Thank you to the organisers for this this event and for the opportunity to speak. I feel privileged and honoured to have been invited to share a platform with these outstanding feminists to discuss the law about sex and gender, and to do so at the inaugural event for For Women Scotland. I seem to be developing quite a fondness for Edinburgh despite spending more time on the trains than I will do in the City!

I want to start by emphasising a point that I cannot emphasise enough, and that seems to sometimes get lost or ignored. I stand for the human rights of every individual, for the fundamental rights that every person has by virtue of being born human. I will fight for those rights for all people, the rights to live free from violence and discrimination, the right to freedom of expression within lawful parameters, the right to freedom of religion or belief, the right to bodily autonomy, to sexuality, to dignity, and to many more.

Some of you might have heard me speak about this topic before, or might have read the short pieces that Rosemary Auchmuty and I have published. I do not want to bore any of you who already might have read or heard some of what I have to say tonight. At the same time, I do not want to assume that anyone let alone everyone has heard or read that material. So, in this talk I will cover some of the background on international human rights law, before turning to discuss why we have rights for vulnerable groups, what can be done where there are conflicts of rights, and what solutions we can propose to uphold the rights of all concerned.

There are so many legal issues to discuss, and many things have already been said, particularly about the national law on the GRA, the Equality Act, and Self-ID. I want to take a step back and think about this issue from an international human rights law perspective. I want to explain a little bit about international human rights law, the specific protections that women have under those laws, why they have those protections, what protections exist for SOGI minorities, and the key legal developments in relation to human rights of women and human rights of transgender individual both at the international level and in countries where gender self-ID has been introduced.

International human rights law sprang from the ashes of Nazi Germany. Up until then under international law a government could treat its own citizens any way that it liked. The Universal Declaration of Human Rights in 1948 was designed to address that gap. To give all individuals protections of their fundamental rights. To require all governments to uphold those rights for all individuals within their jurisdiction.

When the Universal Declaration was being drafted, there was a discussion about whether to have specific protections for women. But they decided not to do so, because the whole point was that every individual has every right by virtue of being born human. And it was felt that having specific protections for particular groups would undermine the universality of the human rights project.

Ultimately, trying to mainstream women's rights into human rights left significant and deeply problematic gaps in terms of women's rights. At that time, one third of UN member states did not grant political rights to women, and women remained subjugated in a myriad of ways often in the name of 'religion' or 'culture'.

In 1967 the UN Commission on the Status of Women took the ground-breaking step of adopting the Declaration on the Elimination of Discrimination against Women. That was followed in 1979 by the Convention on the Elimination of All Forms of Discrimination against Women. And an accountability mechanism was created – CEDAW -- to review and implement that Convention in States that signed up to it.

The advancement of women's rights has continued with further ground-breaking moments. At the same time, despite much focus on ending discrimination and advancing women's equality, and the increasing focus on violence against women and girls, we remain in a world where women are subjugated in many parts of the world, and denied their fundamental rights both in law and in practice.

The fight for women to have specific protections has paved the way for other vulnerable groups to do the same.

The very idea of having specific protections for groups who face particular risk is no longer viewed as undermining the very nature of human rights. Since the creation of specific instruments and mechanisms for women similar steps have been taken for children, persons with disabilities, racial minorities, migrant workers, and others.

There is now clear understanding that the risks faced by members of such groups means that they require specific protection in law and practice. Although of course just because such an understanding exists, and just because States formally accept obligations by ratifying treaties, does not mean that changes on the ground are forthcoming. But it gives those groups tools for lobbying for effective change, which is at the heart of human rights advocacy and work.

In international human rights law the word 'women' has been defined as referring to biological sex. This was the definition in various international human rights treaties and discussions, including recently in 1998 in the Rome Statute creating the International Criminal Court where it makes it explicit that the word 'gender' refers to the two biological sex classes of male and female.

Gender has been defined as social constructs based on the different ways that the two sexes are viewed and treated in societies, including laws and practices. Some forms of discrimination against women might be based on their sex – for example denying access to reproductive rights, or child brides. Others may be based on gendered constructs, such as denying girls the right to education based on society viewing the two sexes differently, or violence against women against girls.

The international human rights law framework and mechanisms focusing on women provide specific protections for women to access their fundamental rights based on the long history of violence and discrimination against women.

Separately, in international human rights law there have been some attempts to protect sexual orientation and gender identity minorities – the UN umbrella term of LGBT. Almost all of those attempts are done separately to the protection of women's rights. Sexual orientation and gender identity minorities are a separate vulnerable group, as are children, persons with disabilities, racial minorities, and so on.

Those attempts are frequently blocked at the UN level by the 77 countries that still criminalise, discriminate against, or oppress LGBT persons. And many efforts to protect the fundamental rights of those people have failed as a result.

Of course, all individuals have fundamental rights by virtue of being born human. And those rights include non-discrimination and dignity. The denial of fundamental rights to LGBT persons around the world is deeply concerning, and it is clear that there is a long fight ahead to protect sexual orientation and gender identity minorities.

At the international level there were moves in the 1990s to include SOGI minorities in the declarations and plans of actions for human rights. This was a pivotal time for human rights, with the end of the Cold War and a new commitment to advancing human rights in the international arena.

But those moves were blocked by the countries that criminalise or discriminate against SOGI minorities. Indeed the first emergence of the need to protect SOGI minorities from violations of their fundamental rights was in the early 2000s with UN resolutions on extrajudicial killings. And even those most basic attempts to protect SOGI individuals from being killed by their governments were deeply politicised and resisted by a sizeable minority of countries.

In 2006 the Yogyakarta Principles were created by a group of international human rights law experts. Those principles set out rights to which SOGI minorities ought to receive and have protected. But the key issue that many people have with those principles is that they talk also about self-identification of gender – not sex – as being key to trans people's ability to realise their fundamental rights. A second issue that is problematic is the definitions, or lack of definitions, of terms such as gender identity and sex characteristics. But we must remember that those Principles were aimed at kickstarting conversations and discussions – they are not international law, and they were not being promoted as anything other than a starting point for developing much-needed protections for SOGI minorities.

It is important to remember that then, and indeed now, there is very little likelihood of creating specific mechanisms to protect sexual orientation or gender identity minorities given that more than 77 countries out of 193 UN members criminalise LGBT persons.

The Yogyakarta Principles from 2006 were created by a self-selecting group of human rights experts, which is how many human rights initiatives begin, but have hardly been discussed by UN member states and hardly gained any traction, thus leaving them somewhat dead in the water. While there have been some occasions when they are referred to by academics, or even very rarely by a court, they are not discussed even as soft law, but rather as a set of principles developed by a small group of human rights experts. And neither the Principles nor those who refer to them have set out a definition of gender identity.

We are a broad church of women's rights activists, and I am setting out my stall here regarding SOGI and international human rights law. But just because it is my opinion based on the research and work that I do – and just because I think I am always right (!!) – does not mean that you need to agree with everything I say.

My opinion is that we need specific international human rights law mechanisms to protect any and all vulnerable groups from violations of their fundamental rights. And I believe that there are ways of doing so without undermining the rights of other members of vulnerable groups. To do so, we must first identify definitions in law for the groups or classes that we are seeking to protect.

Gender identity and sex are two separate things, both in law and in fact. Sex has been defined and protected in international human rights law. Gender identity is at a very early stage both in terms of any clear definitions and in terms of protections.

Transgender individuals clearly require protection from violations of their human rights. We ought all to be concerned with the many countries where people who do not conform to gender expectations or norms are tortured, imprisoned, forcibly sterilised, or discriminated against. But those are fundamental rights that all people have by virtue of being born human. Protecting a person's right to 'gender identity' goes beyond fundamental rights, and therefore needs to be defined if that group of individuals are to receive specific additional protections.

I have spent considerable time listening to and reading the work of the lawyers, the philosophers, the trans rights activists, the radical feminists, and many others. I am remain unconvinced that gender identity can be defined in a manner that would be required for a legal definition. Sex is

biological – the definitions at national, regional and international levels make it clear that sex is about chromosomes, gonads, and genitalia. Gender is about social constructs, which again has been made clear through laws across different scale. I am yet to see a definition of gender identity that is legally robust or indeed that I could apply.

The idea that self-identifying one's gender – note that it is gender and not sex – has some support in international human rights law. But nowhere is gender identity defined. The 2018 report by the UN independent expert on violence and discrimination against SOGI minorities, in which he examines violence and discrimination against gender identity minorities, defines gender identity by referring to a version of Stonewall's list of who might fall under this broad umbrella. Listing who might be a gender identity minority – including transsexuals, transvestites, and so on – is not a definition for the purpose of law.

The European Court of Human Rights has stated that the right to a private and family life includes something called the right to self-determine one's gender, although there is little explanation of what that means.

Some laws have been passed on gender identity, none of which provide definitions my favourite of which is from Masacheussets which defines gender identity as the gender in which a person identifies.

In the UK case of Elan-Cane last year gender was described as "a matter of self-perception" when talking about how difficult it is to pin down a definition. The reason that Julian Norman talks about gender-fuck isn't just for the rude words, it is that when you come down to self-perception, someone might feel an internal sense of self more strongly within the concept of gender-fuck than other terms (genderqueer, neutrois, agender, pangender etc) and yet the one which is gaining traction is "non-binary." Why wouldn't someone's identity as genderfucker be just as keenly felt as someone else's non-binary?

It is pretty clear, then, why people seeking to protect transgender individuals' fundamental rights are seeking to conflate sex and gender. Without a definition of gender identity, and in a world where transgender individuals face significant human rights violations, linking gender and sex would provide a mechanisms to protect their rights more robustly. The problem is that doing so would be in direct conflict with women's rights already established and protected in law.

Individuals who are members of vulnerable groups have specific rights afforded to them based on their characteristics. Members of racial minorities, persons with disabilities, women, children, and others are afforded those protections based on their membership of a group. Expanding the definition of a group to include others undermines those protections. For example, women have specific protections based on the history of discrimination, disempowerment, and of male privilege being afforded to members of the other sex class. Expanding the definition of who is a woman would undermine the object and purpose of those protections.

That is not to say that transgender individuals do not face discrimination or abuses, but their experiences are not the same as those of women, or those of racial minorities, or persons with disabilities, and the experiences stem from different reasons and spaces, even if there are similarities across the board. This is why it is key to have specific protections for each group, not to conflate the groups.

So, let's turn to the proposed changes. In particular I want to focus on why other countries have changed their laws, and what they do in terms of any conflict of rights.

Six years ago, the UK was one of a small minority of EU countries that did not require transgender people to undergo forced sterilisation in order to gain legal recognition of their preferred gender. Those countries included Denmark, France, Italy, the Netherlands, Norway, Portugal, and Sweden. Even last year, when the European Court of Human Rights ruled that forced sterilisation of transgender persons is a human rights violation, EU countries including Belgium, Croatia, Czech Republic, Finland, Greece, Switzerland still had those laws in place.

It is against that backdrop that we need to understand the many changes in the laws on legal recognition of transgender persons across EU countries.

We keep being told that many countries have self-identification without any problems. So I want to go through a few of those countries' laws, to understand how the conflict of rights is addressed.

Let's start with Ireland. Until 2015 Ireland did not recognise transgenderism, and no individual could receive legal recognition of their preferred gender. Ireland now has laws that allow for self-identification of gender, including for young people, without any requirements of having had a 'meaningful' transition or having lived for a length of time in that gender.

Ireland has retained sex-based exemptions for a large number of areas including schools and prisons. So the self-identification of gender seemingly has very little impact upon women's rights and sex-segregated spaces. The government is currently considering whether to have specific policies on sex and gender, but currently the practice is for each institution to make its own decisions, and those decisions are protecting sex-segregation where it is proportionate and legitimate.

Calls in the UK to adopt self- ID "just like Ireland" would actually take trans rights backwards, given that in the UK a GRC makes a person female "for all purposes" whereas in Ireland sex separation remains pretty constant regardless of GRC.

In 2014 Denmark changed its laws as to how a person can change their gendered social security number. That change went from requiring medical treatment including forced sterilisation to now being able to self-identify after a six month waiting period between registering to change and having the legal change implemented. Those six months are called a period of reflection.

Denmark also has the option for an X gender on passports, which means that many people who identify under the broad banner of 'non-binary' including Julian's favourite phrase 'gender-fuck', would be able to register in that way.

There are only six million people in Denmark. And women's rights and the women's movement is central to that society. Yet there are already cases of violence against women and rape by self-identifying 'women' who have accessed women's spaces. The same is true of Norway.

In Malta, self-identification allows trans women to access female prisons, but the law provides for separate showers and sleeping facilities for those prisoners, and female guards are given a choice as to whether they search those prisoners.

I am running out of time, but I raise these issues because we keep being told that self-identification is fine elsewhere but without being given the facts about what happens on the ground. For all that people can point to Argentina, they conveniently ignore the three types of prisons there – one for males, one for females, and one for all LGBTQ prisoners. People point to Pakistan where many gay

individuals are coerced into transitioning because if a person is attracted to the same-sex then society assumes they must be trans. Indeed, in Iran that is enshrined in law.

None of us has the answers as to what will happen. But what is clear from international human rights law is that women's rights must be protected, and that the UK has legal obligations to do so.

In the UK the relationship between the Gender Recognition Act and the Equality Act is such that it is unclear how sex-segregated exemptions might be retained. Indeed, we already know that many of those exemptions are being ignored in practice despite this violating human rights of women.

What we need is clarity. Clarity in terms of the law. Clarity in terms of definitions. We need proposals for solutions that will uphold the rights of all individuals, including the specific protections afforded in human rights law to vulnerable groups. And we need the UK to remember that it is party to international human rights treaties that require it to protect our sex-based rights.