

SNP Women's Pledge

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 term "acquired gender" is not defined in the consultation and is therefore meaningless. Notwithstanding the lack of definition of "acquired gender" the proposal in the Bill does not demand the applicant present evidence of this requirement which could then be tested and assessed as the applicant is only required to make a statutory declaration of living in this undefined "acquired gender". Indeed the government does not offer evidence of its understanding of gender although ministers have previously stated that they understand that sex and gender are different things. Given that the difference between sex and gender is accepted by ministers, it is wrong that "living in the acquired gender" can be used to change sex.

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.:

The length of time for reflection should be more than three months because it should include enough time for a full medical assessment. I believe that the current process which requires a diagnosis of gender dysphoria and safeguarding provided by the Gender Recognition Panel should be retained. See full response in answer to Q4

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.:

I oppose the Bill's proposal to lower the age at which one can gain a legal sex change from 18 to 16. I believe lowering the age will result in more children embarking on a path towards medical transition as it is hard to see how this can be refused if a young person has changed their legal sex. While I believe that transgender people should be protected, I oppose the bill's effect of broadening the definition of transgender beyond people with dysphoria to anyone who self identifies as the opposite sex. I believe this sends out a damaging message to children and young people and confuses sex with the unscientific concept of "gender identity" predicated on regressive "masculine" and "feminine" stereotypes. This comes at a time when increasing numbers of clinicians across the world are expressing concern about the practice of automatically "affirming" children who present with gender identity concerns. The UK government has already ordered an inquiry into the sharp and unexplained increase in young girls seeking to change sex. A recent Freedom of Information request suggests the rise may be even sharper in Scotland. A number of clinicians at UK gender identity clinics have resigned because of their concerns about pressure from trans activist groups to affirm children. These clinicians have expressed concern in the media and in internal reports that young gay people may be identifying as trans because of pressure from homophobic society, including, in some cases, their families.

This coincides with growing anecdotal evidence of young women, mainly lesbians, experiencing “transition regret”, often after irreversible hormone treatment and breast removal. This has already been documented in Sweden and here in the UK, where such young women have formed their own detrans network.

The network includes a Scottish woman who has now spoken at length of her regret in the media and warned against the effect of the Gender Recognition Reform Bill on young people.

I note that the draft Equality Impact Assessment in the consultation cites research from Sweden showing low rates of detransition. I would point out that this research covers the period 1960-2010 before the current surge of young women identifying as male (and subsequently expressing regret) and before the rise of social media. The government has a moral obligation to keep pace with recent developments and to put child welfare front and centre of policy making.

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

Yes

If yes, please outline these comments.:

The SNP Women’s Pledge is an organisation made up of SNP members formed in 2019 to uphold women’s legal rights to privacy, dignity, fairness and safety.

We oppose the Gender Recognition Reform (Scotland) Bill because it ends the requirement of a medical diagnosis and independent assessment by a Gender Recognition Panel currently needed to change legal sex. The Bill replaces these with a system of self-declaration. If the Bill becomes law, the act of making the declaration before a public notary becomes the sole qualifying criterion related to being transgender. We believe such a system is open to abuse by predatory men. The Bill’s removal of medical and other forms of safeguarding also means individuals with mental health problems, autism and gender dysphoria will not get the support they need before making life-changing decisions. The Bill is not a mere administrative change. It confuses sex with regressive gender stereotypes and sends a message which risks accelerating the current rise in children and young people seeking to medically and surgically transition. There is growing evidence that many of these young people come to regret the changes they have made.

Synopsis of main concerns

* We oppose the Gender Recognition Reform Bill because it makes sex a matter of self-declaration.

* Medical safeguards should remain in place. We totally oppose the bill’s plan to drop these entirely.

* The Gender Recognition Panel, or some equivalent of the Gender Recognition Panel, should continue to have a role in assessing applications.

* The proposed system of self-declaration is open to abuse by predatory men.

* There is no definition of “acquired gender” even though applicants must declare they have lived in an “acquired gender” for three months.

* The bill will significantly extend the number of people who can change their sex on paper while making no changes to their bodies.

* The bill extends the privacy protections in the current GRA to many more people.

* Offenders who transition are expected to self-report their identity change to Disclosure Scotland, this has safeguarding implications.

* Self-declaration may also cause problems for people with mental health problems, autism and gender dysphoria, who will not get the treatment and support they

need.

* The current gender recognition law in the UK and Scotland is fully compliant with the European Court of Human Rights so this change is not needed.

* The Bill confuses sex with regressive gender stereotypes and sends a message which risks accelerating the current rise in children and young people seeking to transition.

* The Bill and the consultation document repeatedly refer to “gender recognition” when the effect will be to change legal sex and give the applicant a new birth certificate in that sex.

* The government needs to make the difference between sex and gender identity clear.

* The 2016 SNP Manifesto does not give a mandate to introduce the self-identification of sex.

* The government’s claim to maintain the sex-based exemptions in the Equality Act 2010 is undermined by the record of public bodies in this area.

* Public bodies including NHS Scotland and the Scottish Prison Service already ignore the Equality Act’s single sex exemptions by allowing self-identified transwomen to access female only spaces.

* The draft Equality Impact Assessment for the bill is deeply flawed.

* The draft Equality Impact Assessment cites ideological arguments from gender identity activists and ignores fact-based evidence about the negative impact of self-identification on women.

* The draft Equality Impact Assessment ignores the effect on privacy and dignity and the right of women to refuse consent to male-bodied people in their spaces or delivering intimate care.

* The draft Equality Impact Assessment produces no evidence to demonstrate that males who socially transition depart from male pattern offending.

* The bill and consultation document fail to explain how possession of a Gender Recognition Certificate extends legal rights.

* We strongly oppose the proposal to lower the age to 16.

* The bill and EQIA take no account of the sharp and unprecedented rise in teenage girls transitioning and the concerns expressed by clinicians that this can be a result of homophobia/lesbophobia, social contagion and other underlying mental health conditions or adverse childhood experiences.

* The bill and consultation document ignore the growing number of detransitioners who regret their decision to change sex.

* The bill and consultation document fail to define “international best practice” and we note that in fact very few countries have introduced sex self-identification.

* No evaluation has been carried out on the effect of self-identification in practice in countries where it has been introduced.

* The consultation document justifies the bill by backing the “Yogyakarta Principles” which have no legal standing and demand countries cease to record biological sex on all official documents.

* The Yogyakarta Principles, are cited as international best practice in the consultation document but will result in poor statistics on sex based discrimination, health outcomes and violence.

* We are concerned at reports, including by the international law firm Dentons, that sex self-identification is achieved by avoiding all public debate and by targeting young people.

* We are concerned that organisations campaigning for sex self-identification have privileged access to decision makers and received significant public funding.

* We fear the public funds and access given to groups favouring sex self-identification is undemocratic and unfair and risks making the outcome of the consultation on the Gender Recognition Reform (Scotland) Bill unbalanced.

* We are concerned that women who have concerns about sex self ID are being intimidated to prevent them speaking out. This must stop.

CHANGING THE DEFINITION OF TRANSGENDER BEYOND THE CURRENT SMALL GROUP

The consultation document accompanying the Bill claims the change is minor and will simplify an existing process for a small number of vulnerable transgender people. In fact, the proposed change will significantly increase the numbers of people seeking to change legal sex, with the government's own estimates suggesting the number of legal sex changes rising from 30 per year in Scotland to as high as 400 (according to the Government's 2017 consultation paper, the current consultation lowers the estimate to 250, for reasons that are unclear). MBM Policy Analysis note significant leaps of 575% occurred when the law was changed in Belgium. The proposed law will broaden the definition of transgender to include anyone who declares themselves the opposite sex, without evidence of gender dysphoria and without the current safeguarding provided by the Gender Recognition Panel. It will allow men with criminal convictions for crimes like rape, sexual assault and domestic abuse to legally become women without any ability to block their application. It is likely to include many more people whose transition is social rather than medical/surgical, and more people whose "social transition" is not immediately recognisable. It will include more people who retain male anatomy, including offenders, who will be able to change their identity to female and then take advantage of the significant privacy protections afforded by obtaining a Gender Recognition Certificate.

While the government points out that the current Gender Recognition Process does not require surgery or medical treatment, the 2004 Act always intended this for exceptional cases, such as when individuals could not have these procedures for health reasons. However, the medical diagnosis currently in place offers a degree of gate-keeping in addition to the gender recognition panel. We believe that the medical diagnosis requirement remains appropriate. The consultation for the bill, on page 5 points out that the World Health Organisation (WHO) International Classification of Diseases (ICD) continues to list "gender dysphoria" under the chapter relating to sexual health. The European Court of Human Rights ruled in 2017 (*Garçon and Nicot v France*) that it was not a violation of human rights to demand medical diagnosis as a condition of "gender recognition". The consultation document is not honest about the significance of the proposed change. It refers to "obtaining a gender recognition certificate" and living in an "acquired gender" when the reality of the bill is the ability to change legal sex and present a new birth certificate, in their new identity which gives no indication that a change has been made.

This is completely different from the campaigns for lesbian and gay equality. Many people in the SNP Women's Pledge are gay or lesbian and all of us strongly supported the campaigns to support this group. As individuals we supported equal marriage and many of us campaigned to end the prohibition on teaching about lesbian and gay relationships in schools (Section 2(a) in Scotland and

Section 28 in England & Wales). However the push for sex self identification is fundamentally different.

Gay rights activists campaigned for society to accept their different ways of living and loving. Radical transgender ideology, which informs this bill, demands society, and the law, rejects the reality of biological sex in favour of a recently conceptualized abstract notion of human identity. The anti-discrimination demands of gay rights campaigners did not compromise the rights of other groups. The campaign for sex-self identification, sometimes called “Equal Recognition” or “Trans Rights” affects the rights of women.

We note that women also have human rights to safety, privacy and dignity. We also note that women are protected in the Equality Act 2010 on the grounds of sex. Changing the definition of sex to a “feeling” as opposed to a material fact will compromise the human rights women should currently enjoy. We support the human rights of everyone, including those who identify as trans, and believe they should live free from discrimination. However, changing sex by self declaration is not a “human right”. The European Court of Human Rights rules do not accept this either and the current UK law is fully compliant with human rights.

BILL IS NOT MANDATED IN 2016 SNP MANIFESTO

The SNP Manifesto for the Scottish Parliament election in 2016 did not mandate the government to pursue this legislation. The 2016 SNP manifesto was 76 pages long but carried just a single sentence (page 21) which said : “We will review and reform gender recognition law, so it’s in line with international best practice for people who are Transgender or Intersex.”

There was no indication in the manifesto of what this meant and most party members were unaware of what was proposed in their name. It did not outline a process of sex self declaration without medical checks or gate-keeping as is proposed in this Bill. Women’s Pledge are very concerned at the treatment of members of the party, including supporters of the Women’s Pledge, who have spoken up against these proposals in good faith. The attempt to shut down debate by demonising female MSPs and MPs has been frightening and misogynistic and has to stop.

NO DEFINITION OF “ACQUIRED GENDER”

The bill says that a person seeking to change legal sex must declare they have lived in the “acquired gender” for three months. However there is no definition of the term “acquired gender”, or indeed “transgender”. Notwithstanding the lack of definition, the proposal in the Bill does not demand the applicant present evidence of this requirement which could then be tested and assessed, as the applicant is only required to make a statutory declaration of living in the “acquired gender”. The government offers no evidence of its understanding of gender, although ministers have previously stated that they understand that sex and gender are different things. Given that the difference between sex and gender is accepted by ministers, it is wrong that “living in the acquired gender” can be used to change sex.

THE BILL WILL IMPACT ON WOMEN’S RIGHTS TO PRIVACY, DIGNITY, SAFETY AND FAIRNESS

SNP Women’s Pledge continue to believe that the bill threatens women’s safe spaces and single sex services. We are not convinced by the government’s reassurances on this point. The draft Equality Impact Assessment contained in the Bill consultation concludes that women will not be affected negatively by the

proposed change.

NOTE: The Equality Act 2010, allows some single sex spaces/services to be reserved for people born female in the interests of privacy, dignity, safety and fairness. These single sex spaces include sleeping accommodation such as hostels, hospital wards, prisons and changing rooms. The Equality Act also allows single sex services/jobs (known as the Genuine Occupational Requirement) to exclude transwomen (described as “transsexuals” in The Act). This would include jobs that involve intimate personal care and rape counselling. The exemptions also cover sport and measures intended to combat the discrimination females face, such as all women shortlists in political parties and scholarships.

We are unconvinced by reassurances made by the Scottish Government in the consultation paper that the Bill will not compromise women’s protections in the Equality Act for the following reasons:

1: The Government already allows public, third and private sector organisations to ignore the Equality Act’s protections. For example, Greater Glasgow and Clyde Health board says it has a policy of placing transwomen in female hospital wards on the basis of self declaration, even if they have male anatomy. The same guidance by GGCHB incorrectly advises (page 12) that a male-to-female transgender worker with a Gender Recognition Certificate will meet the Genuine Occupational Requirement allowing them to care for a vulnerable female. The guidance also states that a female patient who complains about a person who appears anatomically male in the bed next to them should be told that they are wrong to complain. The guidance suggests such a female patient who complains is akin to a racist. (page 33) It is also the case that Women’s organisations must be trans inclusive in order to obtain Scottish Government funding, even though the Equality Act specifically says these can be single sex. Both Glasgow and Lothian Health Boards say they cannot guarantee a biologically female healthcare worker to women who request one, because this could compromise the legal rights to privacy of transwomen employees. The Scottish Prison Service has since 2014 housed male-bodied prisoners who identify as female in the women’s estate, on the basis of self-declaration following risk assessment. The Scottish Government does not have to do this under the current law. The Scottish Government says it is reviewing this policy within the SPS, however the Bill’s proposal

to grant legal sex change on the basis of self-identification could make it impossible to exclude such people from the female estate as a previous court ruling in England said a GRC holder must be admitted to a woman’s prison. The Ministry of Justice in England believe they cannot exclude GRC holders. The former prison governor [REDACTED], a member of SNP Women’s Pledge, has shared her professional concerns about this practice on several occasions including in the Scottish Parliament. She has detailed instances where vulnerable female prisoners were frightened and embarrassed by male-bodied prisoners who identified as women – in every case after they were incarcerated. She has pointed out that the risk assessment does not take the feelings/privacy of the female inmates into account and does not exclude those who have historic convictions for violence against women.

2. The Gender Recognition Reform Scotland Bill’s draft Equality Impact Assessment prepared by the Scottish Government ignores empirical evidence

which underlines the importance of single sex spaces and services for women. It ignores the contributions of Prison Governor ██████████ (see 1, above) contained in the report by Women's and Girls in Scotland.(June 2019) In the report ██████████, who at that time was not named, described several examples of transwomen losing their temper, intimidating women and indulging in sexually explicit behaviour in the female estate. ██████████ has since repeated these statements in the media and at public meetings. The Women and Girls in Scotland report also contained the result of a consultation of 2000 self-selecting women, most of whom said they would self-exclude from services if they could not be guaranteed single sex provision. The Bill consultation and its draft Equality Impact Assessment chooses to ignore specific well publicised cases in Scotland, the UK and elsewhere in the world where self-identified transwomen who retain male anatomy have sought to abuse single sex spaces. This include examples of a convicted sex offender assaulting women in a female prison in England, a male born person without a GRC but identifying as a woman attacking children in a female toilet in Scotland and a Canadian case in which a person with male anatomy demanded women working alone offered waxing services and tried to sue when they refused, resulting in several going out of business. There are many similar examples from around the world however the Scottish Government has advised that any submissions to this consultation which reference criminal convictions will not be published, if the only source is media reports. It says it does not consider newspapers or other media to be a reliable source despite the robust defamation and contempt laws in place in Scotland. We will continue to press the government on this matter as there are many cases around the world of male bodied trans identifying people offending in males patterns and media is the only way such convictions come to public attention. Court records are not easily accessible to the general public. There is also evidence that more sexual assaults are committed in so called "gender neutral" spaces, but this well publicised survey was also ignored in the Equality Impact Assessment. The Equality Impact Assessment fails to engage with the factual evidence provided through convictions in the Scottish Courts Service which show that males are responsible for 98.5% of all sexual crime (excluding prostitution associated offences). The draft Equality Impact Assessment offers no evidence to support the assertion that transwomen who have undergone no physical changes depart from male pattern offending. Ministry of Justice figures from England suggest that the proportion of male-to-female transgender prisoners incarcerated for sex offences is significantly higher than the prison population as a whole. Given that the Scottish Government and public authorities such as the NHS and the Scottish Prison Service ALREADY misinterpret the Equality Act to allow self identifying transwomen access to single sex spaces, we have no confidence that the guidance will improve if and when the Bill becomes law. There is a genuine fear among women in our group that the new law will be used to entrench existing bad practice by organisations who have not taken the privacy, safety and dignity of women seriously in the past. A far wider group of men will be able to become legally female and the previous form of service providers suggests they will insist this gives them rights to female spaces, meaning the only option to individual women is through the courts.

3. While ignoring fact based examples of threats to women in single sex spaces, the Scottish Government Equality Impact Assessment justifies its assertion that

the proposed legal change is no threat to women by citing an academic paper by Peter Dunne of Bristol University who campaigns on gender identity issues. Dr Dunne's paper argues AGAINST all single sex provision (which the Scottish Government says is not its position) Dr Dunne's paper states that a woman who sees

a transwoman's body (presumably male genitals) in a changing room should be no more upset than if she sees a breast cancer survivor with a mastectomy in the changing room. This statement has caused considerable offence. The Cabinet Secretary Shirley-Anne Somerville distanced herself from this assertion in Dunne's paper when questioned in parliament. However the report is still used to justify the conclusion of the draft Equality Impact Assessment. The draft Equality Impact Assessment also cites another paper from academics who support self identification of sex, (Eckes: The Journal of LGBT Youth 2017) which compares the uses of separate male and female toilets to segregation on the grounds of race. We believe the reliance on such contentious and one sided arguments, which did not use empirical research, completely destroys the credibility of the draft Equality Impact Assessment.

4. We are concerned that organisations which are described as partners of the government in taking forward gender identity policy have argued for changes to the Equality Act to end single sex spaces for women. This further undermines the Scottish Government's claim to support these exemptions. Scottish Trans Alliance/Equality Network – who receive significant government funding – have argued that the Single Sex Exemptions in the Equality Act, designed to protect women, should be scrapped. In 2015, Scottish Trans Alliance/Equality Network told the UK Government's Women and Equality Committee that single sex exemptions for women should be replaced with exemptions for trans people only ie trans people could demand services exclusively by and for trans people but females would not be entitled to services by and for female people. See their submission to the committee here. The same submission argued for an end to the Genuine Occupational Requirement reserving some jobs for females only eg rape counselling of women or intimate personal care of women. We are very concerned that organisations which do not respect women's rights to single sex spaces have such undue influence on the development of policy which has such an impact on women's rights. The Scottish Government website says that Scottish Trans Alliance "assist" the government "in developing our policy on gender identity and gender reassignment". We find it very worrying that a group which dismissed women's need for single sex spaces has this influence.

Lack of clarity on the legal rights afforded by a Gender Recognition Certificate
The government has been unable to outline what legal rights a Gender Recognition Certificate bestows. In 2018, the Equality and Human Rights Commission issued a clarification statement which said: "A trans woman who does not hold a GRC and is therefore legally male would be treated as male for the purposes of the sex discrimination provisions, and a trans woman with a GRC would be treated as female. The sex discrimination exceptions in the Equality Act therefore apply differently to a trans person with a GRC or without a GRC." However the statement went on to say the relationship between the GRA and the Equality Act was complex. A recent analysis of the relationship between the Equality Act and the GRA (Komorowski, 2020) was published in the Journal of the Law Society of Scotland. Komorowski argued that under the Equality Act, having a particular sex must mean being born that sex, or else having acquired a GRC – and that

there was scope to argue about when the Act included the second group in that term. He concluded “before we change the law, we ought to understand what effect the current Act has.” The government consultation paper does not discuss how acquiring a GRC affects a person’s legal rights of access to single sex services and occupations, and therefore their rights in relation to other people using the relevant services, particularly women. Without knowing how acquiring a GRC affects a person’s legal rights, it is hard to see how people can give informed comment on proposals that will lower the barriers for access to a GRC and widen the eligible number and range of people.

Privacy and dignity matter as well as safety

The draft Equality Impact Assessment makes no reference at all to women’s desire for privacy and dignity or their human right to consent to people with male anatomy seeing them in a state of undress, for example. Given that the Equality Act gives women this legal protection, it is remiss that the Scottish Government fail to take account of it in the consultation. The only way to evaluate how women feel about their consent being sought or their privacy being compromised is to ask them. The Scottish Government have not asked women how they feel about this change. However the Women’s and Girls in Scotland survey did ask 2000 women their views. An overwhelming majority said they would not feel happy about sharing intimate spaces with people born male who self-identified as female.

The law will extend the legal right of any male to conceal their past history and previous identity

The Gender Recognition Act 2004 gives those who obtain a Gender Recognition Certificate powerful privacy protections. As well as changing the sex on their birth certificate they can change other information, such as names, which would reveal their previous identity. An organisation which reveals a GRC holder’s previous identity can be committing a criminal offence. The Scottish Government intends to preserve this protection in the reformed legislation, even though the group of people who will benefit from it will be expanded considerably, to include those who have not had medical treatment or diagnosis.

As previously noted, the gate-keeping presently conducted by the Gender Recognition Panel will cease completely if the law is changed. The Scottish Government has made no assessment of the work of the current Gender Recognition Panel. They have conducted no analysis of who is currently refused a GRC

and on what grounds. It would be interesting to know if the GRP refuses to grant legal sex change on the grounds that this could present a risk either to the applicant or the public. As Murray Blackburn MacKenzie say: “The [consultation] paper does not discuss how far a provision originally designed to protect the privacy of a very small group, understood to comprise largely people whose transition would otherwise be likely to go undetected, is equally appropriate for a group many times larger, comprising people the extent of whose transition is likely to be more variable, and access to which includes no external gatekeeping.

There are many reasons why someone might need to know about a person’s past life, even where that person has no criminal convictions. However in the case of disclosure of criminal convictions, the consultation paper is not at all reassuring. The Scottish Government, in the consultation paper, makes clear that in applying for a disclosure certificate, the applicant need not reveal their previous identity to a prospective employer. Instead the applicant must voluntarily go to Disclosure Scotland and share their previous name and identity so an accurate check may

take place. This system relies entirely on self-reporting. It will work for those with nothing to hide. But it will not provide adequate safeguards against a previous offender who, as a result of the far lower bar introduced by the legislation, will be able to change their sex and their identity without question as there will be no gate-keeping. (MBM GRA Reform Assessment page 8) given that sex offenders are known to be manipulative, it is in our view unrealistic and reckless to assume that person with a history of male violence/abuse will volunteer information in this way.

RISK TO CHILDREN AND YOUNG PEOPLE

We oppose the Bill's proposal to lower the age at which one can gain legal sex change from 18 to 16. We believe this will result in more children embarking on a path towards medical transition as it is hard to see how this can be refused if a young person has changed their legal sex. More broadly, the bill's purpose is to increase the acceptance of transgender identities. While we believe that transgender people should be protected, we oppose the bill's effect of broadening the definition of transgender beyond people with dysphoria to anyone who self identifies as the opposite sex. We believe this sends out a damaging message to children and young people and confuses sex with the unscientific concept of "gender identity" predicated on regressive "masculine" and "feminine" stereotypes.

This comes at a time when increasing numbers of clinicians across the world are expressing concern about the practice of automatically "affirming" children who present with gender identity concerns. The UK government has already ordered an inquiry into the sharp and unexplained increase in young girls seeking to change sex. A recent Freedom of Information request suggests the rise may be even sharper in Scotland. A significant number of clinicians have resigned because of their concerns about affirmation and pressure from trans activist groups. These clinicians have expressed concern that young gay people may be identifying as trans because of pressure from homophobic society, including, in some cases, their families. This coincides with growing anecdotal evidence of young women, mainly lesbians, experiencing "transition regret", often after irreversible hormone treatment and breast removal. This has already been documented in Sweden here and in the UK, where such young women have formed their own detrans network. The network includes Scottish woman SW who has now spoken at length of her regret in the media and warned against the effect of the Gender Recognition Reform Bill on young people. We note that the draft Equality Impact Assessment in the consultation cites research from Sweden showing low rates of detransition. We would point out that this research covers the period 1960-2010 before the current surge of young women identifying as male (and subsequently expressing regret) and before the rise of social media. The government has a moral obligation to keep pace with recent developments and to put child welfare front and centre of policy making.

INTERNATIONAL BEST PRACTICE – A MEANINGLESS TERM

The consultation claims that the Scottish Government wishes to bring the law into line with "international best practice" without defining what this is. The consultation has not conducted any research into those (very few) countries which have introduced "sex self identification". Only seven European countries have introduced this legislation. Since most of these changes have been recent, it is not yet possible to tell the effect of these legal changes. However we know that there are already serious concerns in Ireland around placing transwomen, including sex offenders, in female jails. This was not anticipated when the law was

introduced. It should also be noted that some of the countries who have sex self ID have a poor record regarding women's rights. Abortion is still largely illegal in Malta and Argentina, for example.

Organisations campaigning for sex self ID claim this is a human rights issue and use the phrases "trans rights are human rights" and "equality for all". However the Scottish Government accepts in its own consultation that the current UK Gender Recognition Act is fully compliant with the European Court of Human Rights rulings. The original 2004 GRA was introduced by the UK after an ECtHR ruling in 2002. This ruling made clear that the required change in the law was only intended to apply to transsexuals. The current body of ECtHR law does not require states to introduce self-identification either for documentary or legal status change. The ECHR allows that in assessing a person's need to change official records, states can reasonably require medical confirmation of psychological distress. There is therefore no human rights requirement to change the law and we believe that doing so will impact adversely on the human rights of women and girls.

YOGYAKARTA PRINCIPLES – NOT GOOD PRACTICE

The Bill's consultation paper states that the Scottish Government views the Yogyakarta Principles as a further reason for change (para. 3.38). The government now accepts that the principals are not legally binding, something they failed to point out in their 2017 consultation paper. Indeed the YP are a set of recommendations drawn up by independent individuals on their own initiative. We do not think the Scottish Government should be using this non statutory document by private individuals to justify changing the law in the Scotland in a way which damages the rights of women and children.

Furthermore we contend that some aspects of the Yogyakarta Principles are dangerous for the following reasons:

The Yogyakarta Principles elevate the concept of innate gender identity over birth sex. They state:

"Everyone has the right to legal recognition without reference to, or requiring assignment or disclosure of, sex, gender, sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to obtain identity documents, including birth certificates, regardless of sexual orientation, gender identity,

gender expression or sex characteristics. Everyone has the right to change gendered information in such documents while gendered information is included in them.' Yogyakarta Principles, 2017³¹

Yogyakarta Principle 31 goes further and demands that governments/states cease to record birth sex completely:

Principle 31 says States should "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 also suggests that where sex or gender continue to be registered, States should "Ensure that a person's criminal record, immigration status or other status is not used to prevent a change of name, legal sex or gender".

DESTRUCTION OF SEX BASED DATA

There is some evidence that principle 31 of the Yogyakarta Principles has already been introduced in Scotland, as crime is now recorded according to self-identified gender, not sex. This is the proposed approach to recording sex in the 2021 Census. Eighty senior academics have written to the Scottish

Parliament pointing out that failing to record sex will make it more difficult to monitor discrimination against women and girls and male pattern violence.

Failure to record birth sex completely ignores the biological basis for harm caused to women as a result of their biology, such as through FGM, maternal mortality, female infanticide, forced marriage, rape, the gender/sex pay gap and commercial sexual exploitation. We note that following adverse publicity regarding the recording of gender not sex, the government set up a statistics working group under the Chief Statistician. We are concerned that there are no independent data using academics on this group and it includes a number of public bodies who have been using and promoting the recording of gender over sex for some time.

This does not inspire confidence. We would remind the government of the important work of [REDACTED] with regard to ensuring sex disaggregated data is recorded. However if the Bill is passed, there could be further damage to the collection of data as the number of people with a different legal 'sex' expands.

SIDE STEPPING DEMOCRACY AND SCRUTINY IN POLICY MAKING

The introduction of sex self-identification around the world, either in law or in practice, is often based on non statutory guidance by activists adopted without proper scrutiny by national parliaments or the media. This has been deliberate, as was made clear in a briefing document by international law firm Dentons. It advised gender identity campaigners to follow examples of best practice, including targeting the youth wings of political parties, keeping the debate out of the media and "piggy-backing" gender recognition on the back of more popular equality legislation, such as equal marriage. We consider this approach to be dangerous and undemocratic. Policy should always be evidence based and properly debated in parliament and across wider society.

INFLUENCE OF UNELECTED GROUPS ON POLICY MAKING AND ACCESS TO FUNDS

In Scotland we note that third sector organisations, generously funded through the Scottish Government's Equality Unit, have a disproportionate influence on policy development. This public funding is used to lobby MSPs, either individually (see lobbying register) through parliamentary receptions and training of public sector organisations.

We are concerned that these organisations – Stonewall and Scottish Trans Alliance/Equality Network – have argued that the Single Sex Exemptions in the Equality Act, designed to protect women, should be scrapped (see above). The Scottish Government website says that Scottish Trans Alliance "assist" the government "in developing our policy on gender identity and gender reassignment". We find it very worrying that a group which dismissed women's need for single sex spaces has this influence.

The public funding to organisations promoting sex self identification is considerable. The four main organisations campaigning for this change, The Equality Network, LGBT Youth Scotland, Stonewall Scotland and Scottish Trans Alliance together received almost £2.5 million from the Scottish Government between 2017 and 2020. While we agree that frontline support services for people in this group should be publicly funded, we are concerned that so much of the staff time and resources of these organisations appears to go on lobbying and campaigns on gender recognition in particular. This stands in stark contrast to grassroots voluntary women's organisations who oppose the change. They have no funds aside from crowdfunding. They depend on individuals working in their free time.

Grassroots women's organisations opposed to sex self ID do not have the same access to government as these organisations. Several have complained of their difficulty meeting ministers and officials, while funded equality "partners" have regular contact and lines of communication with government. This imbalance is undemocratic and unfair. This is extremely apparent when one examines the list of organisations consulted for the draft Equality Impact Assessment on the bill. In addition, women with concerns about sex self-identification are often demonised in an attempt to silence them. Their meetings have been cancelled due to threats, for example.

We are concerned that the power, influence and money afforded to those favouring the bill, and the silencing of those who oppose it, risks affecting the outcome of this consultation.

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

Yes

If yes, please outline these comments.:

See answer to Q4