BRIEFING NOTES ON SEX SELF-IDENTIFICATION

SCHOOLS GUIDANCE

- Supporting transgender young people, produced by LGBT Youth Scotland, funded by Scottish Government and endorsed by Children’s Commissioner
- Adopted by 17 out of 32 Scottish local authorities (NB: compliance with guidance regarded as a ‘measure of success’ by City of Edinburgh Council)
- Guidance stipulates:
  - Teachers should withhold information from parents if child transitions at school but does not want parents to know
  - Children should be permitted to choose to use toilets, changing rooms and shared accommodation on school trips based on their gender identity not sex
  - Parents of other children would not be informed and if other children object, they would be asked to use different facilities
  - Children should be permitted to choose to compete in school sports competitions (intra- and inter-school) based on gender identity not sex
- No local authority that has adopted the guidance has subjected it to an EQIA

TRANSGENDER PRISONER POLICY

- Introduced by Scottish Prison Service in 2014, co-written by Scottish Trans Alliance:
  - Allows prisoners to request being housed in accommodation in accordance with their self-identified sex
  - Can be searched by prison officers in accordance with their self-identified sex, e.g. female prison officers performing intimate rub down searches on male prisoners who identify as women
- Number of high profile sex and violent offenders have been housed in female estate
- Equality and Human Rights Impact Assessment (only made public via FOI in August 2018) revealed that SPS did not consider impact of policy on female prisoners or female prison officers
- SPS indicating they will be reviewing the policy

NHS SCOTLAND PATIENT DATA

- Late submission on the Census Bill revealed that NHS Scotland has allowed patients to change the entry on ‘sex’ in their patient record based on self-identification (no need to be a GRC holder or to have undergone any medical or surgical interventions)
- Not clear how long the policy has been in place, nor what consultation or risk assessment took place prior to its introduction
- Numbers of people who have changed records (from FOI)
- Given this is the case, it’s unlikely any NHS Board can guarantee provision of single sex wards (see recent PQ lodged by Miles Briggs MSP)
FUNDING OF VAWG ORGANISATIONS

- Applicants to the Scottish Government’s Equally Safe Violence Against Women and Girls fund must be ‘trans inclusive’ (see recent PQ lodged by Kezia Dugdale MSP)
- This renders them incapable of applying the single sex exemptions permitted under the Equality Act 2010 (N.B. Stonewall and the Scottish Trans Alliance lobbied the UK Parliament to remove these exemptions)
- Many VAWG organisations are concerned about implications of sex self-ID but afraid to speak out publicly for fear of being labelled transphobic
- Fair Play For Women have produced a report that sets out the concerns held by victims of male sexual violence about proposed reforms to the GRA 2004

STONEWALL MEMORANDUM OF UNDERSTANDING

- Ties signatories to endorsing a pro-affirmation approach to patients who present with gender dysphoria
- Signed by Cath Calderwood, Chief Medical Officer, on behalf of Scottish Government (October 2017)
- Signatories committed to reviewing MoU after one year – unclear whether this process is underway or not

INTERACTION BETWEEN GRA 2004 AND EQUALITY ACT 2010

- There is increasing concern about the lack of clarity regarding the interaction between the GRA 2004 and the Equality Act 2004
- Edinburgh-based advocate Julius Komorowski believes that guidance produced by the Equality and Human Rights Commission is unclear
- Karon Monaghan QC, giving evidence to the Women and Equalities Committee in the UK Parliament, believes that providers of single sex services are unclear about their entitlement to exclude transwomen in some instances

WHAT CAN MSPs DO?

- Create space in Parliament to debate the interaction between the GRA and EA
  o Cross party groups
  o Future’s Forum
- Challenge policies adopted by organisations (particularly public sector organisations) that have adopted sex self-ID prior to the proposed law change
  o PQs
  o Subject committees
- Offer rigorous defence of free speech principles both inside and outside Parliament
- Challenge organisations that support sex self-ID to justify their rationale and evidence base

USEFUL WEBSITES

- www.fairplayforwomen.com
- www.transgendertrend.com

Prepared by forwomen.scot
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