

06 August 2022

By email from: info@forwomen.scot
to: vawgfundingreview@gov.scot

Dear Sir/Madam,

The minutes from the Advisory Group's meeting, as published on 5th August, state that:

Several responses to the call for evidence have focussed on how the Scottish Government (SG) defines women.

It was noted by the group that the review is Trans-inclusive. However, the review's remit is to ensure women, children and young people have fair access to Violence Against Women and Girls (VAWG) services rather than defining women or single sex spaces which is a matter for the Scottish Government.^[1]

As noted in our previous letter, dated 1st August, by moving away from the protected characteristic of woman as "a female of any age" to the circular statement of "anyone who defines themselves as a woman" the review is not trans-inclusive (as it excludes women who have the protected characteristic of gender reassignment), and nor does it ensure women have fair access (as it excludes women who cannot access a service if it is not single-sex).

It is not within the gift of the independent Advisory Group to change the definition of woman in the review of VAWG services, and nor is it an option to shift responsibility for the error in doing so to the Scottish Government. It is **not** a matter for the Scottish Government, who simply do not have the competence to change the definition of woman as this is a decision reserved to the UK Government. Please see the judgment in *For Women Scotland v Lord Advocate and Scottish Ministers*.^[2]

Similarly, the UK wide legislation governing single-sex spaces is set out in the Equality Act 2010 and cannot be amended by the Scottish Government. The application of the Act's provisions is the responsibility of service providers and the Scottish Government considers it important they are upheld. Cabinet Secretary, Shona Robison, told Parliament on 3rd March that:

We strongly support the rights and protections that women have under the Equality Act 2010, including the single-sex exceptions...In practice, that means that trans people can be excluded from single-sex services in some circumstances, where that is proportionate and justifiable. The act's explanatory notes gives an example of a group counselling session for female victims of sexual assault...I understand that the EHRC

will revise guidance. Perhaps that will help public bodies with the practicalities of how they manage those issues.^[3]

It may be useful for the review group to refer to the now published revised EHRC guidance for service providers on the operation of separate and single-sex services.^[4]

We would appreciate a prompt response to confirm the correct definition of woman will be implemented in the review of VAWG services.

Yours faithfully,

Trina Budge, Marion Calder and Susan Smith
Directors, For Women Scotland

References

1. <https://www.gov.scot/publications/violence-against-women-and-girls-strategic-review-of-funding-and-commissioning-of-services-minutes-22-june-2022/>
2. <https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2022csih4.pdf>
3. <https://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=13611&i=123585>
4. <https://www.equalityhumanrights.com/sites/default/files/guidance-separate-and-single-sex-service-providers-equality-act-sex-and-gender-reassignment-exceptions.pdf>