

By email to Jackson Carlaw, Foyso Choudhury,  
Fergus Ewing, Maurice Golden, David Torrance

08 September 2024

Dear Committee Member,

**PE1876: Accurately record the sex of people charged or convicted of rape or attempted rape**

We are writing to you in your capacity as a member of the Citizen Participation and Public Petitions Committee; a copy also goes to the Clerk of the Committee.

In its submission to the Committee on 20 May 2023, Police Scotland stated that a new record for a male first time offender will be created on the Crime History System as “female” if the individual “presents as female” and that this “meets our legislative responsibilities”.

[https://www.parliament.scot/-/media/files/committees/citizen-participation-and-public-petitions-committee/correspondence/2022/pe1876/pe1876\\_dd.pdf](https://www.parliament.scot/-/media/files/committees/citizen-participation-and-public-petitions-committee/correspondence/2022/pe1876/pe1876_dd.pdf)

This position was repeated in the subsequent submission on 08 March 2024 which stated “the sex/gender identification of individuals who come into contact with the police will be based on how they present or how they self-declare”. Again, Police Scotland state that this practice “adheres to legislative compliance”.

[https://www.parliament.scot/-/media/files/committees/citizen-participation-and-public-petitions-committee/correspondence/2022/pe1876/pe1876\\_ff.pdf](https://www.parliament.scot/-/media/files/committees/citizen-participation-and-public-petitions-committee/correspondence/2022/pe1876/pe1876_ff.pdf)

We wish to draw your attention to the ruling of the Court of Session Inner House on a judicial review we brought against the Scottish Ministers which was issued on 01 November 2023, in the period between the two submissions to the Committee by Police Scotland.

<https://www.scotcourts.gov.uk/media/l1imtvox/court-of-session-judgement-reclaiming-motion-by-for-women-scotland-limited-against-the-scottish-ministers-01-november-2023.pdf>

This ruling states (at paragraph 65) that a person with a Gender Recognition Certificate (GRC) in their acquired gender possesses the protected characteristic of gender reassignment. Separately, they also possess the protected characteristic of sex according to the terms of their GRC. **Individuals without a GRC**, whether they have the protected characteristic of gender reassignment or not, **retain the sex in which they were born**.

It is clear that Police Scotland has not reviewed or updated its practice in line with the court’s ruling and, as such, it is not legislatively compliant. Self-identification of sex is not law in Scotland and a GRC is required before a person’s sex can be changed (for some purposes).

We have written to Deputy Chief Constable, Mr Alan Speirs, to request that Police Scotland’s practices regarding sex/gender are urgently updated.

After three years under consideration, we hope that the Committee will now ask Police Scotland to provide oral evidence to explain their unjustified and deeply offensive policy which puts a rapist's "strong sense of belonging" above the law as set out in the court's ruling, and above the impact on female victims.

Kind regards,

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