

**Draft Budget Scrutiny 2020-21: Call for Views**  
**Response by Forwomen.Scot, 23 August 2019**

Forwomen.Scot welcomes this opportunity to respond to the consultation on the draft budget. FWS is a grassroots women's rights organisation comprised of ordinary women from across Scotland: the primary motivation for foundation was concern about the Scottish Government's proposal to reform the 2004 Gender Recognition Act and the potential impact on the hard won rights and protections for women and girls.

The Sex Discrimination Act 1975 defined a woman as 'a female of any age', and stated that 'A person discriminates against a woman in any circumstances relevant for the purposes of any provision of this Act if on the ground of her sex he treats her less favourably than he treats or would treat a man.' This definition is also found in the Equality Act 2010 which defines sex as a protected characteristic. International Human Rights law provides protection for women based on unique disadvantage and discrimination due to sex and the gendered expectations that are assumed based upon sex. Yet it is becoming increasingly difficult for women to access their rights and same-sex services and increasingly common for the law to be misrepresented - sometimes even by the government and public bodies.

Women still face discrimination and unique disadvantage because of their sex, but, currently, no funded organisation in Scotland represents women as a sex class. The focus on gender identity across in policy making, rather than sex, obscures much of the discrimination which still occurs, weakens protections and makes it harder to argue against damaging assumptions. It also corrupts data, making it harder to track systemic bias and ignores that sex discrimination is at the root of many injustices such as FGM, unequal pay, sexual assault, disparity in healthcare research, forced marriage, etc.

If there is to be thorough examination of policies that tackle issues such as maternity rights, abortion, prostitution and domestic and sexual violence, then biological as well as sociological factors which affect women need to be recognised and analysed.

Funding for groups dealing with VAWG via the Equally Safe fund is conditional on them having a transwomen inclusive policy<sup>[1]</sup>, making it impossible to invoke the single-sex exceptions in the Equality Act. Although groups on the ground do not tend to operate services on this basis, we are concerned that vulnerable women are deterred. We have observed that even when clauses such as the Genuine Occupational Requirement are quoted in recruitment adverts, they are explicitly inclusive of transwomen<sup>[2]</sup>. This goes directly against the purpose of the GOR which should ensure that women feel safe in situations where they are vulnerable. We are concerned that women's legal rights are undermined by the very groups funded to protect them.

Currently, therefore, the Scottish Government does not provide funding for any groups who represent women based on the protected characteristic of sex. We believe this is discriminatory.

We also believe that funding for advocacy groups should be contingent on them demonstrating that they have consulted with a wider range of those whom they represent and to have robust links to their local operations and grassroots advocates.

We believe that it is important that protected characteristics all have devoted groups to argue for their rights. However, we do believe there needs to be proper balance and that the rights of one group should not supersede those of others. We are concerned some groups which are heavily funded by the Scottish Government spend a great deal of time lobbying MSPs and ministers for changes in law which will directly affect the rights of women and girls. Within some equality groups a disproportionate amount of attention and funding is now devoted to trans rights at the expense of gay and lesbian rights - even though homophobia is still a problem – especially for lesbian women. Indeed, these groups are, on occasion, rolling back the rights of homosexuals - for example by redefining sexual attraction as "gender" based attraction<sup>[3]</sup>.

We are also concerned that the process of allocating funds is not transparent or rigorous enough and, as a result, funding is not reaching the right people. Equality Network which is concerned with sexual orientation and gender identity receives £45,000<sup>[4]</sup> pa for the support of an "intersex" project. Yet, Differences of Sex Development are medical conditions, not identity issues. A dedicated, established charity - dsdfamilies - with trustees in Scotland provides practical help and support, yet FoI requests on the funding process show that they were not even considered for this award<sup>[5]</sup>. In the period since the funding was awarded (2015), dsdfamilies have produced a substantial report on the experience of young people and information material on a range of conditions which have been translated into several languages. This has been achieved with little funding and unwaged staff. Giving evidence at the committee on the census in December 2018, Tim Hopkins of EN admitted their fully funded project was still "at a very early stage"<sup>[6]</sup>.

Currently, there is no oversight across the protected characteristics. This means that policies or guidance are implemented which are later proved to be harmful to other protected groups. For example, the LGBT Youth School guidance which was reported by a newspaper to breach the Human Rights of girls eleven times<sup>[7]</sup>. FoI requests<sup>[8]</sup> show that the Government decided to withdraw this advice in March 2019 (although this was not announced until June) saying, "the basis of this decision was Ministers' view that guidance that risked potentially excluding other girls from female-only spaces was not legal." This guidance came from a group heavily funded by the government and, initially bore the imprint of the government: when flaws were found, the government were swift to disassociate itself. We believe that it is concerning that government and third sector groups can be conflated in this way when it suits and responsibility evaded when it becomes problematic. Glasgow Life's transgender policy for changing rooms and toilets has also illustrated some of the issues in working through the potentially conflicts with rights of people with other protected characteristics, including sex, age or religion<sup>[9]</sup>. Third sector organisations are often operating with inadequate legal expertise and frequently relay faulty information on the law. We are concerned that incorrect legal advice on the Equality Act has been given to local authorities and other public bodies<sup>[10]</sup> which is then included in policy without proper checks.

Many equality organisations are providing front line services and should be subject to the same Public Sector Equality Duties as public bodies, including requirements to undertake Equality Impact Assessments. The lack of such contributes to the failure to identify and address competing rights.

Murray Blackburn Mackenzie identified many of the issues with the failure to balance competing rights in their recent paper on Policy Capture<sup>[11]</sup>. This has given rise to a situation in which recent scrutiny of policy has largely fallen to unfunded women's groups who have identified issues with guidance for schools, shelters and prisons, which were subsequently accepted by the government or the services in question.

There is also little accountability for third sector organisations. We believe the outcomes of funding should be reported and publicly available, and any group in receipt of public money should be subject to Freedom of Information requests about how they use tax-payers' money.

We are concerned that, without proper scrutiny of the conflation of sex and gender, situations arise such as that concerning crime reporting, whereby incidents are recorded by self-identified gender<sup>[12]</sup>. Male violence continues to be an issue in society – men commit over 95% of all violent and sexual crime. It would not take much misreporting of female crime, therefore to skewer statistics or affect crime prevention, detection and offenders (and victims) programmes.

We also note that in healthcare, women suffer structural disadvantage because drug trials etc are conducted using male subjects. Yet, females respond differently to disease and drugs. This imbalance means that women are more likely to die from a heart attack than men. Many of the examples in Caroline Criado Perez recent book "Invisible Women" touch on the hidden and not so hidden disadvantage a world built on the male model creates for women.

In short, we are concerned that the rights of all groups are not properly considered and protected in funding decisions.

## References

[1] Page 5, S5W-19971: <http://www.parliament.scot/S5ChamberOffice/WA20181204.pdf>

See also the FoI response confirming trans policies must be inclusive of transwomen:

<https://www.gov.scot/binaries/content/documents/govscot/publications/foi-eir-release/2019/07/foi-19-01511/documents/foi-19-01511-information-released-a/foi-19-01511-information-released-a/govscot%3Adocument/FOI-19-01511%2BInformation%2Breleased%2B%2528a%2529.pdf>

[2] Current advert:

<https://www.rapecrisisscotland.org.uk/news/about-vacancies/sexual-violence-prevention-worker-lanarkshire-rape-crisis-centre1/>

(Archived: <http://archive.fo/QTF AF>)

[3] <http://www.equality-network.org/resources/glossary/#squelch-taas-accordion-shortcode-content-35>

[4] <https://www.gov.scot/publications/equality-national-intermediary-bodies-funding-2017-2020/>

[5] <https://www.gov.scot/publications/foi-19-00068/>

[6]

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11836&i=107072&c=2137229#ScotParlOR>

[7]

<https://www.heraldscotland.com/news/17393697.trans-guidance-for-scottish-schools-breaches-11-childrens-rights-campaigners-warn/>

[8] <https://www.gov.scot/publications/foi-201900003278/>

[9] <https://www.dailyrecord.co.uk/news/scottish-news/row-erupts-cross-dressing-men-14444999>

[10] For example, several local authorities have changed the protected characteristic in their policy documents from sex to gender on the advice of Stonewall:

<https://scottish-women.com/2018/09/02/is-the-equality-act-2010-sufficient-at-present/>

[11] <https://murrayblackburnmackenzie.org/losing-sight-of-womens-rights-scottish-affairs-vol-28-3/>

[12] <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11994&i=108482#ScotParlOR>

See also the FoI:

<https://www.scotland.police.uk/access-to-information/freedom-of-information/disclosure-log/0/2019/april/19-0696>