons who are of a particular **sex or gender**.*

[Emphasis added]

This has the effect of redefining “female” in Clause 73, to mean both sex and/or “gender”. This changes the meaning of clause 73 away from that set out in the government’s Consultation Response and Draft Bill in 2019 which stated “ This will also recognise that victims of domestic abuse are predominantly female.”<sup>2</sup> This is a radical change which has not been debated. Not being able to talk clearly about the sexes makes it impossible to talk clearly about the risk of male violence that women face.

### **Sex and gender in the law**

5. As the MOMA Bill debate highlighted, clear words around sex are important to be able to talk about women’s lives, discrimination and violence against women.
6. There are significant debates about whether males who identify as women (“trans women”) should be able to access women’s refuges and other domestic violence services and be employed or volunteer to provide counselling to female survivors of domestic violence seeking female-only services. The place to answer these questions is not through words quickly inserted in an amendment to this Bill, under the guise of tackling misogyny.
7. In UK law, “sex” is understood as binary, with a person’s legal sex; male or female generally reflecting their biological sex (apart from in the relatively rare cases where someone has obtained a “Gender Recognition Certificate” to change their recorded sex).
8. In common law, sex is determined according to a person’s chromosomes and endogenous sex organs (internal and external) (Corbett v Corbett [1971] P 83, followed by R v Tan [1983] QB 1053 and Bellinger v Bellinger [2003] 2 AC 467).
9. Consistent with this, “sex” is defined as a protected characteristic under Section 11 of the Equality Act 2010. It relates to the terms man and woman:
  - (a) a reference to a person who has a particular protected characteristic is a reference to a man or to a woman;

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- (b) a reference to persons who share a protected characteristic is a reference to persons of the same sex.

The Act further defines “man” as a “male of any age” and “woman” as a “female of any age”.

10. “Gender” and “gender identity” are nowhere defined in UK law, but “gender” is sometimes used as a synonym for “sex” and at other times used to promote the idea that a person's self identified gender should be treated as their sex. The Equality and Human Rights Commission states:

The term is often used interchangeably with “sex”, partly in recognition that much of the inequality between women and men is driven by underlying social and power structures rather than by biological sex. Although the Equality Act protects people from discrimination because of their sex, other UK legislation (such as the regulations requiring employers to publish their gender pay gap) refers to gender. **This may cause confusion in some circumstances.** To avoid any ambiguity, we are reviewing our use of language across our website and publications to ensure clarity and consistency. However, it is important to note that any mistaken or structural use of the term gender does not affect how the law works in practice.<sup>3</sup>

11. The Office for Statistics Regulation has recently issued a statement on collecting and reporting data about sex in official statistics:

Producers should be clear about definitions or terminology they use, and these should be harmonised to be consistent and coherent with related statistics and data where possible. **The terms ‘sex’ and ‘gender’ should not be used interchangeably in official statistics.”<sup>4</sup>**

12. MSPs recently voted overwhelmingly in support of an amendment to the bill on forensic services to allow survivors of rape and sexual assault to request the sex (rather than the “gender”) of the

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<sup>3</sup> EHRC (2018) Our statement on sex and gender reassignment: legal protections and language  
<https://www.equalityhumanrights.com/en/our-work/news/our-statement-sex-and-gender-reassignment-legal-protections-and-language>

<sup>4</sup>

<https://osr.statisticsauthority.gov.uk/publication/draft-guidance-collecting-and-reporting-data-about-sex-in-official-statistics/>

medical examiner who sees them.

**13. Amendment 87B should be rejected because it will:**

- Introduce the undefined language of “gender” to guidance and policy on domestic abuse thereby neutralising the words women and female (and male) in the guidance.
- Make tracking crimes against women harder as the category cannot be defined.
- Make talking about male violence harder as the category cannot be defined.
- Encourage the exclusion of people who do not agree that gender identity must overrule sex in all circumstances (i.e. who disagree with the dogma that “trans women are women”) from roles with the National Domestic Abuse Commissioner and on local Domestic Abuse Partnership Boards (concerned with the commissioning of services)
- Undermine the ability to run, commission and protect female only services for survivors of domestic abuse.
- Prevent [“transwidows”](#) and other family members of abusive transitioners from accessing sources of support; and potentially even criminalise them.

**14. The amendment will achieve precisely the opposite of what it says on the tin:** to muddy the waters on violence against women, make sure that female people – women – as a class cannot be discussed, nor the risk of male violence, and to make sure police don’t measure and report clear data on violence against women.

**15. On Monday questions should be asked about this amendment in the Lords:**

1. What use is a definition of “misogyny” which doesn’t define or even mention women?
2. Why does “gender” need to be added, when gender is undefined and confusing, and sex is a protected characteristic which covers everybody? .

**16. The Scottish Parliament very recently debated its own Hate Crime Bill , now approved, and determined not to include “misogyny”, nor sex, nor women, as protected groups, due to the complexity of legislating against misogyny. A Working Group chaired by Baroness Helena Kennedy, will look into the issues and options over the course of a year. This raises the question of why Parliament would allow the ill-thought out creation of a new hate crime without due scrutiny haste in England and Wales.**

**17. The Law Commission is already consulting and working on a wide-ranging proposal on Hate**

Crimes. There should not be a rush to push this flawed approach to “misogyny” through as an amendment on the side of the Domestic Abuse Bill.<sup>5</sup>

### **Arguments for inclusion of “gender” in hate crimes in relation to sex**

18. We anticipate that it will be argued that “gender” should be included to avoid these situations:

- a. A perpetrator could have a defense that they thought a woman was a transwoman (and therefore not of the female sex).
- b. A perpetrator who attacks a transwoman based on the perception that they are female would have a defense that no hate crime has been committed as their intended victim is not female..

These arguments do not hold water (and in it is only the data collection side of “hate crimes” that is being proposed here and not the aggravator). Perception can already be covered in hate crimes (for example a person who is attacked because they are perceived to be muslim is still a victim of a religious hate crime, even if they are not).

19. As The High Court has recently ruled in a application for Judicial Review on how data on sex and transgender identity should be collected in the census - these two characteristics should be considered separately and not conflated.<sup>6</sup>

20. Transgender males are not excluded from the Domestic Abuse Bill. There is no need for language to be introduced to the one section of this Bill which focuses specifically on females.

21. There are contentious debates on whether males who self identify as women should be considered to be women for the purposes of data collection or for accessing “female only” services, and about whether and how the Hate Crimes framework needs to be reformed. These debates need to be fully examined as a separate issue not through a short-cut via the last minute adoption of this amendment which will undermine much needed clarity about sex.

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<sup>5</sup> Our response to the Law Commission’s Hate Crimes proposal is here <https://sex-matters.org/wp-content/uploads/2021/01/Hate-Crime-Law-Commission-030121-Sex-Matters.pdf> - we do not think there is an additional need for the category of misogyny, sex or “women” to be added as a hate crime. But in any case this is an issue for longer debate in the context of a future Hate Crimes Bill, not for an amendment here.

<sup>6</sup> <https://sex-matters.org/posts/data-and-statistics/census-guidance-on-the-sex-question-ruled-unlawful/>