

## **Keep Prisons Single Sex Speech, Holyrood 15th September 2022**

In 2011 biological sex was erased from the piece of legislation that informs all prison policy and practice in Scotland. Previous versions of The Prisons and Young Offenders Institutions (Scotland) Rules had referred to sex, but in 2011 sex was removed and replaced by gender.

Why does this matter? It matters because the Prison Rules set out the circumstances for allocation, searching and other procedures in prison where sex is important. But since 2011, the Rules now specify that these should take place according to gender, not sex. This means that:

- Searching is to take place on a same gender basis.
- Compulsory testing for drugs or for alcohol is to be administered by those of the same gender as the prisoner.
- Categorisation of prisoners and the subsequent allocation is according to gender.

This is for all prisoners.

By removing sex and replacing it with gender, the Rules set in place the legislative context that doesn't merely justify, rather it mandates that subsequent prison policy also refers to gender and not to sex. And this is exactly what happened.

This change in 2011 that erased sex from prisons legislation was key to paving the way for the 2014 Scottish Prison Service Policy where record keeping, allocation and searching for all prisoners is conducted on the basis of their gender identity not their sex. Sex registered at birth, biological sex, is no longer relevant to the Scottish Prison Service: it's been erased from the legislation, so why would it be? It's how people identify which is important.

Was this deliberate? The evidence indicates that it was. Scottish Trans Alliance has had a longstanding interest in prisons and ensuring that Scottish Prison Service policy and practice reflect transgender interests. As James Morton, former Manager of Scottish Trans Alliance, wrote in 2018:

- Another key priority was pushing for public services to always respect trans people's gender identities, even if they have not changed all their official documents or attended an NHS gender identity clinic. We strategised that by working intensively with the Scottish Prison Service to support them to include trans women as women on a self-identification basis within very challenging circumstances, we would be able to ensure that all other public services should be able to do likewise.

The intention is clear: prisons, and women's prisons in particular, were used to secure a precedent that could be used to argue that single-sex spaces for women provided in other sectors should also admit people of the male sex on the basis of their self-identification.

The change in legislation that replaced sex with gender made this practically a done deal.

So how did this happen? After all, in 2020 a similar attempt to erase sex from legislation, in this case the Forensic Medical Services Bill, was met with considerable opposition and was successfully defeated thanks to the tenacity of Johann Lamont and other MSPs. What happened in 2011?

Kenny MacAskill, who was justice secretary from 2007 to 2014, describes being hoodwinked and that this change to legislation was sneaked in under the wire. He says that people's trust and naivety were abused and exploited to put through this change that has been shown to have severe and serious consequences. He says he simply did not know.

It would be easy to place the burden of responsibility for this mess at Kenny's feet. But to do so would be both unfair and unwise as it would not reflect what actually went on. The Denton's Playbook, the document that reveals the tactics of trans lobbyists, sets out how to get policy and legislation changed under the radar, without proper scrutiny, on the quiet. This is the recommended process and where changes can be pushed through with as close to zero consultation or publicity as possible, it is seen as a success. This is what happened in 2011.

We submitted a Freedom of Information Access Request for all documentation, reports and correspondence that informed the decision to change the 2011 Rules. We got back a single sheet of A4, with a single sentence stating that erasing sex would be appropriate given transgender issues. That was it. The sum totality of consideration. There was no consultation. There was no correspondence. There was no discussion.

The 2014 Scottish Prison Service policy is currently under review. Keep Prisons Single Sex, together with other organisations represented here today, have participated in the consultation process. But whilst the Prison Rules refer to gender and not to sex, the possibility for meaningful change is severely constrained. It is not sufficient to simply review the 2014 policy, the 2011 legislation and the process by which this change was affected must also be reviewed.

What happened in 2011 is frankly an outrage and we must remain alert to the possibility of future under-the-radar attempts to erase sex.