

# [***A hate crime law was meant to protect against prejudice. It ended up sowing further division***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6BS5-5861-JBSS-S009-00000-00&context=1516831)

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**Body**

(CNN) &#8212; A ferocious debate that has raged across social media, legal chambers, police stations and Scottish ***politics*** also played out on the streets of [*Edinburgh*](https://www.cnn.com/travel/article/edinburgh-dark-city/index.html) this weekend.

Scotland's Hate Crime and Public Order Act came into force last week, a contentious law that expands existing legislation to include transgender identity as a protected characteristic from hate crimes.

"We must remember why this Bill is so necessary, every day in Scotland around 18 hate crimes are committed," Scottish First Minister - then Justice Secretary - Humza Yousaf [*said*](https://www.gov.scot/news/hate-crime-bill-passed/) when the act was passed back in 2021, citing the government's [*estimated figures*](https://www.gov.scot/publications/updated-study-characteristics-police-recorded-hate-crime-scotland/pages/4/) at the time.

"Through the passing of this landmark Bill, Parliament has sent a strong and clear message to victims, perpetrators, communities and to wider society that offences motivated by prejudice will be treated seriously and will not be tolerated," he said.

Supporters of the law believe it will provide much-needed protection for the marginalized and regularly vilified transgender community, while critics say it will stifle free speech and even threaten hard-won women's rights. The two sides are at loggerheads, online and offline.

In the first week of the law's enactment, a feminist group, "Let Women Speak," organized a rally against the legislation in Scotland's capital on Saturday. It was met by a counterprotest from a small band of transgender rights campaigners, Reuters video showed. The two sides were kept apart by metal barriers as they traded noisy insults, amid a heavy police presence.

Yet the bill has come into force as issues around transgender rights, and how they intersect with women's rights, are creating a complex set of problems for lawmakers, sports regulators and employers, among others.

As the confrontation simmers, the debate has become intensely polarized and drawn in public figures such as JK Rowling, Elon Musk and Joe Rogan, none of whom are strangers to weighing in on culture war touchpoints.

So what does the law mean, and why has it sparked outcry?

'Stirring up hatred'

Before Scottish lawmakers passed the bill, laws already existed across the United Kingdom to criminalize "stirring up hatred" against racial identity. This new legislation introduces offenses for hate crimes against more characteristics, including age, disability, religion, sexual orientation, transgender identity and variations in sex characteristics.

Biological sex, however, is not included. The government says this is because it intends to put a [*separate*](https://www.gov.scot/news/misogyny-law-consultation/) bill criminalizing misogyny before the Scottish parliament at a later date.

According to Susan Smith, however, the director of For Women Scotland, a gender-critical feminist campaign group, this creates an "inequality" within the law.

"I think for a lot of people, this idea of having certain characteristics plucked out means you elevate or you give certain people a protection that others lack," she told CNN.

Another major concern for those who oppose the Hate Crime Act is the supposed lack of clarity on what type of behavior could constitute an offense under the new law. Section three makes it an offense to behave in a manner or communicate material "that a reasonable person would consider to be threatening or abusive" with the intention of stirring up hatred.

"The test for 'threatening' is obviously much, much higher than the test for 'abusive,'" Smith said. "What somebody sees as abusive varies from person to person."

Those convicted under the new law could face up to seven years in prison, and/or a fine.

Online arena

Complicating the implementation of the law, Siobhan Brown, Scotland's Minister for Victims and Community Safety, sparked confusion about whether or not the act would make misgendering someone online a crime.

It was at this juncture that Rowling - the Harry Potter author turned strident gender-critical commentator - deliberatelymisgendered severaltrans women online and dared police to arrest her.

Police Scotland later confirmed it would not be investigating Rowling's posts as a criminal offense.

First Minister [*Yousaf told the BBC last Wednesday he was not "surprised"*](https://www.bbc.co.uk/news/uk-scotland-scotland-politics-68725547) that officers decided not to charge Rowling, despite her comments being "offensive, upsetting and insulting to trans people."

"But it doesn't mean that they meet a threshold of criminality of being threatening or abusive and intending to stir up hatred," he said.

A Scottish government spokesperson told CNN: "The legislation does not prevent people expressing controversial, challenging or offensive views, nor does it seek to stifle criticism or rigorous debate in any way, and the right to freedom of expression is specifically built into the Act."

Vic Valentine, Scottish Trans Policy and Public Affairs officer at Equality Network, argues the law "gets the balance right" with free speech.

"It is hard to understand why anyone would think that behavior or speech that is threatening or abusive, and intended to stir up hatred towards people simply because of who they are, should not be criminal," they told CNN.

But 25-year-old Scottish trans student Lucy (who asked not to be identified by her real name due to concerns about continued online abuse), said the new law does not reassure her.

"Abuse towards trans people is normalized and sometimes encouraged, so I don't see that changing regardless of what laws are introduced," she said, adding that abuse is "pretty constant" when using the social media platform X.

This act is not the first time Scotland has moved out of alignment with the rest of the UK in an attempt to make transgender laws more progressive.

In January, the British government [*blocked*](https://www.cnn.com/2023/01/16/europe/scottish-gender-law-uk-constitution-intl-gbr/index.html) Scotland's attempt to reform the UK-wide Gender Recognition Act 2004, which allows people to apply to have their legal gender changed. Scotland's proposed reforms would have allowed transgender people to self-identify, without the need for a medical diagnosis or certificate.

This episode only made things worse, according to Lucy. "If the self ID debate hadn't started, I don't think people would've been swallowed up by most of the hateful rhetoric," she said. "I think people will double down on whatever they have to say about trans people in light of the new law as some form of 'protest.'"

'Vexatious' claims and misinformation

The Scottish Police Federation has repeatedly raised concerns about the capacity of officers to deal with a potential surge in hate crime complaints, [*suggesting*](https://x.com/ScotsPolFed/status/1776881297404641754) on X Sunday that they had been "swamped."

Police Scotland received 7,152 complaints under the new legislation in its first week of operation, the UK's PA Media news agency reported on Wednesday. The force announced it had officially recorded complaints of 240 hate crimes and 30 non-hate crime incidents.

In a Saturday [*op-ed*](https://www.thecourier.co.uk/fp/opinion/4941757/humza-yousaf-racist-graffiti-hate-crime-debate/) for Scottish newspaper The Courier, Yousaf wrote that, "critics of this law shouldn't exaggerate its impact with false fears." Later that day he told PA Media that "deliberate misinformation" is being "peddled by some bad actors."

Escalating an already volatile debate, Scotland's new law has become an obvious flashpoint in online culture wars, with global public figures drawing attention to it on their platforms.

Last month, Police Scotland were forced to release a [*statement*](https://www.scotland.police.uk/what-s-happening/news/2024/march/hate-crime-training/) denying that officers had been instructed under the Act "to target actors, comedians, or any other people or groups," after such claims were spearheaded by influential US podcast host Joe Rogan and billionaire X CEO Elon Musk.

On March 19, Musk [*reposted*](https://x.com/elonmusk/status/1770032208662663278) comments from Malaysian far right commentator and social media influencer Ian Miles Cheong who said police officers in Scotland had been given training to "target" social media posts with material deemed "threatening and abusive."

Musk reposted it on X, calling it "an example of why it is so important to preserve freedom of speech." In its statement, however, Police Scotland addressed this as "inaccurate media reporting and commentary."

Among those actually affected by Scotland's new law, such as Lucy, not everyone is willing to be as vocal - despite being on the frontlines of this confrontation.

"I feel pretty hopeless at the way gender is debated in society, I don't take part in it anymore," she told CNN. "I know a lot of trans people who feel the same. We just want to get on with our lives."

By Amy Cassidy, CNN

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