

Submission to inform the visit to the UK by the Special Rapporteur on violence against women and girls, February 2024

About us

For Women Scotland is a not-for-profit group campaigning to protect and strengthen women's rights in Scotland. This briefing is based on our work over the last five years in raising public awareness, representing women's views in Parliament, and bringing two judicial reviews against the Scottish Government.

Sex and women in law

CEDAW protects women against discrimination on the basis of sex,¹ which the UN defines as "the physical and biological characteristics that distinguish men and women".² The UK ratified CEDAW in 1986 and the UK Government considers the provisions of the convention are largely legislated for by the UK-wide Equality Act 2010.³ This Act defines sex as a reference to a man or a woman, where woman means a female of any age.⁴

The issue and consequences

A series of legal cases have established that sex no longer has a coherent, stable and workable definition in law due to the confusing interaction between the Equality Act and the Gender Recognition Act 2004.

Summary of cases:

- Sex can be self-identified for the Census but a rigid biological definition of sex must be adopted and the effect of a Gender Recognition Certificate (GRC) disapplied in "matters affecting status, or important rights, in particular the rights of others".⁵
- Incorporating males with the protected characteristic of gender reassignment (this includes those with and without a GRC) into the definition of woman conflates and confuses the two separate protected characteristics of sex and gender reassignment and is outside the powers of the Scottish Ministers. "Provisions in favour of women...by definition [in the Equality Act] exclude those who are biologically male".⁶ (FWS1)
- A male with the protected characteristic of gender reassignment and a GRC comes within the definition of woman for the purposes of the Equality Act. Those without a GRC remain of their birth sex.⁷ (FWS2)
An application to appeal this ruling to the UK Supreme Court will be heard by the Court of Session on 16 February 2024.⁸

Following FWS2 the ordinary meaning of sex has been lost and the law can no longer distinguish between the biological characteristics that define the two sexes. There is simply no way to measure progress or achieve equality between men and women when the legal categories now contain a mixture of both males and females. We believe the Equality Act no longer aligns with CEDAW and the UK is in breach of its obligations.

Despite winning FWS2 the Scottish Government still upholds a policy of self-identification of sex which signals to public bodies and NGOs that the Scottish Government may disapprove of organisations lawfully applying the Equality Act sex-based exceptions allowing female-only spaces, services and sports. This is compounded by Government funded trans groups influencing policies and promoting gender identity ideology in the women's sector, schools, prisons and the NHS.

Women's sector: Scottish Government funding for rape crisis centres and women's aid refuges is conditional on including self-identified transwomen.⁹ This has led to a male without a GRC managing a rape crisis centre¹⁰ and staff unable to disclose the sex of counsellors to rape victims seeking female-only support.¹¹ Job adverts regularly invite applications from those who "identify as women" for positions restricted by an Equality Act exception to be women-only.¹² All these result in female survivors being excluded and harmed. The Committee scrutinising the Gender Recognition Reform Bill claimed there was no evidence of self-exclusion¹³ after refusing to hear evidence from survivors and disregarding written submissions.¹⁴ Many local centres are confused and feel unable to provide the preferred single-sex service.

Schools: Scottish Government guidance¹⁵ advises schools to teach gender identity as an innate quality in all human beings and is reinforced by a charter scheme from LGBT Youth Scotland which has been adopted by 60% of schools.¹⁶ Pupils who believe otherwise are disciplined under bullying policies. Sex-based stereotypes are reinforced, social contagion of gender dysphoria is encouraged and transitions affirmed, laws mandating separate-sex toilets¹⁷ are ignored and changing rooms and sports are often mixed-sex. Girls' dignity is eroded and sexual harassment is at an all time high.¹⁸ Parents who speak in defence of such girls are dismissed or face hostility.

Prisons: After a public outcry when a double rapist who identified as a woman was sent to a female prison¹⁹ the Scottish Prison Service transgender policy was amended to keep transwomen prisoners with a history of violence against women in the male estate.²⁰ A full review has since concluded and the updated policy²¹ does not comply with international obligations or the single-sex residential accommodation provisions of the Equality Act; prisoners can still be housed on the basis of self-identification of sex. The Prison Service takes no account of GRCs, believes there is an "acceptable risk" to women prisoners, and existing transwomen prisoners, including one who murdered a cellmate in a male prison, still remain in women's prisons.

Data: Scottish Government guidance advises data should be collected on the basis of gender identity and not sex, unless necessary in a medical context.²² This dismisses the CEDAW Committee recommendations following its criticism of the UK's "lack of systematic collection of data, disaggregated by sex".²³ Important information is now unreliable even for criminal justice as Police Scotland record offenders, including rapists, as female.²⁴

Freedom of association: Under the FWS2 ruling women and girls, including lesbians, cannot meet without including males with a GRC.

Recommendations

- The UK Government should amend the Equality Act, Surrogacy Arrangements Act 1985 and Human Fertilisation and Embryology Act 1990 to protect women's rights by clarifying sex is a biological referent.
- The Scottish Government should amend the devolved Abortion Act 1967 and ensure the upcoming Misogyny Bill and Human Rights Bill (which will incorporate CEDAW) will protect women's rights by clarifying sex is a biological referent. Withdraw the trans guidance and lobby groups from schools, remove the male inclusive funding condition for women's organisations and reinstate single-sex accommodation in prisons.
- The Equality and Human Rights Commission should update the Equality Act Code of Practice and provide clear guidance to the women's sector on how they can operate single-sex services.



For Women Scotland
10 February 2024

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