



Equality
Network



Scottish
Trans

The definition of sex in the Equality Act 2010

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The Equality Network is a leading Scottish LGBTI equality and human rights charity. Scottish Trans is the project of the Equality Network focusing on the equality and human rights, and inclusion, of trans people.

We are available to discuss anything in this briefing, or indeed wider questions you may have about trans equality and human rights – either in advance of the debate or in the future.

The two petitions

[Petition 623243](#) (**Petition 1**) calls on the UK Parliament to “Update the Equality Act to make clear that the characteristic ‘sex’ is ‘biological sex’”.

Petition 1 is calling for a change to the definition of sex in the Equality Act 2010 (EA). The reason that it gives for seeking this change is that currently, a trans man or woman who obtains a Gender Recognition Certificate (GRC) under the Gender Recognition Act 2004 (GRA) will have their sex recognised, for legal purposes in the EA, as male or female – whichever of those reflects the gender they have permanently transitioned to. So for example, a trans man who was recorded as female on his original birth certificate, who obtains a GRC under the GRA, will be recognised as male for the purposes of the EA. The petitioners think that sex in the EA should always mean a person’s sex recorded at birth.

[Petition 627984](#) (**Petition 2**) calls on the UK Parliament to “Commit to not amending the Equality Act’s definition of sex”

Petition 2 opposes the change called for by Petition 1. It says that this would remove legal protections and encourage discrimination against trans people.

The UK Government responded to both petitions in January 2023 after they both reached 100,000 signatures. Their response can be read in full on the Parliament website Petitions’ pages, but in summary, the UKG said that they do not think a change to the definition of sex is necessary. **We agree with this.** The Equality and Human Rights Commission also recently commented on this proposal, but without considering the effects on trans people, and without consulting to any significant degree with women, trans people, or women’s or trans organisations. The large majority of such organisations in Scotland oppose petition 1.

How do you protect trans people from discrimination and uphold their human rights?

The key principle that underpins trans people's equality and human rights is their ability to live their lives, including accessing rights and protections, in line with the gender to which they have permanently transitioned. For this to work, law, policy and practice that differentiates on the basis of sex needs to do so in a way that acknowledges and accommodates for the fact that this differentiation can create barriers, exclusion and distress for trans people.

This is why trans people are able to update identity documents to reflect how they live their lives, rather than their sex recorded at birth. It is why trans people are able to access services, interact with public bodies, and go to work in line with the gender to which they have permanently transitioned. And it is why the Gender Recognition Act 2004 was passed.

To insist that trans people are treated in law as their sex registered at birth is to fundamentally negate who they are. Lesbian and gay people were once treated this badly - when the law refused to recognise same-sex relationships as legal or valid. That ended 20 years ago, and trans people deserve the same consideration.

What is the Gender Recognition Act?

The Gender Recognition Act 2004 (GRA) was introduced in response to a [ruling from](#) the European Court of Human Rights in 2002. The court found that being unable to change the sex recorded on their birth certificates, and being unable to be recognised in law as the gender to which they had permanently transitioned, was a breach of British trans people's human rights, specifically the Article 8 right to respect for private and family life.

The GRA sets out the process that trans men and women use to apply for a gender recognition certificate (GRC), which they can then use to update the sex recorded on their birth certificate.

Trans people are able to update the sex on their other identity documents – such as driving licences, passports, and medical records – before and without obtaining a GRC, at the point at which they start permanently living as a man or woman.

Trans people transition – that is, take steps to live their lives in ways that are more comfortable for them – before obtaining a GRC. In fact, they are required to do so. Transitioning is a very individual process, but it can include things like changing your name, asking people to use different titles and pronouns for you, and for some people, it may involve accessing medical treatments, such as hormones or surgical interventions.

Obtaining a GRC also gives trans men or women recognition of their gender in law. The [explanatory notes](#) for the GRA state:

“In practical terms, legal recognition will have the effect that, for example, a male-to-female transsexual person will be legally recognised as a woman in English [and Scots!] law.”

This therefore includes being recognised for the purposes of anti-discrimination and equality law (now consolidated into the Equality Act 2010) as male or female – whichever of those reflects the gender they have permanently transitioned to.

What does it mean that a trans person's sex changes for the Equality Act 2010?

Protection from sex discrimination

One effect of obtaining a GRC is explicit protection from sex discrimination for trans people, in the gender they live in. This actually predates the Equality Act 2010, and applied under the Sex Discrimination Act 1975, for trans men and women with a GRC between 2005 and 2010. This protection was one of the express intentions of the UK Parliament when passing the GRA. The [explanatory notes](#) for the GRA, about the effect of obtaining a GRC, include:

“an applicant who was born a male would, in law, become a woman for all purposes. She would, for example, be entitled to protection as a woman under the Sex Discrimination Act 1975”

Positive action measures

The current law means that for some positive action measures relating to sex, e.g. all-women shortlists for political parties, trans people should be treated in line with the sex on their GRC.

This is a good thing. Trans women make up a tiny percentage of the population (around 0.25%). Those with a GRC have transitioned to live permanently as women, and have undertaken a legal process that includes signing a statutory declaration of their intention to live as a woman for the rest of their life. It is right that if a trans woman wants to stand for election to parliament, she is treated as a woman. To treat her as a man would be to fundamentally undermine her identity.

What does it **not** mean that a trans person's sex changes for the Equality Act 2010?

Single-sex services

Legal change of sex has no impact on the decisions that the operators of single-sex services can make to treat trans people less favourably, or exclude them, where doing so is a proportionate means of achieving a legitimate aim.

At [Schedule 3 Part 7 Paragraph 28](#) of the EA, there is a gender reassignment exception that allows people with the protected characteristic of gender reassignment to be discriminated against by a single-sex service. This applies equally whether or not the trans person has a GRC, so their legal change of sex gives them no additional rights to access single-sex services. All trans people fall within the scope of this exception, and could be discriminated against by a single-sex service if it was a proportionate means of achieving a legitimate aim.

Essentially, this means that under the current EA, single-sex services can choose to do any of:

- Include trans people in line with the gender they have permanently transitioned to, in the same way that they would other women (or men as the case may be);
- Adapt their service to treat trans people differently, but not less favourably than other service users; or
- Treat trans people less favourably, or exclude them entirely, so long as this is a proportionate means of achieving a legitimate aim. This applies whether or not the trans person has a GRC, and applies regardless of what their sex is in law under the EA.

Sport

Legal change of sex has no impact on trans people's participation in sport. This is because [s.195](#) of the EA allows trans people to be treated differently or excluded in gender-affected sports (sports where the average differences between men and women would lead to disadvantage in

competition) if this is necessary to secure fairness or safety. This applies to all people with the protected characteristic of gender reassignment – which includes all trans people whether or not they have changed legal sex by obtaining a GRC.

What this means is that the change proposed in petition 1 has no legal effect on the ability of a single sex service or sport to exclude trans people, because that ability to exclude applies regardless of the trans person’s sex in law.

Why do we oppose petition 1?

The change called for in Petition 1 would remove fundamental rights afforded to trans people under the GRA. This law was passed to uphold the human rights of trans people, as required under the European Convention of Human Rights. In their judgement, the human rights Court said:

“the Court considers that society may reasonably be expected to tolerate a certain inconvenience to enable individuals **to live in dignity and worth** in accordance with the sexual identity chosen by them at great personal cost.” (emphasis added)

The proposed change would also fundamentally alter the interaction between obtaining a GRC and equality law, which is a long standing legal status quo, that predates the Equality Act 2010. It is an unnecessary change, because trans people being recognised as male or female for the purpose of the EA does not significantly affect anyone’s rights or protections under the EA. Instead, recognition as male or female in equality law is part of the fundamental purpose of the GRA – to recognise trans people in law in line with the gender to which they have permanently transitioned.

Furthermore, although petition 1 would have no direct effect on access to single sex services, it would be the first step on a road towards a UK where trans people have significantly less freedom to live their lives in the “dignity and worth” that they do now. Petition 1 aims to chip away at the decades-long protections and rights of trans people, and to undermine the idea that we should strive for a society that recognises and respect trans people in line with their deeply-held identities.

We think that there is a very significant risk that people who oppose any inclusion and recognition of trans people in line with the gender to which they have permanently transitioned would use this change as a green light to campaign for the exclusion of trans people. For example, to pressure single-sex services and facilities to routinely exclude all trans people, to insist that all trans people must interact with public bodies in line with the sex recorded on their original birth certificate, and to insist that all trans people must navigate the workplace without privacy about their trans history. Indeed, some groups and organisations are already campaigning for these kinds of changes, which would have a profoundly negative impact on trans people’s ability to participate in public life at all.

A few decades ago, this is how trans people were treated in the UK – and it resulted in people facing huge barriers to accessing the services or care they needed, being unable to find or keep a job, and encountering harassment and discrimination due to having no choice but to reveal their trans status when providing identity documents or engaging with public bodies.

The change in Petition 1 would send a message that the UK Parliament rejects the foundational principles on which trans people’s equality and human rights stand – the ability to live and access rights and protections in line with the gender to which they have permanently transitioned (with proportionate adjustments). It would send a message that Parliament wishes to start to roll back several decades of improvements to trans people’s rights in law, and inclusion in society.

We very much hope that Parliament does not wish to send that message.