

For Women Scotland, 16 May 2022

Submission to the Equalities, Human Rights and Civil Justice Committee on the Gender Recognition Reform (Scotland) Bill

About Us

For Women Scotland is a grassroots women's group formed in June 2018 amid growing unease about how women's rights would be affected by the Scottish Government's plans to reform the Gender Recognition Act to allow for self-declaration of sex.

Our group has grown considerably over the last few years and registered as a not-for-profit company in July 2020 (company number: SC669393). We are funded through donations and do not receive any public money, we are not aligned to any political party, and are all volunteers.

We campaign on equality and human rights issues impacting on women and children in Scotland and challenge the ongoing push from Government and public bodies to overwrite sex-based rights in legislation and public policy with the undefined and unscientific gender identity. We initiated the #SixWords campaign that led to a change in the Forensic Medical Services Bill to allow victims of rape and sexual assault to request a medical examiner by their sex (and not gender). Earlier this year we won the appeal of our judicial review when the Court of Session ruled that the Scottish Government exceeded its powers by including transwomen in the definition of woman in the Gender Representation on Public Boards (Scotland) Act 2018. The judges restated that the protected characteristic of sex refers to either a male or a female and that provisions in favour of women must, by definition, exclude those who are biologically male. It confirms that sex is significant in law and that women's concerns about the undermining of the protected characteristic are valid.

<https://www.telegraph.co.uk/news/2022/02/18/snp-loses-bid-redefine-meaning-women-include-trans-people-public/>

Q1. The removal of the requirement for a medical diagnosis of gender dysphoria and supporting medical evidence.

The intention of the 2004 Act was to restrict Gender Recognition Certificates (GRC) to the small, objectively identifiable group of people who have a demonstrated medical need. The Scottish Government has not recognised that by removing this fundamental criteria the law will no longer be about trans people – it opens up the ability to change the sex recorded on your birth certificate to 100% of the population.

In the last two years neither Shirley-Anne Somerville, nor the current Cabinet Secretary responsible for the Bill, Shona Robison, have been able to justify this, or explain why someone without gender dysphoria has any need to change their sex in law. Physical treatments on the NHS will still require a diagnosis of gender dysphoria and no consideration has been given to the consequences of creating of a new group of people who will legally be the opposite sex but who do not meet the required standards for GIC services, and so

cannot make any changes to their body. This places an unnecessary pressure on an already overstretched NHS who have previously warned the Government of the need to manage raised patient expectations.¹

The Government has said that removing this criteria and making sex a matter of self-declaration would bring Scotland in line with international best practice. This is not true. Scotland is already in line with international human rights law which holds that requiring a medical diagnosis before issuing a GRC strikes the correct balance between the rights of people who identify as trans and the state's obligations to the rest of society.²

Only a minority of countries in the world allow people who identify as trans to change their sex in law at all. Fewer still allow this without requiring genital surgery. According to Wikipedia just 17 out of the 195 countries in the world have laws based on self-declaration of sex.³ There has been no evaluation of how this has impacted society in those countries and the evidence⁴ we do have shows it has been abused by predatory males and other criminals and fraudsters to the detriment of women and children.

Q2. Provisions enabling applicants to make a statutory declaration that they have lived in the acquired gender for a minimum of three months (rather than the current period of two years) and that they intend to live permanently in their acquired gender.

Section 1(2)(a) of the Gender Recognition Act 2004⁵ defines the “acquired gender” as “the gender in which the person is living” which, without a definition of “gender”, is both circular and meaningless. If the law is to be reformed it is essential that this term is clarified, particularly if an applicant is expected to declare under oath, subject to a potential criminal offence, that they meet this requirement.

We note that Section 4(3) of the Bill has made an addition to this definition to say “the gender in which the person is living **when the application is made**” [emphasis ours]. Since the Scottish Government is not opposed to updating the definition it should go further and provide a simple and clear definition. This is not unreasonable since if it is proposed to remove all other safeguards from the legislation (including a medical diagnosis of gender dysphoria) this term becomes the key parameter. We would also query the new restriction that only applies the term to the moment in time when the application was made and not to the time after application when the person is living in the acquired gender. Not only does it make an assumption, contrary to the purpose of the Bill, that the gender change may not be permanent but it makes any investigation for fraud historical rather than current.

¹ <https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-analysis/2021/08/organisation-responses-to-gender-recognition-consultation-scotland-h-r/documents/nhs-greater-glasgow-and-clyde/nhs-greater-glasgow-and-clyde/govscot%3Adocument/NHS%252BGreater%252BGlasgow%252Band%252BClyde%2Bresponses.pdf>

² <https://hudoc.echr.coe.int/eng#%7B%22languageisocode%22:%5B%22ENG%22%5D,%22appno%22:%5B%2279885/12%22,%2252471/13%22,%2252596/13%22%5D,%22documentcollectionid%22:%5B%22CHAMBER%22%5D,%22itemid%22:%5B%22001-172913%22%5D%7D>

³ https://en.wikipedia.org/wiki/Gender_self-identification

⁴ <https://murrayblackburnmackenzie.org/2021/09/08/gender-recognition-reform-and-international-developments/>

⁵ <https://www.legislation.gov.uk/ukpga/2004/7/section/1>

According to the Scottish Government's education guide on gender stereotypes,⁶ "Sex is determined at birth and is based on physiological differences...Gender refers to sets of learned behaviours. These are socially defined characteristics and expectations attributed to being male or female. Gender is fluid and can change. The challenge comes if we confuse sex and gender and start to view gender as innate."

We suspect that since gender relies on regressive stereotypes which Scotland has a responsibility to eliminate under Article 5 of CEDAW,⁷ then the Government has recognised the futility of defining "living in an acquired gender" in any meaningful way that could be objectively tested and lead to a reassignment of a person's sex.

Cabinet Secretary, Fiona Hyslop, talked about sex and gender identity when giving evidence to the CTEEA Committee on the Census (Amendment) (Scotland) Bill,⁸ saying: "if the bill is perceived to conflate those issues that does not help us. As I said, we need to have clarity in what we are doing, so I would rather that things were quite straightforward and simple." We agree with Ms Hyslop that sex and gender are very different and it is not helpful if they are conflated in this Bill either.

The two year period in the current law is there for very good safeguarding reasons, not only for wider society, but to safeguard the well-being of trans people themselves. The proposed reduction to three months does not allow sufficient time for doctors to rule out other causes of distress and make a diagnosis of gender dysphoria. The NHS states: "A diagnosis of gender dysphoria can usually be made after an in-depth assessment carried out by two or more specialists. This may require several sessions, carried out a few months apart."⁹

The NHS Gender Reassignment Protocol¹⁰ advises a further 12 month experience to ensure patients are stabilised in their reassignment before taking any long-term decisions such as surgery. This should equally apply to major legal changes which go hand-in-hand with medical treatment, and which will affect a person for the rest of their life.

For the wellbeing of applicants and to retain GRCs for the small, objectively identifiable group of people for whom it was intended it is important the current provisions are retained. Reducing the qualifying period is irresponsible and could very easily lead to distressed people making lifelong irreversible decisions about their legal status before doctors have a chance to find the root cause of distress and recommend treatment. It is particularly worrying in the case of 16 and 17 year olds who are developmentally still exploring and a change in legal status would prematurely cement a decision and compromise any other outcome.

⁶ <https://education.gov.scot/improvement/Documents/gender-stereotyping-intro.pdf>

⁷ <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

⁸ <https://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=11864&c=2141207>

⁹ <https://archive.ph/woE58>

¹⁰ https://www.sehd.scot.nhs.uk/mels/CEL2012_26.pdf

Q3. Whether applications should be made to the Registrar General for Scotland instead of the Gender Recognition Panel, a UK Tribunal.

The Panel is composed of legal and medical experts and, in addition to performing administration checks, it has an important role in providing oversight to safeguard against bad-faith actors and to protect those who might be harmed by acquiring a GRC prematurely. Removing these final checks would be irresponsible, particularly when simultaneously proposing a reduction in the minimum age of applicants.

The Bill introduced a duty for the Registrar General to count the number of GRCs issued, however this falls far short of the important data currently published by the UK Government on the tribunal panel.

Q4. Proposals that applications are to be determined by the Registrar General after a further period of reflection of at least three months.

The fact that a reflection period is proposed acknowledges that some applicants may change their mind. However, without any balanced external input from a medical practitioner or therapist, this is effectively a waiting period only and many applicants may proceed with a permanent legal change that may not be right for them.

As stated above, the current NHS medical advice is that it takes considerably longer than three months to assess a patient presenting with distress regarding gender and make any diagnosis, and even longer to complete treatment, so for the wellbeing of the applicant this proposed period is too short.

Q5. Whether the minimum age for applicants for obtaining a GRC should be reduced from 18 to 16.

The Government argues that 16 year olds are adults in Scotland who have the right to vote and marry and therefore have the legal capacity to permanently alter their sex in law. This does not explain why they went to the Supreme Court to defend their incorporation of the UN Convention on the Rights of the Child into Scots law which defines a child as “being below the age of eighteen years”,¹¹ and which quite rightly recognises that young people are often impulsive and do not think about long term effects and so parents/guardians and the state still have an important role in protecting them.

The Children and young People (Scotland) Act 2014 highlights the need to involve children (defined as those under 18) in matters affecting them but it also stresses that “Each child has the right to protection from all forms of abuse, neglect or exploitation” and “any intervention by a public authority in the life of a child must be properly justified and should be supported by services from all relevant agencies”.

¹¹ <https://www.parliament.scot/-/media/files/legislation/bills/current-bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill/stage-3/bill-as-passed.pdf>

The Government's proposal, however, continues to ignore the advice from the Children and Young People's Commissioner Scotland,¹² who warned that this plan conflicts with our modern understanding of the cognitive development of people under 25 – neurological research¹³ the Government otherwise accepts as valid and important, as evident from the recent change in sentencing guidelines for this age group. Significantly, there is also no mechanism in the Bill for setting out how a child's capacity to understand the GRC process and its consequences would be assessed, and the Commissioner thought there was a need for the Government to do more work in this area.

This is not just a paper exercise but is intrinsically linked to the affirmative medical pathways adopted by Scotland's NHS gender service for young people. Sixteen is the age at which cross-sex hormones may be given and the consequences of these are serious and life-long, with many of the effects on the body irreversible.

Our recent Freedom of Information requests reveal a rapidly increasing and disproportionate number of gender-distressed children in Scotland - the referral rates have grown fifteen-fold in six years¹⁴ and 1,254 children are currently either receiving treatment or are awaiting a first appointment.¹⁵ This is almost twice the expected number given the relative population size with England, which has a comparable figure of 7,100.¹⁶ This should be gravely concerning and a prompt for investigation rather than a push for legal affirmation of the situation.

Following the damning findings in the Interim Cass Report¹⁷ the Scottish Government should be mirroring Westminster's urgent enquiry into the NHS's unquestioning affirmative approach to under-18s who present with gender-distress.¹⁸ Many countries are in a similar position and increasingly are concluding from reviews that affirmation of a gender identity is not the best policy - for example, Sweden,¹⁹ Finland²⁰ and France²¹ have all recently severely restricted medical treatments in preference for psychotherapy.

¹² <https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-analysis/2021/08/organisation-responses-to-gender-recognition-consultation-scotland-a-g/documents/children-and-young-peoples-commissioner-scotland/children-and-young-peoples-commissioner-scotland/govscot%3Adocument/Children%2Band%2BYoung%2BPeoples%2BCommissioner%2BScotland.pdf>

¹³ <https://www.scottishsentencingcouncil.org.uk/media/2044/20200219-ssc-cognitive-maturity-literature-review.pdf>

¹⁴ FOI showing 37 referrals in 2013:

<https://forwomen.scot/wp-content/uploads/2019/12/Sandyford-Foi-response-27Sep19.pdf>

NGICNS document showing 559 referrals in 2019 (para12, page 27):

<https://forwomen.scot/wp-content/uploads/2021/11/Gender-Service-Mapping-report-v1-1.pdf>

¹⁵ FOI showing 1,253 at Sandyford:

https://forwomen.scot/wp-content/uploads/2022/04/Sandyford_response_22Apr2022_anon.pdf

plus 1-4 17 year olds on adult waiting list in Inverness:

<https://forwomen.scot/wp-content/uploads/2022/04/Inverness-Gender-Clinic-response-18Apr2022.png>

¹⁶ <https://www.thetimes.co.uk/article/sajid-javid-inquiry-into-gender-treatment-for-children-wc3r3d9sn>

¹⁷ <https://cass.independent-review.uk/publications/interim-report/>

¹⁸ <https://www.thetimes.co.uk/article/sajid-javid-inquiry-into-gender-treatment-for-children-wc3r3d9sn>

¹⁹ <https://segm.org/segm-summary-sweden-prioritizes-therapy-curbs-hormones-for-gender-dysphoric-youth>

²⁰ https://segm.org/Finland_deviates_from_WPATH_prioritizing psychotherapy_no_surgery_for_minors

²¹ <https://segm.org/France-cautions-regarding-puberty-blockers-and-cross-sex-hormones-for-youth>

We know that with family support and talking therapy the majority of children will become comfortable with their body as they mature - research by the Tavistock children's clinic in London suggests over 90% will be happy with their birth sex once fully passed through puberty.²² It is not in a young person's best interests to lock them into a permanent reassignment of gender and it would be irresponsible of the Government to do so, compromising and undermining parental support and exploratory therapy.

Dr Cass has stated that "A fundamentally different service model is needed which is more in line with other paediatric provision" and the full report is likely to recommend sweeping changes to how the NHS treats gender-distressed children. Inevitably this will influence the provision in Scotland and it would be unwise to legislate in this area while we await the final report, particularly when we already know self-declaration of sex for children is out of step with Dr Cass's findings to date.

The Government has also ignored the evidence provided by the growing number of detransitioners about being rushed into social and medical transitions without due consideration of their backgrounds and other mental health issues.²³ These brave young men and women requested a pathway to revoking a GRC but this has been denied. Not only will those who change their mind be possibly charged with making a false declaration but this Bill would see those who are still legally children permanently trapped in their acquired gender.

The Government has so far failed to answer questions regarding the cross-border effect of GRCs by self-declaration. The age anomaly with the rest of the UK immediately poses questions on whether a Scottish born child who is resident in England can access a GRC which is not legally available to them in their home country. Does Scotland have the authority to override both parental and state decisions in other countries? Would young people visiting Scotland for a short time, perhaps to study, satisfy the ordinarily resident requirement in order to make an application?

Q6. If you have any comments on the provisions for interim GRCs.

Spousal consent has been misrepresented as a means to prevent an applicant acquiring a GRC. In reality, it is a much needed temporary pause for the spouse of a transitioner to have a marriage annulled or dissolved before their partner changes their legal sex. The spouse cannot prevent the transition but they are able to exit a marriage before the legal terms change. For many - especially those from ethnic or religious minority groups - they might otherwise find themselves unwilling partners in a same-sex marriage. In response to the consultation in 2018, the Faculty of Advocates wrote: "We consider that a balance must be struck between the rights of the transgender person to seek official recognition of their acquired gender and the rights of their spouse to decide whether they want to remain in the marriage."²⁴

²² <https://archive.ph/O2OzN>

²³ <https://www.thetimes.co.uk/article/sharp-rise-in-child-cases-at-gender-clinic-lvlqzrk5g>

²⁴ <https://webarchive.nrscotland.gov.uk/20190711105452/https://www2.gov.scot/Resource/0053/00539304.pdf>

It is somewhat concerning that Section 5, 8D(3) only provides for the applicant to submit a statement at the point when the statutory declaration is made, but not the spouse, if they do not wish the marriage/civil partnership to continue. We do not see any provision within the Bill to inform the spouse that either an application has been made or an interim GRC granted, unless they have made a statement that they wish the marriage to continue. It seems entirely possible that the spouse may not be made aware that an interim GRC has been granted unless the applicant proceeds within the following six months to make an application to the sheriff for a full GRC under Section 7, 8H(4).

Without the provision to dissolve the marriage, we are concerned that spouses of transitioners will have to either wait for a no-fault divorce or prove that the behaviour of the transitioner is unreasonable. The traumatic effects of living with a transitioning partner or parent, as detailed by groups like Trans Widows who contributed to the UK consultation,²⁵ are often ignored or underplayed.

This is a complex area of law and we are concerned that the Government has not given sufficient thought to how fast-tracking GRCs will impact on the families of applicants, and the necessary time required to exit a marriage. It is imperative the Committee hears evidence from spouses who have experienced this situation.

In addition, many questions still remain unanswered regarding the cross-border effect of the Bill. For example what would happen for a couple living in England but where the husband has a Scottish birth certificate and is therefore eligible for a GRC based on self-declaration - marriages in England cannot transfer from opposite sex to same sex, so what would its status be? Where would that leave the wife financially? The lack of clarity on what "ordinarily resident" means also raises the possibility of one spouse from England visiting Scotland for long enough to apply for a GRC with the same resultant issues for the spouse and marriage status.

Q7. If you have any comments on the provisions for confirmatory GRCs for applicants who have overseas gender recognition.

We are unsure why this is needed. A GRC allows for a new birth certificate to be issued with a change in sex. If this has already been done in the country of birth what point is there in a Scottish confirmatory GRC? It serves no purpose.

Q8. If you have any comments on the offences of knowingly making a false application or including false information.

We remain unconvinced that any prosecution of such an offence could ever be successful. A subjective feeling held by someone at a specific historical moment in time cannot be proved, or disproved. The Government has been unable to say how this could possibly work.

²⁵ <https://www.transwidowsvoices.org/spousal-exit-clause>

Q9. If you have any comments on the removal of powers to introduce a fee.

In May 2021 the UK Government reduced the fee from £140 to £5 along with digitising the application process. This resulted in a marked 72% increase in GRC applications in the following three month period²⁶ but the Scottish Government does not appear to have analysed the situation in Scotland - there is every chance this cost reduction has resolved many of the financial hurdles that were thought to be preventing access and no further reform is needed at all.

With regard to removing the fee entirely we would only point out that something which has no value will not be valued.

Q10. If the Bill's intended policy outcomes could be delivered through other means such as using existing legislation or in another way?

Q11. If you have any suggestions for how this Bill could be amended. If so, please provide details.

We conducted our own survey on key points in the Bill at the end of March 2022.²⁷ As well as 99% support for retaining the diagnosis of gender dysphoria, the following suggested amendments to the Bill were well supported:

- Address the conflation between “sex” and “gender” in the Bill.
As previously discussed this point causes a lot of confusion and the conflation in the Bill is detrimental to ensuring that the legislation is easily understood and people are clear about what they are entitled to.
- Provide definitions for key terms, for example, “acquired gender”, “ordinarily resident”
A definition of “acquired gender” or what it means to live in a gender has yet to be given by the Government and, since other safeguards are proposed to be removed from the legislation, this will become the key parameter. It is vital that a clear explanation is provided, although the danger is that this could result in embedding stereotypes into legislation.
- Clarify that a GRC does not change biological sex.
Human beings cannot change sex and it is important that applicants are made aware that a GRC cannot override this fact.
- Clarify that a GRC does not mean a person is entitled to the single-sex spaces of the opposite sex.
The Government has said on numerous occasions that it supports single-sex spaces and services provided for by the Equality Act 2010 so it would be helpful if it would follow through and make this statement on the face of the Bill. As per the ruling in For

²⁶ <https://publications.parliament.uk/pa/cm5802/cmselect/cmwomeq/129/report.html>

²⁷ <https://forwomen.scot/01/05/2022/gender-recognition-reform-bill-survey/>

Women Scotland v The Scottish Ministers the definitions for “woman” and “sex” are biological and “Provisions in favour of women, in this context, by definition exclude those who are biologically male.”²⁸ The recent EHRC guidance confirms that, where justified, all men can be excluded from a women-only space, even those who hold a GRC.²⁹

- Bar sex offenders from applying for a GRC.
48% of trans prisoners in England and Wales are sex offenders compared to less than 20% of male prisoners³⁰ which means that either trans people commit more sex offences or sex offenders have taken advantage of the ability to self-identify as the opposite sex. The British Association of Gender Identity Specialists, in their evidence to the UK Government Women and Equalities Committee,³¹ suggest the latter scenario is more likely and pinpoints many reasons as to why sex-offenders would find it advantageous to use legislation such as the reform Bill. Combined with the enhanced privacy protections gained with a GRC this is a gaping safeguarding hole and should be closed. Vast numbers already breach their police notification conditions and the UK Government is currently reviewing whether sex offenders should even be allowed to change their name.³²
- Allow sex to be disclosed for the purpose of upholding single-sex spaces.
The Schedule 9 exceptions for occupational requirements in the Equality Act allow for certain jobs to be fulfilled by a person of a specified sex. However, it is almost impossible to exercise this right in practice if an applicant with a GRC fails to disclose their sex. The enhanced privacy protections in Section 22 of the GRA, lack of any documentation showing biological sex, and the special process to gain a PVG without disclosing sex to employers, renders service providers unable to meet users needs. NHS Lothian has admitted it is unable to guarantee a female healthcare practitioner to women who request one.³³
- Allow sex to be disclosed in equality monitoring data.
The Equality and Human Rights Commission wrote to the Scottish Government in November 2021 with updated advice³⁴ to make it clear that public bodies can ask questions about sex registered at birth when needed. For organisations to fulfil their Public Sector Equality Duties and to monitor equality between men and women it should be made clear that there are occasions when a GRC-holder may need to disclose their sex.

²⁸ <https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2022-csih4.pdf>

²⁹ <https://www.equalityhumanrights.com/en/advice-and-guidance/separate-and-single-sex-service-providers-guide-equality-act-sex-and-gender>

³⁰ <https://fairplayforwomen.com/transgender-prisoners/>

³¹ <http://data.parliament.uk/WrittenEvidence/CommitteeEvidence.svc/EvidenceDocument/Women%20and%20Equalities/Transgender%20Equality/written/19532.html>

³² <https://www.thetimes.co.uk/article/a-review-into-sex-offenders-changing-their-names-must-bring-about-real-change-jqx6fjn2>

³³ <https://www.thetimes.co.uk/article/women-risk-health-over-trans-nhs-workers-fear-5dvz86f2l>

³⁴ https://fairplayforwomen.com/wp-content/uploads/2022/01/NEW-EHRC-GUIDANCE_comparing-old-and-new.pdf

- Do not allow sex to be changed on medical records (for patient protection against misdiagnosis and to ensure correct screening tests offered).
Sex is the primary variable in medical treatment and obscuring this can be dangerous for the patient. Tragic cases that highlight this include a transman (female) whose test results were assessed using the male, rather than the female, scale which resulted in the delay of a necessary kidney transplant.³⁵ A pregnant woman with medical records that stated male lost the baby after medical staff did not consider pregnancy a cause of abdominal pain.³⁶ A change in a person's NHS CHI number already results in an inability to ensure people are invited to screening tests appropriate to their sex.
- Provide a way of revoking a GRC for people who have detransitioned.
- Set a minimum length of residency in Scotland before an application can be made.

Q12. Any other comments on the Bill.

The GRA changes a person's sex in law for most, but not all purposes. It is governed by a number of exceptions both within the Act and in other pieces of legislation which apply where a person's biological sex supersedes their new legal sex. This includes sports, single and separate-sex services, peerages, status as a mother or father, various benefits, job requirements, and religious exceptions.

These exceptions are fiercely debated and occasionally subject to court action. According to existing case law regarding prisons, a GRC-holder may have a stronger claim to access spaces and services provided for the opposite sex than a person without a GRC.³⁷ The Scottish Government takes a different view and claims holding a GRC makes no difference at all and that male non GRC-holders can equally access women's spaces. And of course, our recent court win proved that wrong with the ruling that a women-only provision must exclude biological males,³⁸ which the Government then contradicted its own position on, by arguing in the remedy hearing that GRC holders should be included in the provision for women. It is in this climate of unsettled and contested law that the Government plans to legislate, knowing full well that making acquiring a GRC a matter of self-declaration will lead to at least a tenfold increase in GRC-holders – the majority of whom expect admittance into the spaces of the opposite sex. This will only exacerbate the situation.

The Government has refused to engage on the legal arguments and has ignored the advice issued by the Equality and Human Rights Commission, which asked for a more careful consideration of the effect the reform will have on women's sex-based rights under the Equality Act.³⁹

³⁵ <http://clinchem.aaccjnls.org/content/63/11/1680.full.pdf>

³⁶ <https://metro.co.uk/2019/05/20/pregnant-transgender-mans-baby-died-because-nurse-didnt-realize-he-was-in-labor-9613972/>

³⁷ <https://www.loc.gov/item/global-legal-monitor/2021-08-24/england-and-wales-high-court-rules-on-lawfulness-of-policies-regarding-allocation-of-transgender-prisoners-to-womens-prisons/>

³⁸ <https://forwomen.scot/25/02/2022/we-won-scottish-government-redefinition-of-woman-is-unlawful/>

³⁹ <https://www.equalityhumanrights.com/sites/default/files/letter-to-cabinet-office-our-position-gender-recognition-act-2004-reform-january-2022.docx>

The EHRC also warned of consequences relating to the collection and use of data, participation in sport, measures to address barriers facing women, and practices within the criminal justice system, amongst others.

Men who say they are women have already claimed it is their right to:

- be treated on female hospital wards,
- access women's refuges,
- join women's sports teams,
- have sex-specific crimes such as rape recorded as if committed by a woman,
- be housed in female prisons, and
- provide intimate care and counselling to women who would prefer female carers.

These already happen in Scotland and are encouraged by the Government, who, contrary to the Equality Act and specific laws regulating school, workplaces and non-domestic buildings, recently declared in Parliament that men can self-identify into women's and girls' changing rooms and toilets.⁴⁰ Government guidance to schools specifically states boys can join girl-only sporting activities.⁴¹

Only a minority of countries in the world allow people to change their sex in law. There has been no evaluation of how this has impacted society in those countries and the evidence we do have shows it has been abused by predatory males and other criminals and fraudsters to the detriment of women and children.⁴² The Government cannot continue to deny there are significant demonstrable problems and safeguarding needs to be a priority.

Women are already defined in law with protections and rights as a sex-class, distinct and separate from men - rights that will now be completely undermined. The legal issues must be sorted out before any changes are made to the GRA. It is not good enough for the Government to merely say the GRA has nothing to do with the Equality Act, all the while systematically undermining women's rights in law and our very definition. This is contrary to Article 1 of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),⁴³ which states the recognition of women on the basis of sex should not be impaired. This convention was ratified by the UK in 1986 yet the Scottish Government has failed to take its provisions into account in either the drafting of the Bill or the Equality Impact Assessments.

Finally, we would like to put it on record that the process of reform development and consultation has been deeply flawed. The vast majority of responses to the second consultation remain unpublished and largely unanalysed. Despite a manifesto commitment to a consultative process inclusive of women's groups, the Government has shown bias in meeting only with groups it funds and who agree with its position until this was revealed in the media in the final few weeks before the Bill was introduced to Parliament.

⁴⁰ <https://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=11235&i=102373>

⁴¹ <https://education.gov.scot/media/xpgo5atb/supporting-transgender-pupils-schools-guidance-scottish-schools.pdf>

⁴² <https://murrayblackburnmackenzie.org/2021/09/08/gender-recognition-reform-and-international-developments/>

⁴³ <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

No women's groups were involved in the development of the Bill and in the hastily arranged meetings it was not clear what we were being consulted on as no updated information about the content of the Bill was revealed. None of our questions were answered satisfactorily or concerns addressed⁴⁴ Our follow-up letters remain unanswered and none of our input is reflected in the Bill as introduced.

We also note that the Committee is starting to take oral evidence the day after this Call for Views closes and so it is highly unlikely that any of the points we have raised here can be put to the first witnesses.

⁴⁴ <https://forwomen.scot/02/04/2022/meetings-between-womens-groups-and-the-scottish-government/>