

Women's Human Rights Campaign

Questions

1 Do you have any comments on the proposal that applicants must live in their acquired gender for at least 3 months before applying for a GRC?

Yes

If yes, please outline these comments.:

The Women's Human Rights Campaign exists to safeguard and promote the sex based rights of women and girls which are enshrined in international human rights documents such as the Convention on All forms of Discrimination Against Women 1979 (CEDAW). We developed the Declaration on Women's Sex Based Rights, which was launched in 2019 and now has 6,985 signatories from 124 countries, and is supported by 124 organisations.

We are taking part in this consultation because of our concerns that women's rights in Scotland will be eroded if this Bill is enacted. The rights which women and girls have gained in both international human rights law and in UK law in, for example, the Equality Act 2010, are based on the recognition that the particular forms of social inequality and discrimination that women and girls face are based on our experiences as a biological sex, and not on 'gender'.

The ways in which the relationship between sex and the concept of gender are framed in law and policy is crucially important to our ability to maintain women's sex-based rights. If the biology-based category of sex is collapsed into the category of 'gender re-assignment', or the broader and more amorphous concept of 'gender identity' which is now widely promoted, sex-based rights will be eroded.

We believe that the premise underlying the current proposed reforms, that a person can have a 'gender' which should be recognised in the law and take precedence over biological sex, is harmful to the rights of women and girls in general, and is also harmful to lesbians, as it leads to the promotion of the idea that sexual orientation is based on gender and not on biological sex.

The existing Gender Recognition Act 2004 (GRA) is ambiguous in some respects because of the use of language which confuses and conflates sex and 'gender'. This has led to confusion both about this Act's provisions and its interplay with the Equality Act 2010 (Equality Act). The Scottish government's proposed reforms of the GRA reproduce this ambiguity and confusion.

The difference between sex and 'gender' was summarised by a group of doctors writing in 2018, who stated that 'Sex has a biological basis, whereas gender is fundamentally a social expression.' (Byng et al, "Gender-questioning children deserve better science", (2018) The Lancet, Vol. 392, Issue 10163) Gender represents forms of outward appearance or behaviour which feminists have traditionally called 'sex stereotypes'. The United Nations Gender Equality Glossary defines sex as 'The physical and biological characteristics that distinguish males and

females' (Gender Equality Glossary, UN Women). It says that 'Gender refers to the roles, behaviors, activities, and attributes that a given society at a given time considers appropriate for men and women... These attributes, opportunities and relationships are socially constructed and are learned through socialization processes'.

The CEDAW calls for the 'elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women'. These stereotyped roles are what is now called 'gender'.

The Women's Human Rights Campaign believes that the human rights of all people who do not conform to sex-based stereotypes, including those who identify as transgender, should be upheld. For example, we support their rights to freedom from discrimination in areas such as employment and housing, and to protection from violence under the law, which includes the right to protection from persecution under international refugee law. However, we think that the idea that a person can live in an 'acquired gender' is rooted in sex stereotypes.

There is no definition of 'gender' in either the 2004 Act or this Bill, and so it is not clear what living in an 'acquired gender' means, or what the difference is between an 'acquired gender' and biological sex.

Nevertheless, for the sake of people who may embark on a path towards 'gender re assignment' we believe that the current two year waiting period before applying for a GRC should be retained to allow time for reflection. An increasing number of young people, and particularly young women, who embark on the path to gender re assignment are changing their minds and making the decision to 'de-transition' as their brains and thinking mature.

The current requirement for a medical diagnosis of 'gender dysphoria' makes it more likely that the person wishing to transition has at least some access to advice and support. However, by removing all the assessment and gate-keeping provisions which are contained in the current legislation, and introducing a process of self-declaration, the Bill would effectively remove this support, which may be particularly detrimental to young people who are considering gender re-assignment.

We believe that changing the law to enable self-declaration of 'gender' would be harmful to the sex-based rights of women, and undermine the safeguarding of children and vulnerable adults, and that therefore this Bill should be withdrawn.

2 Do you have any comments on the proposal that applicants must go through a period of reflection for at least 3 months before obtaining a GRC?

Yes

If yes, please outline these comments.:

We believe that a reflection period of 3 months after the GRC application is much too short a time for making such a significant and life-changing decision as obtaining a GRC.

It is unclear from the proposals what the 'period of reflection' would consist of beyond the passage of time. While we believe that the 2004 Act is flawed, we think that retaining the assessment and gate-keeping provisions it provides for would at least help to reduce the possibility of a person finalising the process of obtaining a GRC without adequate reflection, and therefore reduce the potential for people to make life-changing decisions which they may later regret. This is particularly important in relation to young people.

We believe that changing the law to enable self-declaration of 'gender' would be harmful to the sex-based rights of women, and undermine the safeguarding of children and vulnerable adults, and that therefore this Bill should be withdrawn.

3 Should the minimum age at which a person can apply for legal gender recognition be reduced from 18 to 16?

No

If you wish, please give reasons for your view.:

We believe that lowering the age at which a person can apply for a GRC to 16 while also removing all assessment requirements from the process of obtaining a GRC would give rise to serious safeguarding risks in relation to young people.

The Bill's provisions, if enacted, would mean that the process of obtaining a GRC would take a total of 6 months, and would involve no requirement for medical assessment, or even a requirement that the young person should seek advice from any health professional. No support mechanisms of any kind for young people seeking to transition are incorporated into the Bill.

The idea behind this Bill, that people can change their 'gender', is likely to be interpreted by young people as meaning it is possible change sex. This is a very dangerous message for the law to be giving, since sex cannot be changed, and the medical treatment provided to young people who wish to change 'gender' is so harmful.

Although there are no long term studies at present, evidence suggests that the likely effects of the use of cross-sex hormones include sterility, damage to bones and to the developing brain, and for women, very serious pain on orgasm.

At present, young people in the UK may take cross-sex hormones from the age of 16. If an application for a GRC is no longer dependent on a diagnosis of gender dysphoria or any form of assessment from a medical professional, young people may access cross-sex hormones from online sources, and use them without medical supervision.

We believe that changing the law to enable self-declaration of 'gender' would be harmful to the sex-based rights of women, and undermine the safeguarding of children and vulnerable adults, and that therefore this Bill should be withdrawn.

4 Do you have any other comments on the provisions of the draft Bill?

Yes

If yes, please outline these comments.:

In 2013 the World Health Organisation published research based on international data which suggested that 35% of women worldwide had experienced physical and/or sexual violence from a male assailant. Their review of the international prevalence of the sexual abuse of children suggested that 20% of girls and 8% of boys worldwide had been sexually abused. (World Health Organization (n2013) Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence.)

The Scottish Government's report on Recorded Crime in Scotland for the period 2018-2019, shows that 13,547 sexual offences were reported during that period. Most studies which research the sex of perpetrators of sexual offences find that over 90% are men. Given this context, enabling individuals to change their sex in law merely by a process of self-declaration would have profound implications for the safeguarding women and children from sex-based violence. It would also have profound implications for the safeguarding of vulnerable adults who may require care, such as those with learning disabilities, some forms of psychiatric illness, and dementia. This is not because those who identify as transgender represent a safeguarding threat as such. It is because evidence suggests that persistent sex offenders are often skilled at manipulating others and will go to great lengths to gain access to those whom they wish to abuse sexually. Evidence also suggests that many biological males who identify, or claim to identify, as women show the same patterns of offending as other biological males.

Ministry of Justice figures published in 2018 estimated that long-term prisoners in the prison estate in England and Wales included 125 offenders who claimed a transgender identity, of whom 60 were sex offenders. Of these 60, 29 had convictions for sexual offences relating to children. There were 17 transgender prisoners in Scotland during this period. (BBC News, How many transgender inmates are there? 13 August 2018, <https://www.bbc.co.uk/news/uk-42221629>)

Assessment of risk is at the heart of good preventative safeguarding practices. However, a self-declaration process would remove all assessment and gatekeeping mechanisms from the process of gender re-assignment, thereby removing all safeguards against potential abuses.

Both the British Association of Gender Identity Specialists and the British Psychological Society have stated that some male sex offenders who claim to be transgender are doing so as a means of seeking access to women and children by presenting in an apparently female way, in order to make subsequent sexual offending easier.

The British Association of Gender Identity Specialists has noted an, 'ever increasing tide of referrals of patients in prison serving long or indeterminate sentences for sexual offences', who 'vastly outnumber' prisoners referred to them who have committed non-sexual offences. (British Association of Gender Identity Specialists, 'Written evidence submitted by British Association of Gender Identity Specialists to the Transgender Equality Inquiry', 20 August 2015)

The British Psychological Society has stated that, 'psychologists working with forensic patients are aware of a number of cases where men convicted of sex crimes have falsely claimed to be transgender females', and they have warned of the need to be 'extremely cautious of setting law and policy such that some of the most dangerous people in society have greater latitude to offend'. (British Psychological Society, 'Written evidence submitted by British Psychological Society to the Transgender Equality Inquiry', 20 August 2015)

In parts of the UK, de facto self-declaration has already been introduced in many organisations, including many criminal justice agencies such as the police service, the prison service, and the courts. This has happened without public consultation and seems to be the result of a widespread process of policy capture by organisations which provide training and consultancy to public sector bodies. In many public and private organisations' policies which cite the Equality Act, the protected characteristic of sex has been removed and replaced with 'gender identity', although the Act makes no mention of 'gender identity' and refers to 'gender re-assignment'.

The consequences of de facto self-declaration illustrate the likely consequences of introducing self-declaration into law. It is leading increasingly to the presence of biological males in female single sex spaces such as domestic abuse refuges, hospital wards and prisons, as well as changing rooms in public sports facilities.

This infringes the right to privacy and dignity of women and girls, and in some cases places them at risk of assault. Many facilities, such as showers and changing rooms in public sports facilities, are widely used by female children as well as adult women; a fact which is often overlooked in discussions about the significance of retaining single-sex spaces.

Sex offenders who claim to have a female 'gender identity' have been placed in prisons in recent years, including many who do not have a Gender Recognition Certificate and are therefore male in law. In 2018 one such offender was convicted of sexually assaulting two women while on remand in a women's prison in England while awaiting trial for other sexual offences.

This increased presence of biological males in what are intended to be single-sex services and spaces is taking place despite the provisions in the Equality Act which permit the maintenance of single-sex services provided that they serve a legitimate aim and do so in a proportionate way. This reflects widespread confusion about the interplay between the Equality Act and the GRA, which arises in part from the ambiguities contained in the current GRA. This confusion is likely to increase if the

GRA is reformed to enable any male to obtain a GRC by means of a statutory declaration.

Implications for data collection

Police services within the UK are increasingly adopting the practice of recording suspected offenders according to their 'gender identity' rather than their sex. Article 4 of the UN Declaration on the Elimination of Violence against Women requires states to collect data relating to the prevalence of different forms of violence against women, and on the effectiveness of measures aimed at preventing and redressing this violence. The Committee which oversees the operation of the CEDAW makes similar recommendations.

Recording offenders' 'gender identity' rather than their sex leads to the collection of data on violence against women and girls which is inaccurate and misleading. This creates a significant impediment to the development of effective laws and policy aimed at the elimination of violence against women and girls. It also hinders accurate recording of the patterns of violence directed against people who identify as transgender.

The conflation of sex and 'gender' in data gathering hinders the accurate assessment of sex-based inequalities in other spheres, and consequently makes the development of strategies to combat inequalities such as, for example, the gender pay gap (more accurately described as the sex pay gap), more difficult. Combatting sex discrimination requires accurate data recording about sex. Implications for freedom of thought, conscience and religion, and freedom of expression, as protected by articles 9 and 10 of the European Convention on Human Rights

The ideology which underpins the concept of 'gender identity' is rooted in the attempt to deny the significance of biological sex, and replace it with 'gender identity' in law and policy. The ultimate aim of the Yogyakarta Principles, which are promoted by lobby groups as representing 'international best practice' but have no status in law, is to '...end the registration of the sex and gender of the person in identity documents such as birth certificates, identification cards, passports and driver licences, and as part of their legal personality'. (Principle 31(A), Yogyakarta Principles plus 10). The Yogyakarta Principles see self-declaration of 'gender' as a step towards this long-term aim.

Throughout the UK, self-declaration of 'gender identity' has been promoted in recent year using the slogan 'No Debate', which may reflect the fact that those who promote it are aware that most of the public are unlikely to agree with it, and would almost certainly disagree with the more extreme manifestations of the ideology which underpins it.

This 'No Debate' approach has led to attempts to limit the freedom of expression of those who question the concept of 'gender identity', or who disagree with proposals to introduce self-declaration.

One field in which attempts to suppress disagreement with aspects of gender ideology is higher education. In June 2019, a group of academics wrote a letter to

the Sunday Times in which they stated that many academics are 'unable to confidently question the contested notion of "gender identity" without fear of sanction.' (Letters to the Editor, The Times, 16 June 2019)

We believe that, in an atmosphere in which open public discussion of the implications of self-declaration of 'gender' is being suppressed, it would undermine public trust in the democratic process for the Scottish government to proceed with its introduction in this Bill.

In addition to the suppression of speech which is critical of the concept of 'gender identity', there have been attempts to impose forms of speech which acquiesce in accepting this concept which undermine democratic principles such as freedom of expression.

De facto self-declaration of 'gender' has been introduced into guidance for judges in England and Wales, who are instructed by judicial guidance known as the Equal Treatment Bench Book to use the preferred pronouns of witnesses who identify as transgender at criminal trials. The Bench Book says nothing explicit about compelling other witnesses to use preferred pronouns, but judges are now instructing witnesses to do so. This has included judges requiring complainants at trials for assault to use the preferred pronouns of defendants who are accused of assault them.

Judges have a responsibility to strike a balance under Article 6 of the European Convention on Human Rights between protecting the defendant's right to a fair trial and ensuring that witnesses are enabled to give evidence to the best of their ability. The type of guidance introduced by the Bench Book takes no account of the potential impact on witnesses of being required to describe a defendant in ways which amount to a denial of their own perceptions of reality, or of the particular stress this will cause to witnesses who are giving evidence about being subjected to traumatising events such as physical and sexual violence.

In trials for sexual offences the majority of complainants are women and children, and the overwhelming majority of defendants are male. The logic of guidance such as that contained in the Bench Book is that a complainant in a rape trial can be required to call a defendant who has raped her 'she'. By extension, it could also require her to use female possessive pronouns to refer to the defendant's body parts, to which she would have to refer when giving her evidence. This could also apply to child witnesses and vulnerable adult witnesses.

This is a form of compelled speech which undermines access to justice, particularly for women and children. The right to accurately describe the sex of those who have assaulted them is crucially important to the ability of women, children and men to report violence and give evidence against their abusers.

We believe that changing the law to enable self-declaration of 'gender' would be harmful to the sex-based rights of women, and undermine the safeguarding of children and vulnerable adults, and that therefore this Bill should be withdrawn

5 Do you have any comments on the draft Impact Assessments?

Yes

If yes, please outline these comments.:

The Impact Assessments are inadequate. They do not comply with the Scottish Government's own standards in respect of examining the potential consequences of proposed changes in the law. The claim that the provisions which will be introduced by Bill will not have any adverse impacts on women is not evidence-based.

The potential impact on groups who come within the Equality Act's protected characteristics, which include sex and sexual orientation, have not been thoroughly assessed. Nor has the potential impact on children and young people been assessed thoroughly.

The Impact Assessments do not take into account the negative effects on women and girls of introducing self-declaration of 'gender' into law. The Bill endangers all of the sex-based rights that are established in UN human rights documents, such as CEDAW. The decades long fight to gain women's rights as human rights internationally would be undermined by this Bill.

The Impact Assessments do not adequately examine the impact of self-declaration of 'gender' on such rights as single-sex services and spaces for women and girls, freedom of expression, and women's social and cultural participation and political representation. Such a legislative change will enable males to more easily enter spaces set aside for women's safety and dignity, to speak for women in social, cultural and political situations, to win prizes and opportunities set up to promote women's equality, and to enter women's sports.

We believe that changing the law to enable self-declaration of 'gender' would be harmful to the sex-based rights of women, and undermine the safeguarding of children and vulnerable adults, and that therefore this Bill should be withdrawn.