

**Witness Statement of John Nicolson MP  
On behalf of the Appellant  
Date: 31 January 2022  
Exhibit: JN1**

**Appeal number: CA.2021.0013**

**FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
(CHARITY)**

**MERMAIDS**

**Appellant**

**and**

**THE CHARITY COMMISSION FOR ENGLAND AND WALES**

**First Respondent**

**THE TRUSTEES OF LGB ALLIANCE**

**Second Respondents**

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**WITNESS STATEMENT OF JOHN NICOLSON MP**

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I, John Nicolson MP, of the House of Commons, London, SW1A 0AA, shall say as follows:

1. I have been the Scottish National Party (“SNP”) Member of Parliament (“MP”) for Ochil and South Perthshire since 2019; before that I was the MP for East Dunbartonshire between 2015 and 2017. I am the SNP Shadow Secretary of State for Digital, Culture, Media and Sport (“DCMS”) and a member of the House of Commons DCMS Committee. I am also a Deputy Chair of the All-Party Parliamentary Group (“APPG”) on Global LGBT+ Rights; we work with major UK-based LGBT+ charities and human rights organisations to identify political priorities on LGBT+ issues, domestically and around the world, and advocate in Parliament for positive change in the lives of LGBT+ people.

2. I make this statement in support of the appeal by Mermaids (the Appellant) against the decision of the Charity Commission (the First Respondent) to register LGB Alliance (an organisation run by the Second Respondents) as a charity in April 2021. The statement was drafted with the assistance of Mermaids' solicitors.
3. In the course of making this statement, I shall refer to a bundle of documents, which is now shown to me marked '[JN1]'. References take the form '[JN1/X]', where 'X' is the exhibit page number.
4. Matters within this witness statement are within my own knowledge and belief unless I state otherwise, in which case I give the source of that knowledge or belief. Where matters are within my own knowledge, they are true. Where matters are not within my own knowledge, they are true to the best of my knowledge and belief.
5. In this statement I will focus on two areas:
  - a. Political campaigning, which has been one of LGB Alliance's core activities since its foundation.
  - b. LGB Alliance's denigration of individuals who support trans rights, which, again, has been one of its core activities since its foundation.

### **Political campaigning by LGB Alliance**

#### *Gender Recognition Act reform in Scotland*

6. In Scotland, the governing Scottish National Party ("SNP") has – not without internal debate - adopted a progressive stance on trans rights. Our position has been summarised by our leader, Nicola Surgeon: *"As an ardent, passionate feminist, and [I] have been all of my life, I don't see the greater recognition of transgender rights as a threat to me as a woman or to my feminism"* [JN1/2-5]. The Scottish Government has in many ways, in my view, been ahead of the UK Government when it comes to these issues, which may explain why LGB Alliance have focused so much of their attention north



of the border. As an MP representing a Scottish constituency in Westminster, and the Deputy Chair of the APPG on LGBT+ rights, I have closely followed the proposed changes in Scotland (although I have not been involved in the passage of the Holyrood legislation).

7. LGB Alliance seem to have used Scotland as a testing ground for their most aggressive lobbying. LGB Alliance have a significant presence in Scotland; they held a “Scotland launch” in Glasgow on 18 January 2020 and have a “Scotland” page on their website, which gives a postal address in Edinburgh [JN1/6-8]. As far as I know, LGB Alliance is not registered as a charity with the Scottish Charity Regulator, the OSCR.
8. In 2017/18, the Scottish Government started consulting on proposed reforms to the process by which trans people can obtain legal gender recognition in the form of a Gender Recognition Certificate (“GRC”), including by removing the requirement for a medical diagnosis of gender dysphoria. On 17 December 2019 a new consultation was opened on the Gender Recognition Reform (Scotland) Bill (“the GRR Bill”) which ran until 17 March 2020.
9. During the consultation period, LGB Alliance encouraged their supporters to submit responses calling for the GRR Bill to be withdrawn. They provided a set of model responses to be used, warning about “*soaring numbers of children who claim to have been born in the wrong body*”, claiming that the Bill would “*pour fuel on this fire*” by “*promoting the meaningless concept of gender identity*”, and arguing that the Bill would make “*the current epidemic worse*” [JN1/9-19].
10. In January 2020 LGB Alliance ran an advert in the *Herald* and *Scotland on Sunday* titled “*PRESS PAUSE on the Gender Recognition Bill*”, which argued that the proposed reform “*sounds reasonable enough. Until you think through the implications, especially for women and girls.*” The advert suggested that if the GRR Bill passed “*there would be nothing to stop any man gaining legal recognition as a woman with a birth certificate to match and thereby accessing women’s hospital wards, refuges, prisons, toilets or changing rooms*” and that the law could therefore be “*exploited by predatory men who wish to hurt women and girls*” [JN1/20].

11. In March 2020, they ran a similar advert in the *Scotsman* titled “*Self-ID gives predators the green light*”, which claimed that the GRR Bill would “*allow any man to ‘become’ a woman quickly, easily and with no professional oversight. Even a man who has been convicted of sexual offences against women and girls*”, and that that would mean a “*male-bodied person*” could “*choose to share a cell with a woman in prison*” or “*take a place at a women’s refuge*”. It also claimed that making it easier to obtain a GRC would increase crime against women and girls in public toilets and changing rooms, and said that “*every predator typically abuses hundreds of times. So this change to the law will harm thousands of women*” [JN1/21].

12. These materials were riddled with falsehoods and repeatedly misrepresented the law. It was inaccurate for LGB Alliance to state (in their consultation responses) that the reforms would “*allow any man who says he believes he is a woman to gain a [GRC]*” or (in the January 2020 advert) that the reforms would allow a “*predatory man*” to apply for a GRC on a whim and with “*no professional oversight*”. I exhibit a copy of the draft GRR Bill, as it stood at the time of the 2019/20 consultation, at [JN1/22-48]. It will be seen that it contains extensive safeguards: (i) only someone who had lived in their acquired gender for at least three months, and confirmed that they planned to do so permanently, could apply for a GRC [JN1/27]; (ii) a “reflection period” of three months would follow the application, after which the applicant would have to confirm that they wished to proceed [JN1/25]; (iii) the application would need to be supported by a statutory declaration and it would be a criminal offence to make a false application [JN1/40]; and (iv) the courts would have the power to revoke a GRC that has been obtained fraudulently [JN1/37]. It is true that the process is more streamlined and less medicalized than the current one, but it is not the kind of rubber-stamping exercise LGB Alliance’s materials claim it to be.

13. LGB Alliance repeatedly claims that the GRR Bill would make it easier for trans women, and (so far as LGB Alliance makes a distinction between them) men, to access women’s hospital wards, refuges, prisons, toilets and changing rooms. This is inaccurate and liable to mislead the public for a number of reasons:

- a. Under the existing law, a GRC is not required to access any of these facilities in Scotland (or elsewhere in the UK). Hospitals, refuges, prisons, toilets and

changing rooms do not routinely check birth certificates or GRCs to determine who can access them, and there is no legal requirement to do so. It follows that changing the process to obtain a GRC will have no bearing on who is able to enter (for example) women's toilets.

- b. Both today and if the GRR Bill is passed, a GRC would not guarantee access to women's facilities. Service providers can exclude trans women (whether or not they have a GRC) if they have good reasons for doing so. As paragraph 5.15 of the GRR Bill Consultation Paper explains: *"Nothing in what we are proposing will change the exceptions in the Equality Act 2010 which allow trans people to be excluded when this is a proportionate means of achieving a legitimate aim – for example single sex services, employment, health services"* [JN1/51-52]. It is therefore inaccurate to suggest that the GRR Bill would have an impact on providers of women's services who wish to restrict access to their services by trans women.
- c. Similarly, LGB Alliance's suggestion that the GRR Bill would change the position of trans people in prison – by allowing any trans woman to *"choose to share a cell with a woman"* provided they had a GRC - was also untrue. As set out in its 2014 guidance (which is currently being reviewed), the Scottish Prison Service will allocate trans women - with or without a GRC - to the women's estate, but: *"if there is clear evidence that she, as an individual, may pose a sexual offence risk, then this should be dealt with as for any other person in custody posing a risk. Only where a risk assessment determines it is justified, should she be subject to increased staff supervision or restrictions of her association with other people in custody"* [JN1/83].
- d. Even were it true that a GRC was both necessary and sufficient for entry to women's toilets or other facilities, the suggestion that *"predatory men"* would go through the lengthy process of obtaining a GRC so that they could (lawfully) enter women's spaces in order to (unlawfully) hurt women and girls simply does not make sense. The March 2020 advert, for example, suggested that making it easier to gain a GRC would increase crime against women and girls in public toilets because *"some men are prepared to risk arrest by installing hidden cameras in toilets and showers, or by upskirting in public places. The Scottish*

*Government will ensure they will no longer need to break the law to look at women who are naked or partially dressed” [JN1/21].* It is, of course, a criminal offence for anyone to install hidden cameras in toilets or engage in voyeurism and the GRR Bill does not change the law in that regard.

14. Trans women (with or without GRCs) have always used women’s toilets legally (because, as I have explained above, the existing law does not regulate these matters). If LGB Alliance’s fears were founded they would have evidence for it by now. In reality it appears that LGB Alliance is advocating, on the basis of no evidence at all, for new laws which would compel service providers to segregate their users on the basis of “birth sex”.
15. Drawing this together, it can be seen that LGB Alliance’s activity on the GRR Bill was based on fundamental misconceptions, both about the existing law and about the nature of proposed reforms. More generally, the language used by LGB Alliance in these campaigns was inflammatory. For example, their suggested consultation responses referred to an “*epidemic*” of transgender children and young people [JN1/16]. Characterising transgender identity as a disease is an unacceptable stereotype, reminiscent of similarly unacceptable stereotypes of homosexuality.
16. In December 2020, LGB Alliance ran an advert in the *Scotsman* and the *Herald on Sunday*. Drafted as an “open letter” to the UK Prime Minister, Boris Johnson, it argued that the rights of lesbian, gay and bisexual (“LGB”) people were being “*eroded*”, for example because lesbians are being “*threatened with sexual violence if they rebuff the advances of a male-bodied person who “identifies” as a woman*”. This is a sweeping generalisation about trans people, couched in inflammatory language, and I note that LGB Alliance did not provide any evidence to substantiate it. Though it should not need to be said, no one I know, or know of, who supports reform to the GRC process and/or trans rights more broadly believes that anyone should ever be pressured to sleep with anyone. LGB Alliance repeatedly misrepresents this as something LGBT organisations are lobbying for, without evidence [JN1/93].
17. On 5 May 2021, after LGB Alliance had been registered as a charity, they placed another full-page advert opposing the GRR Bill in the *Herald*, titled “*What is a lesbian?*”

In the advert they (characteristically) spoke ominously of grave risks to women and LGB people without going into much detail about what those risks were. The advert said that gay people were the “*canaries in the coal mine*” when it came to the damage that would be wrought by the GRR Bill, though the only example they came up with was lesbian dating apps apparently refusing service to women who say they are “*solely attracted to biological women*”. It is not clear to me how that alleged problem would be exacerbated by the GRR Bill, unless dating apps routinely require users to provide birth certificates / GRCs. The advert also claimed that women’s single-sex spaces “*are necessary*” - again implying, falsely, that the GRR Bill would change the law on single-sex spaces [JN1/94].

18. In all of the adverts, LGB Alliance severely misrepresent the current law and the impact of the proposed reforms, so that they can pretend to advocate for the maintenance of the legal status quo when they are in fact pushing for existing protections to be withdrawn. They seek to generate support for those propositions by falsely casting trans women as the real perpetrators of male violence against cis women.

*Politics at the United Kingdom level*

19. LGB Alliance have also engaged in extensive political activity at a UK-wide level. For example:
  - a. They have repeatedly lobbied the Equality and Human Rights Commission (“EHRC”), as shown by letters published on their website:
    - i. On 23 October 2019 [JN1/95-96] they wrote to EHRC asking it to investigate Stonewall, which they argued may be in breach of the Equality Act 2010 for its “*purposeful elision of sex and gender*” (its belief that the category of, for example, “same-sex attracted men” includes trans men).
    - ii. The EHRC replied on 14 November 2019 [JN1/97-98] to explain that the Equality Act 2010 did not, in any event, apply to Stonewall since it is

not a public body. LGB Alliance’s lawyers sent a lengthy reply on 3 February 2020 [JN1/99-105] arguing that Stonewall should be treated as a public body and urging the EHRC to open an inquiry into “*the evolution and adoption of policy by public sector organisations in relation to transgender rights*” influenced by Stonewall. The EHRC confirmed on 18 March 2020 [JN1/106-108] that such an inquiry did not fit within its identified priorities for the coming period.

iii. LGB Alliance replied on 25 March 2020 saying that “*an enormous amount of detailed research went into the letter sent to you. You do not acknowledge the findings of that research or the serious concerns expressed... This leads us to believe that you have not fully absorbed either the seriousness of the concerns we raise or the need for prompt action*” [JN1/109-110]. They suggested that the EHRC had set its priorities with too much focus on trans people’s needs, saying that most of the LGBT groups the EHRC had consulted prioritised trans people “*because Stonewall has conducted a campaign... to promote the rights of trans people ahead of those of same-sex attracted people*”. The EHRC reassured them on 29 May 2020 that it had considered LGB Alliance’s arguments fully, and that their concerns about the adequacy of the EHRC’s consultation regarding its strategic priorities – which had been open to the public – were unfounded [JN1/111-113].

iv. LGB Alliance subsequently sent an email to Marcus Bell, Director of the Equality Hub (part of the Cabinet Office), complaining about the “*rebuttal*” they had received from the EHRC and explaining that: “*We are approaching the new Chair of EHRC, Baroness Falkner, to request a meeting, as we have made no progress with [EHRC’s CEO] Rebecca Hilsenrath*”. They said that Stonewall had “*enormous influence*” over the EHRC and accused the EHRC of “*colluding*” with LGBT groups [JN1/120-121].

b. Recent FOI responses reveal that LGB Alliance has engaged in lobbying of Government Ministers and other MPs, all of which sought to promote “gender critical” beliefs:

- i. On 13 July 2020 Beverley Jackson and Kate Harris met with Kemi Badenoch (Minister for Equalities). A briefing note prepared by the Minister's staff describe it as an *"introductory meeting with the LGB Alliance to listen to their lobbying priorities"*, which were: *"Relationships and Sex Education guidance in schools, GRA reform, healthcare for young people who are questioning their gender, and diversity of thought on sex and gender identity."* In a section setting out "lines to take" in response, the note recorded that *"for many years transgender people have used single-sex spaces in their acquired gender without issue. We have no interest in curtailing or policing this"* [JN1/139-143].
- ii. On 12 October 2020 Beverley Jackson met with the strategic policy adviser to Liz Truss (Minister for Women and Equalities) proposing an agenda which included discussions about *"tightening up the provisions on single-sex spaces"* and whether Stonewall would continue to be consulted by Government departments given that (according to LGB Alliance) Stonewall *"now opposes the policy of HM Gov"* [JN1/114].
- iii. LGB Alliance emailed an official inviting them to a one-year anniversary meeting on 22 October 2020; the event was to feature discussion of the group's priorities, which included *"to lobby against legislation introducing gender self-ID"* and *"to lobby against the medicalisation of children with gender dysphoria"* [JN1/118-120].
- iv. On or around 11 March 2021, Kate Harris emailed Kemi Badenoch saying that *"18 groups who share a niche belief in gender identity theory have set out to confuse the public and present you as being unsupportive of 'LGBT' people. We will expose this as the nonsense it is"* and assuring her that LGB Alliance *"have your back"*. They explained that they would be sending a letter to the Times in support of the Minister, and trying to get media coverage for their argument that conversion therapy *"simply does not exist as a problem in the UK"* other than *"the conversion therapy of young LGB people to turn them into trans when they would be perfectly happy as*

*LGB” [JN1/115]. On 12 March 2021 they forwarded the Minister a copy of their letter to the Times, saying that “we really hope this will put the cat amongst the pigeons and be helpful for the Government” [JN1/121-122].*

v. On 30 March 2021 they wrote to all MPs about “*stop transing the gay away*”, their campaign to have gender-affirming healthcare classified as “*conversion therapy*”. The letter claimed the campaign was focused on the interests of “*children and young people, particularly LGB young people*” (though two paragraphs later they said it concerned “*young people who would grow up lesbian or gay*”, rather than bisexual) [JN1/144-145].

vi. On 27 March 2021 they emailed Baroness Barran requesting a meeting to discuss online abuse, saying that they “*are pleased to be working with GEO [Government Equalities Office], EHRC, the office of the Minister for Equalities and others to put forward our views on the importance of recognising biological sex*” [JN1/128-129].

20. In summary, therefore, LGB Alliance have engaged in extensive lobbying to freeze or roll back legal protections for trans people across the UK in order to advance their “gender critical” ideology. Such political engagement has always been at the core of their activities. Based on my interactions with them, I believe their foundational principle to be that – contrary to current law across the UK - trans women should be treated in law as being men, and trans men as being women. To this end, they seek to influence legislation and government policy by spreading fear and misinformation, and do little or nothing to advance the rights of LGB people (who, aside from anything else, are barely mentioned in most of their advocacy).

#### **LGB Alliance’s denigration of individuals and organisations who support trans rights**

21. LGB Alliance has a record of denigrating people and organisations who support trans rights, including me and many others.



22. I would defend anyone's right to put forward strong views on controversial issues and to robustly criticise individuals or organisations with whom they disagree. I have done so myself with regard to LGB Alliance. However, based on my experience of interactions with LGB Alliance, I consider they have crossed a line beyond civilised debate, seeking to push the tone of public discourse around trans rights in a more hostile, divided direction.
23. My personal interactions with LGB Alliance are a pertinent example - in particular an incident in April 2020, which I believe was my first encounter with them. On 15 April 2020, in the midst of debate about reforming the Gender Recognition Act, I shared a link to a BBC Scotland programme featuring a young trans constituent of mine [JN1/147]. I was appalled by the hostility of some of the responses. On 21 April 2020 I tweeted a screenshot of a message I had received which read: *"Hi there, absolutely no need to respond, but I thought I'd let you know that there are loads of women in the party who fully support your position on trans right. Please keep fighting the good fight so we don't descend into populism"*. I accompanied it with the words: *"Women who support #LGBTQ rights can often feel bullied by all the transphobic pile ons from the sinister @AllianceLGB (whoever they are). Here's one of many messages I've had tonight. Name withheld out of fear of intimidation"* [JN1/148].
24. LGB Alliance responded (also on 21 April 2020) by tweeting: *"To everyone who is annoyed by the defamatory remarks made about us by the MP (really!) @MrJohnNicolson, who clearly doesn't have a clue who we are or what we do: please make a donation to us IN HIS NAME and we will tweet out your message"* [JN1/149].
25. They then shared a stream of tweets, over several days, thanking individual donors for their contributions and sharing the comments they had posted with their donations on the JustGiving fundraising platform, which were often abusive about me and/or transgender people. The following are just a few examples of LGB Alliance's tweets:
- a. *"Thanks to the anonymous donor who says: "John Nicolson MP may not remember which constituency he is supposed to be standing for \*cringe\* and may not have tried "manvagina" but blocks women, and doesn't listen to their concerns. Misogynist.""* [JN1/149]

- b. *“Thanks to Georgia for her donation. She writes: “For the male chauvinist John Nicolson who doesn't care that awful men can and do take advantage of "Self-ID" policies in order to victimise women & girls. Women's rights are not yours to give away.”” [JN1/149]*
  - c. *“Thanks to Jessica Evans for her donation. Jessica writes: “Misogynist homophobe John Nicolson MP has inspired me to donate to an organisation that listens to women.”” [JN1/150]*
  - d. *“Thanks to the anonymous donor who writes: “Donating in the name of that oily spiv, John Nicolson, and all the straight male ‘lesbians’, whose lack of empathy for women rather gives the lie to their ‘womanhood’.”” [JN1/150]*
  - e. *“And thanks once again to Mr John Nicolson for donating. He writes: “I’m sorry I accused you of being a hate Group. I now realise that sexuality is different to identity and are not compatible when men dressed as women expect lesbians to fancy their Male genitals. JN x” [JN1/150]*
26. As a result of these and other comments posted by LGB Alliance supporters, JustGiving took down LGB Alliance’s fundraising page, reportedly saying that *“Violent and abusive language on the site will not be tolerated and pages which contravene our guidelines are removed” [JN1/153]*. I do not see how LGB Alliance could argue that this is an acceptable way for a registered charity to seek to advance its cause.
27. The experience was not pleasant for me. LGB Alliance’s campaign of abuse left me concerned for my personal safety and that of my staff, and indeed I felt the need to report the matter to the Speaker of the House of Commons for referral to parliamentary security authorities. More broadly, however, I am concerned about the atmosphere of fear and hostility that this approach to public communications is designed to create. As I explained in a letter to the Charity Commission on 21 April 2021: *“Being on the receiving end of LGB Alliance’s venom is unpleasant for me as a politician, but I’m infinitely more concerned about the traumatic effect its activities have on one of the most vulnerable group in society: trans people” [JN1/160]*.

28. Malcolm Clark, one of LGB Alliance's co-founders, also tweets about me quite often – always in the context of my support for trans rights - and has (for example) called me “*frothing at the mouth*”, *self-obsessed*,” a “*bloated ego*,” a “*serial fantasist*”, and an “*elephantine ego*”; he has accused me of “*idiocy and ignorance*”, has said that “*brave feminists are...constantly trolled, bullied and misrepresented by elected mediocrities and narcissists*” like me, and so on [JN1/161-165]. I have not responded to those tweets and I do not tweet about Mr Clark.

29. I am just one of LGB Alliance's many targets. They have a right, of course, to disagree with me and others about this issue. As a politician I am well used to robust debate and criticism. However, I consider that they have crossed the line beyond this into posting abusive and hateful comments that neither advance nor inform the political debate.

***Statement of Truth***

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

*Signed:*

A handwritten signature in black ink that reads "John Nicolson". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

*Date: 31 January 2022*

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On behalf of the Appellant  
Date: 28 January 2022  
Exhibit: JN1

Appeal number: CA.2021.0013

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EXHIBIT JN1

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**Nicola Sturgeon**

🕒 This article is more than 2 years old

## Sturgeon asked to clarify SNP stance on transgender rights

**Leaked messages between MSPs claim first minister is 'out of step' with her party**

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**Libby Brooks**

Wed 17 Apr 2019 17.20 BST

Nicola Sturgeon has been asked to clarify the Scottish National party's stance on transgender rights following the leak of private messages between three prominent female MSPs that claim the first minister is "out of step" with her party.

The conversation, which was tweeted as a screenshot on Tuesday evening but timestamped February, appears to have been prompted by Sturgeon's comments in an interview that she recognised some women had concerns about the implications of her government's proposed changes to the Gender Recognition Act 2004 (GRA), such as allowing individuals to change their legal gender by means of self-declaration.

Sturgeon described these concerns as “misplaced”, adding: “As an ardent, passionate feminist, and [I] have been all of my life, I don’t see the greater recognition of transgender rights as a threat to me as a woman or to my feminism.”

The leaked messages between Ruth Maguire, who is the convenor of Holyrood’s equalities and human rights committee, the Aberdeenshire East MSP, Gillian Martin, and the community safety minister, Ash Denham, appear to express derision at Sturgeon’s remarks.

They also discuss worries that the first minister is not aware of their concerns “because no one has conveyed [MSP] group feelings to her”.

It is not clear whether the MSPs were referring to concerns about the process or framing of the proposed legislation, or a more deep-seated anxiety about the policy.

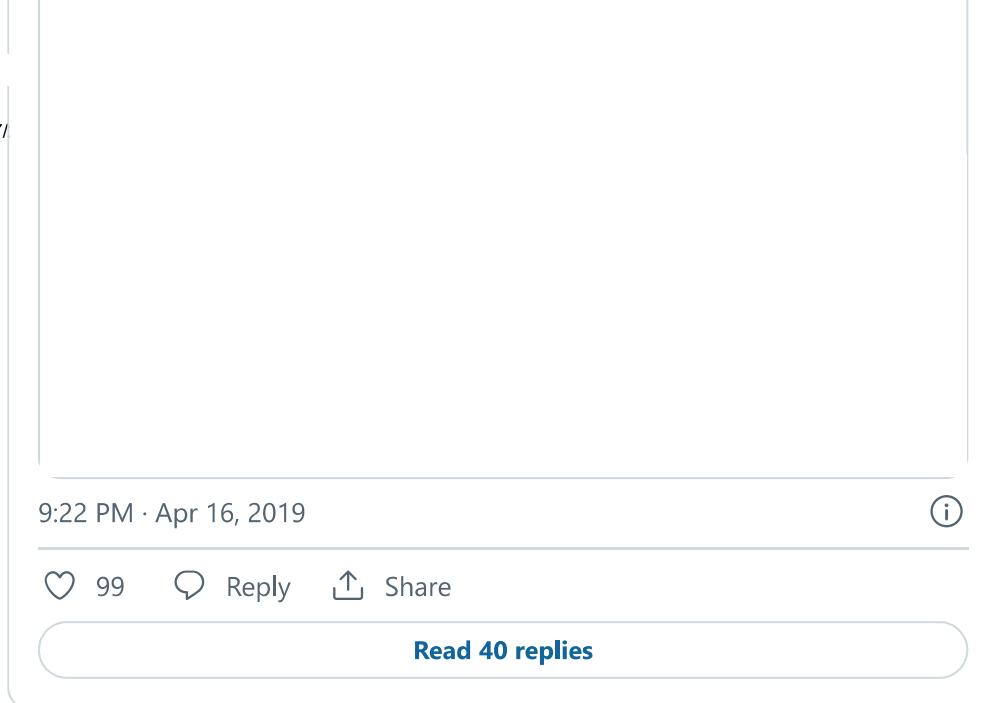
The SNP activist Jordon Henderson, who revealed the messages on Twitter and previously worked for one of the MSPs involved, said he was sent the screenshot by a current party staffer with whom he had worked at Holyrood, who wanted to raise the issue but remain anonymous.

**Jord.** xcx

@montague90



Deeply concerning to see this conversation between SNP elected members claiming the FM is out of step for backing trans rights in Scotland. @theSNP and @NicolaSturgeon must act



“I would like to hear Nicola Sturgeon confirm that she is not rolling back on her commitment to trans rights, but more immediately, this obviously raises concerns about Ruth Maguire remaining head of the equalities committee,” he said.

When Sturgeon originally pledged to [radically reform gender recognition law](#) for trans people in 2016, she said the move would be as important in her next parliamentary term as equal marriage was to the previous one. But the proposals were not included in [last autumn’s programme for government](#), which has been taken by some as an indication of the concern within the SNP about the policy.

Responding on Twitter, the director of Stonewall [Scotland](#), Colin Macfarlane, called on the Scottish government to publish its response to the consultation on the act, stating: “It’s been over a year since the consultation closed. The lack of response is causing real anxiety among trans people.”

The leaked conversation reflects other concerns about trans policy in Scotland. In February, a group of 25 academics, activists and former MSPs [signed an open letter](#) calling on Sturgeon to commit to carrying out a full equality impact assessment of the proposed changes to the GRA.

In the same month, a [highly critical report](#) on proposed changes to Scotland’s census - such as adding a third non-binary alternative to the male/female sex question - found a serious lack of consultation with women’s groups had led to the publication of legislation that was “not fit for purpose” and conflated sex and gender identity.

Fiona Robertson, the SNP’s national women’s and equalities convener, said: “The SNP, like most other parties, ran on a manifesto promise to support GRA reform, non-binary



recognition and self ID. I am working with trans and non-binary members of the party to make our community more inclusive and to build solidarity between equalities groups, and I encourage any elected representatives with concerns to talk to us.”

An SNP spokesperson said: “The SNP supports trans rights and women’s rights as part of our firm commitment to human rights and equality,” adding that “it is important that any discussion on trans rights and women’s rights is conducted respectfully”.

Maguire, Martin and Denham have been approached for comment.

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## LGB Alliance (Scotland)

We Scots have long been proud of finding our own way to do things, or express ourselves, whether it's in our distinct legal system or health service or ... through our poetry and culture. The same is true now of the defence of lesbian, bisexual and gay rights. The LGB Alliance's campaigns in Scotland are driven by Scots and address the specific concerns and needs of Scots.

## Caidreachas LGD (Alba)

Bha sinne na h-Albannaich moiteil riamh às an dòighean a nì sinn rudan againn fhìn, no a chuireas sinn sinn an cèill, co-dhiù 's e an siostam lagha no an t-seirbheis slàinte fa leth no ... tro ar cuid bàrdachd is cultar. Tha an aon rud fìor an-dràsta ri linn dìon còraichean leasbach, dà-sheòrsach agus gèidh. Tha na h-iomairtean aig Caidreamh LGD ann an Alba air an stiùireadh aig Albannaich gus aghaidh a chur air iomnaidhean is feumannan nan Albannach fhèin.

Title

## New Campaign: Gender Recognition Act

The Scottish government's plan in 2020 to change the Gender Recognition Act was opposed by a loose coalition of women's groups, civil society activists and LGB Alliance Scotland. We were happy to play a role in highlighting the risks of Self-ID and will continue to oppose the reform. It's been dropped but only for now and could well be in the manifesto for the 2021 elections. *If it is we will campaign against it.*

## Hate Crime Bill

This controversial bill is currently progressing going through the Scottish Parliament. We oppose it because it creates a new offence of 'stirring up hatred' which is defined so vaguely it's open to potential abuse. The Bill also redefines 'sex' in ways that are *contrary to the Equalities Act*. For example, it defines heterosexual as 'attracted to a different sex' and bisexual as 'attracted to the same sex or a different sex'.

This is meaningless and is an attempt to insert the concept of non-binary into Scottish legislation for the first time

## Children

A growing body of evidence suggests that many children who describe themselves, or are diagnosed, as having been '*born in the wrong body*' would otherwise grow up to be lesbian, gay or bisexual. **Over 80% of children who suffer from gender dysphoria outgrow these feelings after puberty.**

The new bill will increase the pressure on many young Scots to consider and embrace the idea that they may have been born in the wrong body. That's why the LGB Alliance is organising opposition to the bill in concert with groups from across Scottish society and concerned citizens of all political parties and none.

If you're Scottish and/or live in Scotland and want to help our campaign, **contact us.**

You can also write to us at:

Title

**LGB Alliance**  
Summit House  
4-5 Mitchell Street  
Edinburgh  
EH6 7BD

'Tha mi cinnteach, nam bithinn ag èirigh suas ann an Sìorrachd Àir, gum biodh cuid a' cur air shùilean dhomh gur caileag a bh' annam, air a ghlacadh ann an corp balaich, agus cò aige tha fios dè an toradh a bhiodh sin' – Malcolm Clark, Caidreamh LGD (Alba)

Mas ann à Alba a tha thu, no thu a' fuireach ann an Alba agus airson taic a chumail ris an iomairt, cuir fios thugainn gu...

Seòladh puist-d

No sgrìobh gu: Bogsa OP Alba



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# PRESS PAUSE

Title

The consultation is now closed – Thank You for your support.

## Gender Recognition Bill Consultation Guide

Defend the rights of women, children and minorities, including people who are attracted to the same sex, by rejecting the Scottish Government's Gender Recognition Reform Bill.

Press Pause

Stop the Gender Free-For-All

## Foreword

This document is a simple guide to the Scottish government's proposed new law which aims to change the way in which people in Scotland can legally change their sex. We believe the Bill is dangerous both to people who want to change their sex and to the rest of society.



We believe there are better ways to offer support and assistance to people who want to change their sex and extend their rights. This Bill isn't the way to do that. It is vague, contradictory, and full of ideas that are too controversial and strange to enter Scotland's legal framework.

Only by rejecting this Bill can we then go on as a country to discuss the issues behind it properly and respectfully. Together that will allow us to discover a better way to meet all our people's needs.

The Bill is currently out for consultation. The government wants to hear from you what you think. If you want to have YOUR views considered you have to get your response in by March 17<sup>th</sup> 2020.

Why not get it done right now?

If you already know what you think about the proposed law it won't take more than 5 minutes to fill in. The government is only asking five questions. Most are simple Yes or No questions. If you wish to make comments, you can make them one or two sentences long. There's no need to fill the space!

Even if you have strong feelings, please don't be rude. Harsh comments may lead to your submission being rejected. We believe in respectful, polite debate. We have no argument with transsexuals or trans people. Many support our argument and oppose this badly constructed and risky Bill.

To open the consultation on the official Scottish government site click [here](#):-

[Click here to open the consultation form in a new tab.](#)

You can then jump back and forth between this guide and the consultation form as you fill it in.

Under each question, the government asks for comments. For ease and speed, we have supplied some of the thoughts from which you can form your own comments if you choose. These should be in your own words. Please don't just copy and paste our comments in.

If you want to go straight to the questions and our suggested answers roll down to Questions and Answers .. below. In the meantime, here's what we hope is some helpful information.

## Useful Background Information

## Current Provisions

At the moment, if someone wants to change their legal sex they must have a diagnosis of 'gender dysphoria', a recognised medical condition in which a person feels great discomfort about their biological sex. They then have a two- year process which includes an assessment that involves both a doctor and a psychiatric evaluation. All this helps the individual concerned, allowing them time to change their mind, as well as offering protection to the public from people who might exploit the system. People often change their minds. People who apply can currently be turned down if it's thought they are gaming the rules.

## Proposed Change

The Scottish government is now proposing to sweep away this entire system that has worked for two decades. Instead, there will be no need for medical diagnosis, no assessment by specialists and no proper time for anyone to change their mind. The system will essentially become automatic. If someone wants to change their legal sex they will merely have to sign a declaration that they have lived in their chosen new sex for three months. What that means in practice has not been defined. After a brief cooling-off period (of a further three months), which involves no face-to-face interviews or even questions, they will be given a Gender Recognition Certificate. This certificate, in turn, allows them to apply for a birth certificate that will state in the case of a man that he was born female and vice versa.

Title

## Access Risks

We hope you'll agree that all this is worryingly vague and open to abuse. Without monitoring, what is to stop any man saying he is a woman? He could then gain access to women's spaces like changing rooms, and women's only events. Women's sport could be destroyed.

If all this seems risky enough, the dangers are made worse by a trend in society that has exploded recently. It used to be overwhelmingly only 'transsexuals' who applied for Gender Recognition Certificates. Transsexuals usually took hormones and went through complex and lengthy surgery to try to become as similar to their chosen sex as possible. Male transsexuals, for example, would often have their penis surgically removed and grow breasts.

## Change in approach and trends

However, over the last decade, a new and troubling approach has gained ground. Increasingly, people who want to change their sex argue it doesn't matter what a person looks or behaves like. It only matters what's in their head. You can look and act like the most masculine man in Scotland but if you have an inner 'gender



identity' in your mind that tells you that you are female then you must be allowed to call yourself a woman, and gain legal recognition as one. We believe there is little or no evidence 'gender identity' actually exists and even if it does...no one has managed to define or properly explain it. Yet this strange idea has now been put at the heart of the Scottish government's proposed new law.

## Guidance on the proposed law

In its guidance to the proposed law, it says 'people are the best judge of what is in their minds'. It is so convinced that 'gender identity' is real it says it is safe to allow anyone to self-declare their gender. Under the new rules, anyone can say they believe they are really different sex and gain legal proof that they are; no matter how they behave or what they look like. This means potentially thousands of men who look just like other men will gain Gender Recognition Certificates. This will create complete confusion and allow any man who might want to harm women or girls to gain access to women's spaces. How would you know which men have Gender Recognition Certificates and which don't? *Legally you're not allowed to ask to see one.* The Scottish government has refused to explain in practice how this chaos is to be prevented. It simply claims that men will not exploit this situation to get access to girls or women. This is surely willfully naïve.

## Title

## Danger to Children

This Bill is also a danger to children. There has been an almost 4000% rise in the number of girls being referred to gender identity clinics across Britain in less than a decade. Many parents are deeply worried about the soaring numbers of kids who say they have 'gender dysphoria'. We know from the stories of the many young people who later change their minds and regret their transition that much of this is driven by peer pressure, social media and fashion. Meanwhile, growing numbers of children are being fast-tracked towards lifelong medicalisation, including hormones to change their body, infertility, and potential surgery. By lowering the age at which a child can gain a Gender Recognition Certificate from 18 to 16 and enshrining the vague notion of 'gender identity' in law the Scottish government will be pouring fuel on this fire.

## LGBT Rights at risk

The Bill is being sold to the public as part of LGBT rights. But it is actually deeply homophobic and is not supported by a large section of the lesbian and gay community. The ill-defined concept of 'gender identity' is being used to replace – and being confused with – the simple, clear reality of biological sex. This will undermine the rights of lesbians and gays whose rights are protected in the Equality Act (2010) where they are defined as people who are 'same sex' attracted. Get rid of 'sex' in the law and you get rid of lesbian and gay rights.



We have outlined only some of the biggest problems with this proposed law. We hope we've convinced you there are enough serious issues to require it to be scrapped. Remember: there is no pressing need for this law and certainly no need great enough to run such huge risks.

The government says we have no option but to accept this law because we should, they say, follow 'international best practice'. They point to the fact that Belgium, Malta and Argentina have passed similar laws. But when did we let the Argentinians, the Maltese or anyone else decide our laws for us? We must decide for ourselves what is good for Scotland and Scots.

Question 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?

Title

Answer



This question is optional. You can jump to question 3 if you wish. However we suggest you say YES

***Here are some comments we suggest you make. Remember please make them in your own words.***

- The government hasn't defined what 'live in their acquired gender means'. What does it even mean to 'acquire a gender'? We reject the idea that people are born in the wrong body. We believe biological sex is unchangeable
- Anyway, the government's new process doesn't have anyone check on whether an applicant is actually living in their acquired gender (whatever that means). That makes it meaningless.
- Reducing the length of time to get a GRC from 2 years to just 3 months reduces the time for an applicant to change their mind. Many people do change their mind. That makes this Bill bad for trans people.





- Removing all medical observation and the requirement for a medical diagnosis means many applicants will no longer receive any expert advice or psychiatric counselling at a time of huge personal change. That makes this Bill bad for trans people.
- The 3-month waiting time is an acknowledgement there must be some risk. Otherwise, there would be no waiting time at all. If there IS a risk, then the waiting time should be much longer, as it is at present and it should be monitored as it is now.
- Self-declaration of sex is too new and controversial an idea to be enshrined in the law of the land.
- Gender identity is too controversial and new an idea to be fast-tracked into the statute book.
- Withdraw the Bill. It is too risky both for society and for applicants.

Question 2



Title

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?

Answer:



This question is also optional. You can jump to question 3 if you wish.

***We suggest you say YES. Here are some points we suggest you might want to make. Remember please make them in your own words.***

- The government has replaced a two-year process in which expert doctors and psychiatrists could monitor the progress of a person with a mere “3 months living in their acquired gender” plus this 3-month period of reflection. It’s

neither safe for society nor the person who wants to change their sex because there is no expert input.

- The 3-month reflection time is an acknowledgement that people might change their mind. Otherwise there would be no reflection time. So the government should leave the process at 2 years as it is currently. And since clearly they accept that someone might change their mind the government needs to leave the process as it is with medical or psychiatric input.
- If people are going to change their mind then the medical diagnosis of dysphoria should be left as it is in the current Act.
- Withdraw this Bill. It is too risky both for society and for applicants.

Question 3



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

Title

Answer:



No

## ***Here are some points you may wish to make in the comments section***

- There are already soaring numbers of children claiming to have been born in the wrong body. This Bill will pour fuel on this fire.
- There's been an almost 4000% increase in Britain in less than a decade of girls being referred to gender identity clinics, where they are often set on a path of life-long medical treatment. That treatment is so new it is highly experimental. But we know it can end in sterility or infertility. All this is a direct result of the promotion of the meaningless concept of 'gender identity'. Inserting this dangerous concept into Scotland's law book now will make things even worse by giving it legitimacy.
- In schools today, tomboy girls and gentle or effeminate boys are increasingly being told they are the wrong gender. This is a disaster for the vast majority,



whose only fault is that they don't fit social stereotypes.

- By lowering the age at which a kid can get a Gender Recognition Certificate the government is encouraging kids to believe they are in the wrong body. Kids will want to 'get ready' when they are 14 and 15 for their 16<sup>th</sup> birthday when they want to be physically ready for the 'big day' when they can apply for their certificate. They will want to start hormones earlier, or if girls perhaps start wearing chest binders to make themselves look more like boys.
- All the evidence shows that the vast majority of children who suffer from gender dysphoria grow out of it after puberty. This Bill will prevent them doing that by promoting the meaningless concept of gender identity.
- The government should instead be encouraging children to be healthy and happy in their own bodies, not making the current epidemic worse.
- Withdraw this Bill.
- It is a danger to Scotland's children.

Question 4



Title

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

Answer:



Yes

## ***Here are some points you may wish to make in the comments section***

- If enacted, this bill will allow any man who says he believes he is a woman to gain a Gender Recognition Certificate and with that also a birth certificate that states he was born female. Within a few years, there could be thousands of men in Scotland who would never have got a GRC before who will now be able to claim they are legally women. This will undermine women's sport. It will also place in danger women and girls in changing rooms and hospitals wards...



because it will become impossible to stop ANY man wandering into women's spaces whenever they feel like it.

- The Bill will further encourage children to believe they may have been born in the wrong body...leading many to a lifetime of medical intervention. The epidemic of girls taking powerful hormones to turn themselves into boys will be made even worse. No government should encourage children to believe they are born in the wrong body.
- The Bill also undermines the whole basis of lesbian and gay identity by denying the fundamental reality of biological sex. It is a deeply homophobic piece of legislation.
- The Bill should be withdrawn. There is no need for it. Transsexuals currently have the same rights as everyone else. Many transsexuals and other trans people agree this law will be damaging to their rights.
- The only people who should be able to change their sex on their birth certificate are those who have a medical diagnosis of gender dysphoria and who go through a sincere and lengthy process which is monitored professionally by doctors.
- This Bill would change the meaning of two words that human beings have understood for thousands of years: 'man' and 'woman'. Biological sex is perhaps the most fundamental factual reality about human beings. All this should not be torn up or ignored in favour of vague 'inner feelings' that can't be defined and science does not understand.

Title

Question 5



Do you have any comments on the draft impact assessments?

Answer:



Yes



***Here are some points you may wish to make in the comments section***

- Many experts have pointed out the government's Impact Assessments are deeply flawed. They do not follow the Scottish Government's own standards for assessing the possible consequences of new laws. They claim incorrectly that this Bill will have no negative impact on women. But the Bill will actually have profoundly bad consequences for women.
- The assessments take absolutely no account of the impact on children of encouraging belief in 'gender identity'. This is a serious omission.
- The assessments do not take any account of the growing number of people who change sex and then regret it and try to de-transition. Hundreds of people across the UK are now trying to piece their lives and their bodies together after regretting their decision to 'change their sex'. Failure even to mention this is a serious omission.
- The assessments fail to analyse critically the risks of people, especially men, gaming the system.
- The government claims that a statutory declaration and a vow will prevent any malign person exploiting its new process. But if vows and promises worked there would be no one in jail. Criminals or those with malign intent will not be put off by statutory declarations.
- The government's assessments are naive and wildly over-optimistic.
- This Bill would change the meaning of two words that human beings have understood for thousands of years: 'man' and 'woman'. Biological sex is perhaps the most fundamental factual reality about human beings. All this should not be torn up or ignored in favour of vague 'inner feelings' that can't be defined and science does not understand.
- **Withdraw the Bill in its entirety**

---

## When you are finished answering the questions click on Continue

On the next page enter your name & email address, tick that you are responding as an individual, and select your country of residence, and your privacy choices.

Click Continue, skip through the simple evaluation questions and then press

**Submit Response.**

You may just have helped save Scotland from a disastrous piece of legislation.

**If you'd like to keep up to date with news about the consultation**

<https://lgballiance.org.uk/scotland-consultation/>

Follow [@AllianceLGB on Twitter](#)

If you'd like to help us encourage other people to submit responses donate towards our campaign at [Just Giving](#).



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# PRESS PAUSE on the Gender Recognition Bill

The new Gender Recognition Reform Bill is described by the Scottish Government as an easier way for people to legally change their sex.

Sounds reasonable enough. Until you think through the implications, especially for women and girls.

The proposed reform removes the need for psychiatric assessment and medical diagnosis. Nor will there be a need for any physical change such as surgery. There would be nothing to stop any man gaining legal recognition as a woman with a birth certificate to match and thereby accessing women's hospital wards, refuges,

prisons, toilets or changing rooms. It will create a gender free-for-all.

**This is a bad law being pushed through in haste. It is a law that could be exploited by predatory men who wish to hurt women and girls.**

We believe that the majority of genuinely trans people will recognise the harm that malign individuals could cause if this Bill is rushed through Parliament. We think they will welcome the chance to determine the best way forward.

Equality matters! The right of a person to self-identify as a woman must not outweigh the right for a woman to be safe, supported and valued.

Some lobby groups claim that lesbians and gay men support these changes. We don't. These changes will undermine our rights.

The Government must withdraw this Bill and think again. Join the campaign for a reasoned debate and urge your MSP to Press Pause so that more voices can be heard.

Just an opportunity for a proper debate on the implications of the Bill. That's all.

WHAT  
DO WE  
WANT?

WHEN DO  
WE WANT  
IT?

Let's give it as long as it needs. Why rush when there's so much at stake?

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LGB Alliance, Summit House, 4-5 Mitchell Street, Edinburgh, EH6 7BD

# Self-ID gives predators the green light.

The new Gender Recognition Bill would allow any man to 'become' a woman more quickly, easily and with no professional oversight. Even a man who has been convicted of sexual offences against women and girls.

He won't have to change his name or shave off his beard. He won't have to talk to his doctor or a counsellor. He won't have to take hormones or undergo surgery.

It will mean a male-bodied person can enter changing rooms at a sports centre, choose to share a cell with a woman in prison, take a place at a women's refuge or perform intimate medical procedures on women. If a woman challenges them or objects to her own loss of

privacy – she may be charged with a hate crime.

**We believe it is a dangerously lax law that will be exploited by predatory men who pose a real threat to women and girls.**

If you think that's far fetched, consider that some men are prepared to risk arrest by installing hidden cameras in toilets and showers, or by up-skirting in public places. The Scottish Government will ensure they no longer need to break the law to look at women who are naked or partially dressed, because it will be legal for them to access any women's space. Whether women like it or not.

We know that every predator typically abuses hundreds of

times. So this change to the law will harm thousands of women.

Many genuine trans people are concerned that a weak, poorly thought through Bill trivialises their decision to transition and poses a threat to women and girls.

Why is the Scottish Government giving the green light to this important change without consulting more fully with those in harm's way? Why are the rights of women and girls being ignored?

**Write to your MSP and respond to the Government's consultation at [lgballiance.org.uk/scotland-consultation](http://lgballiance.org.uk/scotland-consultation) before 17 March.**

**Join us at the GR Bill demo at Holyrood at 2pm on Saturday**

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## PUBLICATION - CONSULTATION PAPER

# Gender Recognition Reform (Scotland) Bill: consultation

Published: **17 Dec 2019**

Directorate: [Justice Directorate](#)

Part of: [Law and order](#)

ISBN: 9781839604331



The draft Bill reforms the process by which trans people gain legal recognition of their lived gender through a gender recognition certificate.



This document is part of a collection



Supporting documents

Choose section



## Annex C: Draft Gender Recognition Reform (Scotland) Bill

# Gender Recognition Reform (Scotland) Bill

[CONSULTATION DRAFT]

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## Gender Recognition Reform (Scotland) Bill [CONSULTATION DRAFT]

An Act of the Scottish Parliament to reform the grounds and procedure for obtaining gender recognition; and for connected purposes

*References to the 2004 Act*

**1 Meaning of “2004 Act”**

In this Act, the “2004 Act” means the Gender Recognition Act 2004.

*Application for gender recognition certificate*

**2 Persons who may apply**

After section 8 of the 2004 Act insert—

*“Applications to the Registrar General for Scotland*

**8A Persons who may apply to Registrar General for Scotland for gender recognition certificate**

- (1) A person of either gender may apply to the Registrar General for Scotland for a gender recognition certificate on the basis of living in the other gender if the person—
  - (a) is aged at least 16, and
  - (b) meets the condition in subsection (2).
- (2) The condition is that the person—
  - (a) is the subject of a Scottish birth register entry, or
  - (b) is not the subject of such an entry, but is ordinarily resident in Scotland.
- (3) In this Act, “Scottish birth register entry” means an entry containing a record of a person’s birth or adoption—
  - (a) in a register kept by the Registrar General for Scotland, or
  - (b) of which a certified copy is kept by the Registrar General for Scotland.
- (4) For the purposes of this Act, if a person is the subject of more than one UK birth register entry, the person is the subject of a Scottish birth register entry if the person’s most recent birth register entry is a Scottish birth register entry.”.

**3 Notice to be given on receipt of application**

After section 8A of the 2004 Act (inserted by section 2) insert—

**“8B Notice to be given by Registrar General for Scotland on receipt of application**

- (1) On receipt of an application under section 8A(1), the Registrar General for Scotland must notify the applicant in writing of the following matters—

- (a) that the application has been received,
- (b) that the reflection period has begun,
- (c) the date on which that period ends,

- (d) whether, if the application were granted, the Registrar General would



**“8B Notice to be given by Registrar General for Scotland on receipt of application**

1/27

- (1) On receipt of an application under section 8A(1), the Registrar General for Scotland must notify the applicant in writing of the following matters—
  - (a) that the application has been received,
  - (b) that the reflection period has begun,
  - (c) the date on which that period ends,
  - (d) whether, if the application were granted, the Registrar General would issue a full gender recognition certificate or an interim gender recognition certificate,
  - (e) any statutory declaration or evidence which the applicant would have to give to the Registrar General under section 8D in order for the Registrar General to issue a full gender recognition certificate instead of an interim gender recognition certificate, if the application were granted,
  - (f) the effect of subsections (3) and (4).
- (2) At the same time as giving notice under subsection (1), the Registrar General must give the applicant such information as to the effect of the issue of a gender recognition certificate as the Registrar General considers appropriate.
- (3) The Registrar General must not determine the application unless, after the expiry of the reflection period, the applicant confirms by notice in writing that the applicant wishes to proceed with the application.
- (4) The application is to be treated as having been withdrawn if, at the end of the period of two years beginning with the day on which the reflection period ends, the applicant has not given the Registrar General a notice of confirmation under subsection (3) or withdrawn the application.
- (5) In this section, the “reflection period” is the period of three months beginning with the day on which the Registrar General gives notice under subsection (1).”.

**4 Grounds on which application to be granted**

After section 8B of the 2004 Act (inserted by section 3) insert—

**“8C Grounds on which application to be granted by Registrar General for Scotland**

- (1) The Registrar General for Scotland must grant an application under section 8A(1) if—
  - (a) the application includes a statutory declaration by the applicant that the applicant—
    - (i) is aged at least 16,
    - (ii) meets the condition in section 8A(2),
    - (iii) has lived in the acquired gender throughout the period of three months ending with the day on which the application is made, and
    - (iv) intends to continue to live in the acquired gender permanently, and
  - (b) the application and the notice of confirmation under section 8B(3) comply with the requirements of—
    - (i) section 8D, and
    - (ii) any regulation made under section 8U(1)(d).

http

- (b) the application and the notice of confirmation under section 8B(3) comply with the requirements of—
  - (i) section 8D, and
  - (ii) any regulations made under section 8U(1)(d).
- (2) The Registrar General must reject an application under section 8A(1) if not required by subsection (1) to grant it.
- (3) In this Act, “the acquired gender”, in relation to a person who is applying or has applied for a gender recognition certificate under section 8A(1), means the gender in which the person is living when the application is made.”.

## 5 **Statutory declarations and other evidence in relation to marriage or civil partnership**

After section 8C of the 2004 Act (inserted by section 4) insert—

### **“8D Statutory declarations and other evidence to be given to Registrar General for Scotland in relation to marriage or civil partnership**

- (1) An application under section 8A(1) must include a statutory declaration by the applicant as to whether or not the applicant is married or a civil partner.
- (2) Subsection (3) applies where—
  - (a) at the time the application is made, the applicant and another person (“P”) are the parties to a marriage or a civil partnership, and
  - (b) at the time the applicant gives notice of confirmation under section 8B(3), the applicant and P are still, or have since become, the parties to a marriage or civil partnership.
- (3) Either the application or the notice of confirmation must include—
  - (a) a statutory declaration by the applicant that the applicant—
    - (i) wishes the marriage or (as the case may be) civil partnership to continue after the issue of a full gender recognition certificate, or
    - (ii) does not wish the marriage or civil partnership to continue after the issue of a full gender recognition certificate, and
  - (b) either—
    - (i) a statutory declaration by P that P wishes the marriage or civil partnership to continue after the issue of a full gender recognition certificate, or
    - (ii) a statutory declaration by the applicant that no such declaration by P is included.
- (4) Where an application includes a statutory declaration under paragraph (a) or (b) of subsection (3) (the “first declaration”)—
  - (a) the notice of confirmation may include a further statutory declaration under that paragraph (the “second declaration”), and
  - (b) if there is a second declaration, the second declaration replaces the first declaration.



- (a) the notice of confirmation may include a further statutory declaration under that paragraph (the “second declaration”), and
  - (b) if there is a second declaration, the second declaration replaces the first declaration.
- (5) If an application or notice of confirmation includes a statutory declaration under subsection (3)(b)(i), the Registrar General for Scotland must give P notice that the application has been made.
- (6) Subsection (7) applies where—
  - (a) the applicant is married or a civil partner at the time the application is made, and
  - (b) before the applicant gives notice of confirmation under section 8B(3)—
    - (i) the marriage or (as the case may be) civil partnership is dissolved or annulled, or
    - (ii) the applicant’s spouse or (as the case may be) civil partner dies.
- (7) The notice of confirmation must include evidence of the dissolution or annulment or (as the case may be) death.
- (8) Subsection (7) applies whether or not the application included the statutory declarations mentioned in subsection (3).”.

## 6 Certificate to be issued

After section 8D of the 2004 Act (inserted by section 5) insert—

### “8E Certificate to be issued by the Registrar General for Scotland

- (1) Where the Registrar General for Scotland grants an application under section 8A(1), the Registrar General must issue a gender recognition certificate to the applicant.
- (2) The certificate is to be a full gender recognition certificate if, at the time the application was made, the applicant was neither married nor in a civil partnership.
- (3) The certificate is to be a full gender recognition certificate if—
  - (a) at the time the application was made, the applicant was married or in a civil partnership, and
  - (b) the Registrar General is satisfied that, before the applicant gave notice of confirmation under section 8B(3)—
    - (i) the marriage or (as the case may be) civil partnership was dissolved or annulled, or
    - (ii) the applicant’s spouse or (as the case may be) civil partner died.
- (4) Subsections (5) and (6) apply where—
  - (a) at the time the application was made, the applicant was married to or in a civil partnership with another person (“P”), and
  - (b) at the time the applicant gave notice of confirmation under section 8B(3), the applicant and P were still, or had since become, the parties to a marriage or civil partnership.
- (5) The certificate is to be a full gender recognition certificate if both parties wish the marriage or (as the case may be) civil partnership to continue after the issue of a full gender recognition certificate.

- (a) at the time the application was made, the applicant was married to or in a civil partnership with another person (“P”), and
- (b) at the time the applicant gave notice of confirmation under section 8B(3), the applicant and P were still, or had since become, the parties to a marriage or civil partnership.
- (5) The certificate is to be a full gender recognition certificate if both parties wish the marriage or (as the case may be) civil partnership to continue after the issue of a full gender recognition certificate.
- (6) Otherwise, the certificate is to be an interim gender recognition certificate.
- (7) If the Registrar General issues a full gender recognition certificate to a person under subsection (5), the Registrar General must give the person’s spouse or civil partner notice of the issue of the certificate.
- (8) The Scottish Ministers may by regulations specify the content and form of gender recognition certificates.
- (9) The Scottish Ministers must consult the Registrar General before making regulations under subsection (8).”.

## 7 **Issue of full gender recognition certificate to person with interim certificate**

After section 8E of the 2004 Act (inserted by section 6) insert—

*“Issue of full certificate in place of interim certificate (Scotland)*

### **“8F Issue of full certificate by Registrar General for Scotland to applicant who is married or civil partner**

- (1) The Registrar General for Scotland must issue a full gender recognition certificate to a person to whom an interim gender recognition certificate has been issued if—
  - (a) the person applies to the Registrar General for a full gender recognition certificate under this subsection within the period of six months beginning with the day on which the interim gender recognition certificate is issued, and
  - (b) the Registrar General is satisfied that the condition in subsection (2) is met.
- (2) The condition is—
  - (a) when the interim gender recognition certificate was issued, the applicant and another person (“P”) were the parties to a marriage or civil partnership,
  - (b) the applicant and P are still, or have since become, the parties to a marriage or civil partnership, and
  - (c) the application under subsection (1)(a) includes a statutory declaration by P that P wishes the marriage or (as the case may be) civil partnership to continue after the issue of a full gender recognition certificate.
- (3) The Registrar General must reject an application under subsection (1) if not required by that subsection to grant it.
- (4) Where an application is made under subsection (1), the Registrar General must give P—
  - (a) notice of the application, and
  - (b) if the application is refused, notice of the issue of the full gender recognition certificate.



to continue after the issue of a full gender recognition certificate.

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- (3) The Registrar General must reject an application under subsection required by that subsection to grant it.
- (4) Where an application is made under subsection (1), the Registrar General must give P—
  - (a) notice of the application, and
  - (b) if the application is granted, notice of the issue of the full gender recognition certificate.

#### **8G Application under section 8F: death of spouse or civil partner**

- (1) Where an application is made under section 8F(1) and the applicant's spouse or (as the case may be) civil partner dies before the application is determined—
  - (a) the application is to be treated as an application made under section 8K(1), and
  - (b) that application is to be treated as having been made at the time when the application under section 8F(1) was made.
- (2) The Registrar General for Scotland must specify the period within which the applicant is to produce the required evidence in support of the new application.
- (3) In this section—

“new application” means the application under section 8K(1) which the person is, by virtue of subsection (1), treated as having made,

“required evidence” means the evidence required by section 8K(4)(b).

#### **8H Issue of full certificate by sheriff to applicant who is married or civil partner**

- (1) A sheriff must issue a full gender recognition certificate to a person to whom an interim gender recognition certificate has been issued if—
  - (a) the person applies to the sheriff for a full gender recognition certificate within the period of six months beginning with the day on which the interim gender recognition certificate is issued, and
  - (b) the sheriff is satisfied that the condition in subsection (2) is met.
- (2) The condition is—
  - (a) when the interim gender recognition certificate was issued, the applicant and another person (“P”) were the parties to a marriage or a civil partnership,
  - (b) the applicant and P are still, or have since become, the parties to a marriage or civil partnership, and
  - (c) the applicant is not in possession of a statutory declaration by P that P wishes the marriage or (as the case may be) civil partnership to continue after the issue of a full gender recognition certificate.
- (3) The sheriff must reject an application under subsection (1) if not required by that subsection to grant it.

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- (4) Where an application is made under subsection (1), the sheriff must—

(a) give P notice of the application, and



- (c) the applicant is not in possession of a statutory declaration by which the applicant wishes the marriage or (as the case may be) civil partnership to continue after the issue of a full gender recognition certificate.
- (3) The sheriff must reject an application under subsection (1) if not required by that subsection to grant it.
- (4) Where an application is made under subsection (1), the sheriff must—
  - (a) give P notice of the application, and
  - (b) if the application is granted—
    - (i) give P notice of the issue of the full gender recognition certificate, and
    - (ii) give a copy of the certificate to the Registrar General for Scotland.
- (5) Proceedings under this section are to be heard in private if the applicant so requests.

#### **8I Issue of full certificate by court on divorce or dissolution of civil partnership (Scotland)**

- (1) Subsection (2) applies where—
  - (a) a court grants—
    - (i) a decree of divorce on the ground that an interim gender recognition certificate has been issued to a party to the marriage, or
    - (ii) a decree of dissolution on the ground that an interim gender recognition certificate has been issued to a party to a civil partnership, and
  - (b) a full gender recognition certificate has not already been issued to that party under section 8H.
- (2) The court must—
  - (a) issue a full gender recognition certificate to the party to whom the interim gender recognition certificate was issued, and
  - (b) give a copy of the full gender recognition certificate to the Registrar General for Scotland.
- (3) In this section, a reference to an interim gender recognition certificate includes a reference to an interim gender recognition certificate issued under this Act as it applies in England and Wales or Northern Ireland.

#### **8J Issue of full certificate by Registrar General for Scotland following divorce or dissolution of civil partnership**

- (1) The Registrar General for Scotland must issue a full gender recognition certificate to a person to whom an interim gender recognition certificate has been issued if—
  - (a) the person applies to the Registrar General for a full gender recognition certificate under this subsection, and
  - (b) the Registrar General is satisfied that the condition in subsection (2) is met.

- (2) The condition is that, in proceedings instituted during the period of six months beginning with the day on which the interim gender recognition certificate was

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- (2) The condition is that the applicant's spouse or civil partner died within the period of six months beginning with the day on which the inter. recognition certificate was issued.
- (3) The Registrar General must reject an application under subsection (1) if not required by that subsection to grant it.
- (4) An application under subsection (1) must—
  - (a) be made within the period of six months beginning with the day on which the death occurs,
  - (b) include evidence of the death and the date on which it occurred.

**8L Application to Registrar General for Scotland or sheriff: calculation of periods of time**

- (1) Subsection (2) applies for the purpose of calculating the end of a period of months under sections 8B to 8K.
- (2) Where the period would end on the 29th, 30th or 31st day of a month but for the fact that the month does not include such a day, the period ends on the last day of the month.”.

*Gender recognition outwith Scotland*

**8 Gender recognition obtained outwith Scotland**

After section 8L of the 2004 Act (inserted by section 7) insert—

**“8M Gender recognition obtained elsewhere in the United Kingdom**

- (1) Where a person has been issued with a full gender recognition certificate under this Act as it applies in England and Wales or Northern Ireland—
  - (a) the person is to be treated for all purposes as if the person had, when that certificate was issued, been issued with a full gender recognition certificate by the Registrar General for Scotland, and
  - (b) accordingly, the person's gender is the acquired gender.
- (2) In this Act, “the acquired gender”, in relation to a person mentioned in subsection (1), means the person's gender under the law of England and Wales or Northern Ireland following the issue of the certificate.

**8N Gender recognition obtained outwith the United Kingdom**

- (1) Where a person has obtained overseas gender recognition—
  - (a) the person is to be treated for all purposes as if the person had, when that recognition was obtained, been issued with a full gender recognition certificate by the Registrar General for Scotland, and
  - (b) accordingly, the person's gender is the acquired gender.
- (2) But subsection (1) does not apply if it would be manifestly contrary to public policy to treat the person as mentioned in subsection (1)(a).
- (3) In this Act—
  - (a) “overseas gender recognition” means gender recognition obtained in a country or territory outwith the United Kingdom which resulted in a person's gender under the law of that country or territory becoming male instead of female, or female instead of male,
  - (b) “the acquired gender”, in relation to a person mentioned in subsection (1) (where that subsection applies), means the person's gender under the law

- (2) But subsection (1) does not apply if it would be manifestly contrary to public policy to treat the person as mentioned in subsection (1)(a).
- (3) In this Act—
- (a) “overseas gender recognition” means gender recognition obtained in a country or territory outwith the United Kingdom which resulted in a person’s gender under the law of that country or territory becoming male instead of female, or female instead of male,
  - (b) “the acquired gender”, in relation to a person mentioned in subsection (1) (where that subsection applies), means the person’s gender under the law of the country or territory in which the person obtained gender recognition, following the recognition being obtained.
- (4) This section—
- (a) applies whether or not the person has been issued with a confirmatory gender recognition certificate under section 8O,
  - (b) does not apply to a person who has been issued with a full gender recognition certificate under this Act (including as it applies in England and Wales or Northern Ireland).

## **8O Issue of confirmatory gender recognition certificate by Registrar General for Scotland**

- (1) A person who has obtained overseas gender recognition may apply to the Registrar General for Scotland for a confirmatory gender recognition certificate.
- (2) A confirmatory gender recognition certificate is a certificate confirming that a person has obtained overseas gender recognition.
- (3) An application under subsection (1) must include—
  - (a) evidence of the overseas gender recognition obtained by the applicant, or
  - (b) if the applicant is unable to provide such evidence, a statutory declaration by the applicant as to the matters set out in subsection (4).
- (4) Those matters are—
  - (a) that the applicant has obtained overseas gender recognition,
  - (b) the reason that the applicant is unable to provide evidence of that recognition,
  - (c) the gender acquired by the applicant as a result of that recognition,
  - (d) the country or territory in which the recognition was obtained,
  - (e) the date on which the recognition was obtained,
  - (f) the place or register where details of the recognition—
    - (i) are available, or
    - (ii) if they are not available, would have been available and the reason why they are not available.
- (5) An application under subsection (1) must also set out the applicant’s reasons for making the application.
- (6) The Registrar General—



- (e) the date on which the recognition was obtained,
  - (f) the place or register where details of the recognition—
    - (i) are available, or
    - (ii) if they are not available, would have been available and the reason why they are not available.
- (5) An application under subsection (1) must also set out the applicant's reasons for making the application.
- (6) The Registrar General—
  - (a) may reject an application under subsection (1) if—
    - (i) the application includes a statutory declaration under subsection (3)(b), and
    - (ii) the Registrar General is not satisfied that evidence of the overseas gender recognition was unavailable,
  - (b) otherwise, must grant an application under subsection (1) if satisfied that the applicant has obtained overseas gender recognition.
- (7) Where the Registrar General grants an application under subsection (1), the Registrar General must issue a confirmatory gender recognition certificate to the applicant.
- (8) The Scottish Ministers may by regulations specify the content and form of confirmatory gender recognition certificates.
- (9) The Scottish Ministers must consult the Registrar General before making regulations under subsection (8).

## **8P Determination by court of question as to overseas gender recognition**

- (1) This section applies where a question arises as to whether—
  - (a) a person has obtained overseas gender recognition, or
  - (b) it would be manifestly contrary to public policy to treat a person who has obtained overseas gender recognition as if the person had been issued with a full gender recognition certificate by the Registrar General for Scotland, in accordance with section 8N(1).
- (2) A court may make an order determining the question mentioned in subsection (1)—
  - (a) where the question arises in the course of civil proceedings before the court, or
  - (b) on an application being made to the court by a person who has an interest in the question.
- (3) An order under subsection (2) may determine the question—
  - (a) for all purposes, or
  - (b) for such purposes as are specified in the order.
- (4) Proceedings under this section are to be heard in private if the person to whom the question relates so requests.

- (b) for such purposes as are specified in the order.
- (4) Proceedings under this section are to be heard in private if the person to whom the question relates so requests.
- (5) Where a court makes an order under subsection (2), the court may make such other order as it considers appropriate in consequence of, or otherwise in connection with, the order under subsection (2).
- (6) In this section, "a court" means the Court of Session or a sheriff.
- (7) This section does not apply in relation to a person to whom a full gender recognition certificate has been issued under this Act (including as it applies in England and Wales or Northern Ireland)."

*Further provision about applications and certificates*

**9 Review and appeal of decisions**

After section 8P of the 2004 Act (inserted by section 8) insert—

*"Review and appeal of decisions by Registrar General for Scotland*

**8Q Review of Registrar General for Scotland's decision on application for certificate**

- (1) Subsection (2) applies where the Registrar General for Scotland has determined an application under—
  - (a) section 8A(1) for a gender recognition certificate,
  - (b) section 8F(1), 8J(1) or 8K(1) for a full gender recognition certificate, or
  - (c) section 8O(1) for a confirmatory gender recognition certificate.
- (2) The person who made the application (the "applicant") may request that the Registrar General reviews the determination on the ground that—
  - (a) the application was incorrectly rejected, or
  - (b) in the case of an application under section 8A(1), the wrong type of gender recognition certificate was issued.
- (3) A request under subsection (2) is to be made in writing.
- (4) The Registrar General—
  - (a) must comply with the request if it is made within the period of 40 working days beginning with the day on which the application is determined,
  - (b) may (but need not) comply with the request if it is made after the end of that period.
- (5) Following a review under this section, the Registrar General must—
  - (a) if satisfied that—
    - (i) the application was incorrectly rejected, grant the application and

determined,

- (b) may (but need not) comply with the request if it is made after the end of that period.

(5) Following a review under this section, the Registrar General must—

(a) if satisfied that—

- (i) the application was incorrectly rejected, grant the application and issue a certificate to the applicant,
- (ii) the wrong type of gender recognition certificate was issued, revoke the certificate that was issued and issue a new certificate to the applicant,

(b) otherwise, confirm the original determination.

(6) For the purposes of subsection (4)(a), a working day is any day other than a Saturday, a Sunday or a day which, under the Banking and Financial Dealings Act 1971, is a bank holiday in Scotland.

## **8R Appeal to sheriff against Registrar General for Scotland's decision following review**

(1) Where the Registrar General for Scotland determines a review under section 8Q, the person who requested the review may appeal to the sheriff against the determination.

(2) An appeal under subsection (1)—

- (a) must be made within the period of 28 days beginning with the day on which the determination is made,
- (b) may be made on a point of law only,
- (c) is to be heard in private if the appellant so requests.

(3) On an appeal under subsection (1) the sheriff may—

(a) allow the appeal and—

- (i) where the application was incorrectly rejected, issue the certificate applied for,
- (ii) where the wrong type of certificate was issued, revoke the certificate that was issued and issue a new certificate,

(b) allow the appeal and refer the matter to the Registrar General for redetermination, or

(c) dismiss the appeal.

(4) Subsection (5) applies where—

- (a) the sheriff issues a full gender recognition certificate under subsection (3)(a),
- (b) the appellant and another person (“P”) were the parties to a marriage or civil partnership when the application to which the appeal relates was made, and
- (c) when the appeal is determined, the appellant and P are still, or have since become, the parties to a marriage or civil partnership.

(5) The sheriff must give P notice of the issue of the certificate.

(6) The sheriff must give a copy of a certificate issued under subsection (3)(a) to the Registrar General.

## **8S Revocation of certificate on application to the sheriff**

(1) A person who has an interest in a gender recognition certificate may apply to the sheriff for the revocation of the certificate on the ground that—

- (a) the Registrar General for Scotland issued the wrong type of gender recognition certificate under section 8E,
- (b) the application for the certificate was fraudulent, or
- (c) the person to whom the certificate was issued was incapable of—



(3)(a),  
(b) the appellant and another person (“P”) were the parties to a marriage or civil partnership when the application to which the appeal relates was made, and

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(c) when the appeal is determined, the appellant and P are still, or have since become, the parties to a marriage or civil partnership.

(5) The sheriff must give P notice of the issue of the certificate.

(6) The sheriff must give a copy of a certificate issued under subsection (3)(a) to the Registrar General.

## **8S Revocation of certificate on application to the sheriff**

(1) A person who has an interest in a gender recognition certificate may apply to the sheriff for the revocation of the certificate on the ground that—

(a) the Registrar General for Scotland issued the wrong type of gender recognition certificate under section 8E,

(b) the application for the certificate was fraudulent, or

(c) the person to whom the certificate was issued was incapable of—

(i) understanding the effect of obtaining the certificate, or

(ii) validly making the application for the certificate.

(2) A person who has an interest in a confirmatory gender recognition certificate may apply to the sheriff for the revocation of the certificate on the ground that the application for the certificate was fraudulent.

(3) Where the sheriff grants an application under subsection (1) or (2), the sheriff—

(a) must revoke the certificate,

(b) if the application was made under subsection (1)(a), must—

(i) issue a new certificate to the person to whom the revoked certificate was issued, or

(ii) refer the matter back to the Registrar General for redetermination, and

(c) may make such other order as the sheriff considers appropriate in consequence of, or otherwise in connection with, the revocation of the certificate.

(4) Subsection (5) applies where—

(a) the sheriff issues a full gender recognition certificate under subsection (3)(b)(i),

(b) the person to whom the certificate is issued (“A”) and another person (“P”) were the parties to a marriage or civil partnership when the application under section 8A(1) to which the certificate relates was made, and

(c) when the application under subsection (1) is determined, A and P are still, or have since become, the parties to a marriage or civil partnership.

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(5) The sheriff must give P notice of the issue of the certificate.

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(6) The sheriff must give a copy of a certificate issued under subsection (3)(b)(i) to the Registrar General.

(7) Proceedings under this section are to be heard in private if the person to whom the certificate was issued so requests.”.

## **10 Correction of error in certificate**

After section 8S of the 2004 Act (inserted by section 9) insert—

*“Correction of errors (Scotland)*

### **8T Correction of error in certificate by Registrar General for Scotland**

(1) Subsection (2) applies where the Registrar General for Scotland becomes aware that a gender recognition certificate or confirmatory gender recognition certificate issued by the Registrar General contains an error.

(2) The Registrar General may issue a corrected certificate to the person to whom the certificate relates.



- application under section 8A(1) to which the certificate relates was made, and
- (c) when the application under subsection (1) is determined, A and B are still, or have since become, the parties to a marriage or civil partnership.
- (5) The sheriff must give P notice of the issue of the certificate.
  - (6) The sheriff must give a copy of a certificate issued under subsection (3)(b)(i) to the Registrar General.
  - (7) Proceedings under this section are to be heard in private if the person to whom the certificate was issued so requests.”.

## 10 Correction of error in certificate

After section 8S of the 2004 Act (inserted by section 9) insert—

*“Correction of errors (Scotland)*

### 8T Correction of error in certificate by Registrar General for Scotland

- (1) Subsection (2) applies where the Registrar General for Scotland becomes aware that a gender recognition certificate or confirmatory gender recognition certificate issued by the Registrar General contains an error.
- (2) The Registrar General may issue a corrected certificate to the person to whom the certificate relates.
- (3) Nothing in this section enables the Registrar General to issue—
  - (a) a full gender recognition certificate in place of an interim gender recognition certificate,
  - (b) an interim gender recognition certificate in place of a full gender recognition certificate.”.

## 11 Further provision about applications

After section 8T of the 2004 Act (inserted by section 10) insert—

*“Further provision about applications to Registrar General for Scotland*

### 8U Further provision about applications to Registrar General for Scotland

- (1) The Registrar General for Scotland may by regulations make provision for or about—
  - (a) the form and manner in which an application is to be made,
  - (b) fees payable in connection with an application,
  - (c) the form and manner in which a notice under section 8B(3) is to be given,
  - (d) information or evidence to be included in an application or a notice under section 8B(3) (in addition to the information and evidence required by this Act),
  - (e) such other matters in connection with the making of an application as the Registrar General considers appropriate.
- (2) In subsection (1), “application” means an application made to the Registrar General for Scotland under—
  - (a) section 8A(1) for a gender recognition certificate,
  - (b) section 8F(1), 8J(1) or 8K(1) for a full gender recognition certificate,
  - (c) section 8O(1) for a confirmatory gender recognition certificate.
- (3) Regulations under subsection (1)(d) may require information or evidence to be included by way of statutory declaration.
- (4) Regulations under subsection (1)(e)

- (c) such other matters in connection with the making of an application as the Registrar General considers appropriate.
- (2) In subsection (1), “application” means an application made to the Registrar General for Scotland under—
  - (a) section 8A(1) for a gender recognition certificate,
  - (b) section 8F(1), 8J(1) or 8K(1) for a full gender recognition certificate,
  - (c) section 8O(1) for a confirmatory gender recognition certificate.
- (3) Regulations under subsection (1)(d) may require information or evidence to be included by way of statutory declaration.
- (4) Regulations under subsection (1)—
  - (a) may be made only with the consent of the Scottish Ministers,
  - (b) may make—
    - (i) incidental, supplementary, consequential, transitional, transitory or saving provision,
    - (ii) different provision for different purposes,
  - (c) may modify any enactment (including this Act).”.

## 12 Copies of certificates to be given to other Registrars General

After section 10 of the 2004 Act insert—

### “10A Copies of certificates to be given by Registrar General for Scotland to other Registrars General

- (1) This section applies in relation to a full gender recognition certificate—
  - (a) issued by the Registrar General for Scotland, or
  - (b) a copy of which is given to the Registrar General for Scotland under section 8H(4)(b)(ii), 8I(2)(b), 8R(6) or 8S(6).
- (2) The Registrar General for Scotland must send a copy of the certificate to the Registrar General for England and Wales if the person to whom it was issued—
  - (a) is the subject of a UK birth register entry and the Registrar General for England and Wales keeps a certified copy of, or a register containing, that entry, or
  - (b) is a party to a marriage or a civil partnership under the law of England and Wales.
- (3) The Registrar General for Scotland must send a copy of the certificate to the Registrar General for Northern Ireland if the person to whom it was issued—
  - (a) is the subject of a UK birth register entry and the Registrar General for Northern Ireland keeps a certified copy of, or a register containing, that entry, or
  - (b) is a party to a marriage or a civil partnership under the law of Northern Ireland.”.

## 13 Continuity of marriage or civil partnership

After section 11D of the 2004 Act in

### “11E Continuity in Scotland of marriage or civil partnership

- (1) The continuity of a marriage or civil partnership is not affected by the issuing of a full gender recognition certificate to either or both of the parties to the



- entry, or
- (b) is a party to a marriage or a civil partnership under the law of Ireland.”.

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### 13 Continuity of marriage or civil partnership

After section 11D of the 2004 Act insert—

#### “11E Continuity in Scotland of marriage or civil partnership

- (1) The continuity of a marriage or civil partnership is not affected by the issuing of a full gender recognition certificate to either or both of the parties to the marriage or (as the case may be) civil partnership.
- (2) Subsection (3) applies in relation to a marriage or civil partnership under the law of England and Wales, Northern Ireland or a country or territory outwith the United Kingdom.
- (3) Subsection (1)—
  - (a) has effect notwithstanding anything in that law which affects the continuation of a marriage or civil partnership merely by virtue of the change or changes of gender occurring by virtue of the issue of the full gender recognition certificate or certificates,
  - (b) does not affect that law.”.

### 14 Offences

After section 22 of the 2004 Act insert—

#### “22A Offence of making false declaration or application (Scotland)

- (1) A person commits an offence if the person knowingly makes a statutory declaration in accordance with this Act or regulations made under it which is false in a material particular.
- (2) A person commits an offence if the person knowingly includes any other information which is false in a material particular in—
  - (a) an application under—
    - (i) section 8A(1) for a gender recognition certificate,
    - (ii) section 8F(1), 8J(1) or 8K(1) for a full gender recognition certificate, or
    - (iii) section 8O(1) for a confirmatory gender recognition certificate, or
  - (b) a notice of confirmation under section 8B(3).
- (3) A person who commits an offence under subsection (1) or (2) is liable—
  - (a) on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
  - (b) on conviction on indictment to imprisonment for a term not exceeding two years or a fine (or both).”.

#### *Further modification of enactments*

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### 15 Further modification of enactments

The schedule further modifies the 2004 Act and modifies other enactments.

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#### *Final provisions*

### 16 Ancillary provision

(b) on conviction on indictment to imprisonment for a term not exceeding two years or a fine (or both).”.

*Further modification of enactments*

**15 Further modification of enactments**

The schedule further modifies the 2004 Act and modifies other enactments.

*Final provisions*

**16 Ancillary provision**

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.
- (2) Regulations under this section may—
  - (a) make different provision for different purposes,
  - (b) modify any enactment.
- (3) Regulations under this section—
  - (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,
  - (b) otherwise, are subject to the negative procedure.

**17 Commencement**

- (1) This section and sections 16 and 18 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under this section may—
  - (a) include transitional, transitory or saving provision,
  - (b) make different provision for different purposes.

**18 Short title**

The short title of this Act is the Gender Recognition Reform (Scotland) Act 2021.

**SCHEDULE**  
*(introduced by section 15)*

**FURTHER MODIFICATION OF THE 2004 ACT AND MODIFICATION OF OTHER ENACTMENTS**

**PART 1**

**GENDER RECOGNITION ACT 2004**

- 1 The 2004 Act is amended in accordance with this Part.
- 2 The following provisions are repealed—
  - (a) section 1 and schedule 1,
  - (b) sections 2 to 8, apart from section 4(4),
  - (c) sections 11A to 11D,
  - (d) section 21.
- 3 In section 10—



2 The following provisions are repealed—

- (a) section 1 and schedule 1,
- (b) sections 2 to 8, apart from section 4(4),
- (c) sections 11A to 11D,
- (d) section 21.

3 In section 10—

- (a) in subsection (1), after “issued” insert “under this Act as it applies in England and Wales and Northern Ireland”,
- (b) subsection (1A) is repealed,
- (c) in subsection (1B)—
  - (i) after “Gender Recognition Panel” insert “under this Act as it applies in England and Wales or Northern Ireland”,
  - (ii) the words “or the sheriff” are repealed,
  - (iii) for “protected Scottish marriage or a protected Scottish civil partnership” substitute “marriage solemnised in Scotland or civil partnership registered in Scotland”.

4 In section 17—

- (a) in subsection (1), for “a full gender recognition certificate has been issued to any person or revoked” substitute “a person’s gender has become, or ceased to be, the acquired gender”,
- (b) in subsection (2), for “a full gender recognition certificate has been issued to any person or revoked” substitute “a person’s gender has become, or ceased to be, the acquired gender”.

5 In section 18, in subsection (2), for “Court of Session” substitute “sheriff”.

6 In section 20, in subsection (1), for “to whom a full gender recognition certificate has been issued were not” substitute “had not become”.

7 In section 22, for subsection (2) substitute—

“(2) “Protected information” means information which relates to a person—

- (a) who has made an application for a gender recognition certificate or a confirmatory gender recognition certificate under this Act, and which concerns that application or any other application by the person under this Act, or
- (b) whose gender has become the acquired gender, and which concerns the person’s gender before it became the acquired gender.

(2A) In this section, a reference to an application under this Act includes a reference to an application under this Act as it applies in England and Wales or Northern Ireland.”.

8 In section 24—

- (a) after subsection (5) insert—

“(5ZA) Regulations made by the Scottish Ministers under section 8E(8) or 8O(8)—

- (a) may make incidental, supplementary, consequential, transitional, transitory or saving provision,
- (b) may make different provision for different purposes,
- (c) are subject to the negative procedure.”.

(a) after subsection (5) insert—

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“(5ZA) Regulations made by the Scottish Ministers under section 8E(8) or 8O(8)—

- (a) may make incidental, supplementary, consequential, transitional, transitory or saving provision,
- (b) may make different provision for different purposes,
- (c) are subject to the negative procedure.”,

(b) in subsection (5A), after “under” insert “—

- (a) section 8U(1) are subject to—
  - (i) the affirmative procedure if they add to, omit or replace any part of the text of an Act,
  - (ii) otherwise, the negative procedure,
- (b)”.

9 (1) Section 25 is amended as follows.

(2) In subsection (1)—

(a) in the definition of “the acquired gender”, for “section 1(2)” substitute “sections 8C(3), 8M(2) and 8N(3)(b),”;

(b) after the definition of “the appointed day” insert—

““confirmatory gender recognition certificate” means a certificate issued as such under section 8O(6)(b), 8Q(5)(a) or 8R(3)(a),”;

(c) for the definition of “full gender recognition certificate” substitute—

““full gender recognition certificate” means a certificate issued as such under section 8E(2), (3) or (5), 8F(1), 8H(1), 8I(2)(a), 8J(1), 8K(1), 8Q(5)(a), 8R(3)(a) or 8S(3)(b),

“gender recognition certificate” means a full gender recognition certificate or an interim gender recognition certificate,

“interim gender recognition certificate” means a certificate issued as such under section 8E(6), 8Q(5)(a), 8R(3)(a) or 8S(3)(b),”;

(d) after the definition of “interim gender recognition certificate” (inserted by paragraph (c)) insert—

““overseas gender recognition” has the meaning given by section 8N(3)(a),

“Scottish birth register entry” has the meaning given by section 8A(3),”;

(e) the definitions of the following terms are repealed—

- (i) approved country or territory,
- (ii) gender dysphoria,
- (iii) Gender Recognition Panel,

(iv) protected civil partnership,

(v) protected marriage,

(vi) protected Scottish civil partnership,

(vii) protected Scottish marriage,

(viii) registered psychologist



- (iv) protected civil partnership,
- (v) protected marriage,
- (vi) protected Scottish civil partnership,
- (vii) protected Scottish marriage,
- (viii) registered psychologist,
- (ix) statutory declaration of consent.

(3) After subsection (1) insert—

“(1A) A reference in any enactment to the fact that a person’s gender has become the acquired gender under this Act includes a reference to the fact that a person’s gender is the acquired gender by virtue of section 8M or 8N.”.

10 (1) Part 2 of schedule 3 is amended as follows.

(2) In paragraph 14—

(a) before sub-paragraph (1) insert—

“(A1) Sub-paragraph (1) applies where the Registrar General for Scotland—

- (a) issues a full gender recognition certificate or a confirmatory gender recognition certificate to a person who is the subject of a Scottish birth register entry,
- (b) receives a copy of a full gender recognition certificate issued to such a person by a court under section 8H, 8I, 8R or 8S, or
- (c) receives under section 10(1) a copy of a full gender recognition certificate issued to a person under this Act as it applies in England and Wales or Northern Ireland.”.

(b) in sub-paragraph (1), the words from “If” to “person” are repealed,

(c) in sub-paragraph (2), for “6(1)” substitute “8T(1)”.

(3) In paragraph 19—

(a) for sub-paragraph (1) substitute—

“(1) Sub-paragraphs (2) and (3) apply if, after an entry has been made in the Gender Recognition Register in relation to a person—

- (a) the Court of Session or a sheriff revokes the certificate to which the entry relates, or
- (b) the High Court of Justice makes an order quashing the decision to grant the person’s application for a gender recognition certificate under this Act as it applies in England and Wales or Northern Ireland.”.

(b) in sub-paragraph (2), for “or the Court of Session” substitute “, Court of Session or sheriff”,

(c) after sub-paragraph (3) insert—

“(4) The Registrar General must cancel an entry in the Gender Recognition Register if the Registrar General revokes the certificate to which the entry relates.”.

(4) In paragraph 20A—

(a) in sub-paragraph (4)—

- (a) the Court of Session or a sheriff revokes the certificate to which the entry relates, or
- (b) the High Court of Justice makes an order quashing the decision to grant the person's application for a gender recognition certificate under this Act as it applies in England and Wales or Northern Ireland.”,
- (b) in sub-paragraph (2), for “or the Court of Session” substitute “, Court of Session or sheriff”,
- (c) after sub-paragraph (3) insert—
- “(4) The Registrar General must cancel an entry in the Gender Recognition Register if the Registrar General revokes the certificate to which the entry relates.”
- (4) In paragraph 20A—
- (a) in sub-paragraph (4)—
- (i) in the definition of “qualifying Scottish civil partnership”, after “certificate” insert “or a confirmatory gender recognition certificate”,
- (ii) in the definition of “qualifying Scottish marriage”, after “certificate” insert “or a confirmatory gender recognition certificate”,
- (b) after that sub-paragraph insert—
- “(5) In sub-paragraph (4), a reference to a full gender recognition certificate includes a reference to a full gender recognition certificate issued under this Act as it applies in England and Wales or Northern Ireland.”.

## PART 2

### OTHER ENACTMENTS

#### *Divorce (Scotland) Act 1976*

- 11 In section 1 of the Divorce (Scotland) Act 1976 (grounds of divorce)—
- (a) in subsection (1)(b), after “2004” insert “(as it applies in Scotland, England and Wales or Northern Ireland)”,
- (b) in subsection (3B)—
- (i) in paragraph (a), for “under the Gender Recognition Act 2004, the Gender Recognition Panel issue a full gender recognition certificate” substitute “a full gender recognition certificate under the Gender Recognition Act 2004 (as it applies in Scotland, England and Wales or Northern Ireland) is issued”,
- (ii) in paragraph (b), for “4E” substitute “8H”.

#### *Criminal Law (Consolidation) (Scotland) Act 1995*

- 12 In section 44 of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements and declarations), after subsection (2) insert—
- “(2A) Subsection (2)(a) does not apply to a statutory declaration made in accordance with the Gender Recognition Act 2004 or regulations made under section 8U(1)(d) of that Act.”.

#### *Civil Partnership Act 2004*

- 13 In section 117 of the Civil Partnership Act 2004 (dissolution)—
- (a) in subsection (2)(b), after “(c. 7)” insert “(as it applies in Scotland, England and Wales or Northern Ireland)”,
- (b) in subsection (3A)—
- (i) in paragraph (a), for “under the Gender Recognition Act 2004, the Gender Recognition Panel issue a full gender recognition certificate” substitute “a full gender recognition certificate under the Gender Recognition Act 2004 (as it applies in Scotland, England and Wales or Northern Ireland) is issued”,
- (ii) in paragraph (b), for “4E” substitute “8H”.



and declarations), after subsection (2) insert—  
“(2A) Subsection (2)(a) does not apply to a statutory declaration made in accordance with the Gender Recognition Act 2004 or regulations made under section 8U(1)(d) of that Act.”.

*Civil Partnership Act 2004*

- 13 In section 117 of the Civil Partnership Act 2004 (dissolution)—
- (a) in subsection (2)(b), after “(c. 7)” insert “(as it applies in Scotland, England and Wales or Northern Ireland)”;
  - (b) in subsection (3A)—
    - (i) in paragraph (a), for “under the Gender Recognition Act 2004, the Gender Recognition Panel issue a full gender recognition certificate” substitute “a full gender recognition certificate under the Gender Recognition Act 2004 (as it applies in Scotland, England and Wales or Northern Ireland) is issued”;
    - (ii) in paragraph (b), for “4E” substitute “8H”.

*Marriage and Civil Partnership (Scotland) Act 2014*

- 14 In section 30 of the Marriage and Civil Partnership (Scotland) Act 2014 (renewed marriage or civil partnership following issue of full gender recognition certificate)—
- (a) in subsection (1)(a)—
    - (i) for “protected Scottish marriage” substitute “marriage solemnised in Scotland”;
    - (ii) after “certificate” insert “or a confirmatory gender recognition certificate”;
  - (b) in subsection (1)(b)—
    - (i) for “protected Scottish civil partnership” substitute “civil partnership registered in Scotland”;
    - (ii) after “certificates” insert “or a confirmatory gender recognition certificate”;
  - (c) in subsection (2)—
    - (i) in paragraph (a), the words “protected Scottish” are repealed;
    - (ii) in paragraph (b), the words “protected Scottish” are repealed;
  - (d) for subsection (7) substitute—

“(7) In this section—

    - (a) “full gender recognition certificate” has the meaning given by section 25(1) of the Gender Recognition Act 2004 and includes a full gender recognition certificate issued under that Act as it applies in England and Wales or Northern Ireland;
    - (b) “confirmatory gender recognition certificate” has the meaning given by section 25(1) of the Gender Recognition Act 2004.”.

*Courts Reform (Scotland) Act 2014*

- 15 In schedule 1 of the Courts Reform (Scotland) Act 2014 (civil jurisdiction of summary sheriff), after paragraph 5 insert—
- “*Proceedings in relation to overseas gender recognition*
- 5A Proceedings for or in relation to an order under section 8P of the Gender Recognition Act 2004.”.

*The Gender Recognition (Approved Countries and Territories) Order 2011*

- 16 The Gender Recognition (Approved Countries and Territories) Order 2011 (S.I. 2011/1630) is revoked.

1/27 16 The Gender Recognition (Approved Countries and Territories) Order 2011 (S.I. 2011/1630) is revoked.

NEXT

Annex D: Draft Explanatory Notes to The Gender Recognition Reform (Scotland) Bill



PREVIOUS

Annex B: Consultation Questions

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# Gender Recognition Reform (Scotland) Bill: consultation

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The draft Bill reforms the process by which trans people gain legal recognition of their lived gender through a gender recognition certificate.

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## Chapter 5: The Impact of Gender Recognition Reform on Women

### Introduction

5.01. The Scottish Government recognises there are concerns that have been raised about the potential impact of gender recognition reform on women. This Chapter addresses these concerns. The Scottish Government recognises the concerns must be fully considered.

5.02. The Government also recognises that issues have been raised in relation to the reform of the GRA which are not always about the process itself, but in relation to other public policy. As outlined in

<https://www.gov.scot/publications/gender-recognition-reform-scotland-bill-consultation-scottish-government/pages/7/>

the statement to Parliament by the Cabinet Secretary for Social Security and Older People on 20 June 2019, the Scottish Government is developing guidance to make sure that policy makers and service providers understand better how to ensure that the rights of women and trans people can be collectively realised. The guidance will be used across the Scottish Government, will be available to all public authorities and will be publicly available.

5.03. The Scottish Government is clear that reforming the GRA does not diminish the rights of women. The Government remains committed to the protection of women as well as achieving equality and challenging discrimination.

5.04. The Scottish Government's strategy for preventing and eradicating all forms of violence against women and girls is *Equally Safe*.<sup>[45]</sup> This strategy is rooted in our analysis that this violent and abusive behaviour is carried out predominantly by men against women and girls precisely because they are female. This behaviour stems from systemic, deep-rooted women's inequality and includes domestic abuse, rape, sexual assault, commercial sexual exploitation (like prostitution), and so called 'honour based' violence like female genital mutilation and forced marriage.

5.05. The strategies to prevent these crimes and to take effective action when they occur, wherever that may be, will continue to be rooted in our analysis that this unacceptable behaviour is carried out predominantly by men against women and girls. Reforming the GRA will not change the Scottish Government's approach in these areas.

5.06. The Cabinet Secretary said in her Parliamentary statement that concerns about the impact GRA reform would have on women were not, at their core concerns about trans women. "Rather they are about men who seek to abuse women. The fear is that some men will misuse trans equality to access women and do us harm. I understand that. I understand that predatory men will always seek to find ways to harm women. That's not a new problem in Scottish or global society – nor is it a problem created by, or the fault of, trans people."

5.07. People cannot take advantage of the GRA to hide a criminal offence. Individuals can obtain disclosure certificates for employment purposes, but previous names must be provided as part of that process. If a trans person is applying for a disclosure certificate, they can apply using their present name, and that name is all that they have to include on the application form. Separately, and in the strictest confidence, they must also provide any previous names to Disclosure Scotland. It is a criminal offence to make a false statement in relation to an application for a disclosure certificate. As stated in [Chapter 4](#), it will remain a criminal offence for anyone to lie or be fraudulent in order to obtain a GRQ.

5.08. This consultation includes a draft Equality Impact Assessment (EQIA) at [Annex J](#). The next chapter of this consultation seeks comments on the draft Impact Assessments. When the Gender Recognition Reform (Scotland) Bill is introduced into Parliament, the Scottish Government will at the same time publish a final version of the EQIA, taking account of comments received as a result of this consultation.

## The Equality Act 2010

### General

<https://www.gov.scot/publications/gender-recognition-reform-scotland-bill-consultation-scottish-government/pages/7/>

5.09. As outlined in [Chapter 2](#), the Equality Act 2010 (“the 2010 Act”) is key equality legislation. It is generally a reserved matter for the UK Government and cannot be amended by the Scottish Parliament. A key aim of the 2010 Act is to prevent discrimination against people who belong to one of the nine protected characteristics.<sup>[46]</sup> The nine protected characteristics include “sex” and “gender reassignment”.

5.10. For “sex” section 11 of the 2010 Act provides—

“In relation to the protected characteristic of sex—

(a) a reference to a person who has a particular protected characteristic is a reference to a man or to a woman.”

5.11. In section 212(1) of the 2010 Act the definition of “woman” is “means a female of any age” and the definition of “man” is “means a male of any age”. Therefore, under the 2010 Act, the protected characteristic of sex includes a reference to a female (of any age) and a reference to a male (of any age).

5.12. For “gender reassignment”, section 7(1) of the 2010 Act provides that

“A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.”

5.13. As a consequence, the “gender reassignment” protected characteristic is wider than people who have obtained a full GRC: it covers people who intend to, are transitioning, or have transitioned. To have the protected characteristic a person does not need to have undergone medical or surgical treatment. The Explanatory Notes to section 7 of the 2010 Act<sup>[47]</sup> give as an example:

“A person who was born physically female decides to spend the rest of her life as a man. He starts and continues to live as a man. He decides not to seek medical advice as he successfully ‘passes’ as a man without the need for any medical intervention. He would have the protected characteristic of gender reassignment for the purposes of the Act.”

5.14. The 2010 Act has a number of exceptions to the general provisions on non-discrimination. Some of these exceptions are directly relevant when considering the position of women in relation to gender recognition. They are considered in more detail below. The exceptions to the 2010 Act will remain in place after the GRA has been reformed.

## **The relevant exceptions in the 2010 Act**

### *Single sex services*

5.15. The 2010 Act allows women only services and allows services to exclude trans women when it is proportionate and in pursuit of a legitimate aim. Paragraph 28 of schedule 3 the 2010 Act sets out the exception which relates to trans persons, and provides:-

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(1) A person does not contravene section 29, so far as relating to gender reassignment discrimination, only because of anything done in relation to a matter within sub-paragraph (2) if the conduct in question is a proportionate means of achieving a legitimate aim.

(2) The matters are—

- (a) the provision of separate services for persons of each sex;
- (b) the provision of separate services differently for persons of each sex;
- (c) the provision of a service only to persons of one sex.

5.16. The 2010 Act exception for single sex services will not change due to the proposals to reform the process for applying for a GRC. It will remain in place.

5.17. This provision would, for example, allow the operator of a domestic abuse refuge designed for women only to exclude a trans woman from the service if the operator judges that this is a proportionate means of achieving a legitimate aim. This is likely to involve carrying out a risk assessment.

5.18. Providers of services such as domestic abuse refuges may receive funding from the Scottish Government. As part of any application for funding, providers are asked to submit a plan on trans inclusion. Requiring an inclusion plan from funding recipients does not result in funding recipients being unable to rely on a relevant single sex exception. A recipient of the fund would be able to apply an exception which is available under the 2010 Act and could state as much in their inclusion plan.

5.19. All Scottish Government funding recipients must comply with the law, including the 2010 Act. It is for an individual organisation to make decisions as to service provision and how and when to use the exceptions within the 2010 Act.

5.20. As indicated above, the 2010 Act is generally a reserved matter for the UK Government. The UK Government's 2018 consultation on reforming the GRA in England and Wales said in paragraph 117:

"Trans people with a GRC can still be excluded from single sex services, or provided with a different service if it is proportionate to do so on the facts of the individual case. Although reliance on this exception should be rare, it is most likely to be needed in particularly difficult and understandably sensitive areas, such as the provision of women's domestic violence refuges. Whether it is proportionate to exclude a trans person would have to be judged by the service provider on a case by case basis, considering the trans person's needs and the impact on other service users. Refuges will continue to make sensible risk assessments of potential service users. Such assessments are required of all users, whether or not they are trans: for example the refuge might want to prevent an abusive lesbian from entering when her abused female partner is inside, or it may exclude a woman with a history of violence and instability."<sup>[48]</sup>

*Occupational requirements - general*



5.21. Schedule 9 of the 2010 Act<sup>[49]</sup> sets out exceptions in relation to work.

5.22. Paragraph 1 of schedule 9 provides a general exception to what would otherwise be unlawful direct discrimination, including a requirement that the person not be a trans person, where there is an occupational requirement due to the nature or context of the work, and this is a proportionate means of achieving a legitimate aim.

5.23. In the Explanatory Notes for the 2010 Act an example given is that “a counsellor working with victims of rape might have to be a woman and not a transsexual person, even if she has a Gender Recognition Certificate, in order to avoid causing them further distress”.<sup>[50]</sup>

5.24. When appropriate, this exception could also be used in relation to health services where, for example, intimate health and personal care services are provided.

5.25. As indicated above, the 2010 Act is generally a reserved matter for the UK Government. The UK Government’s consultation on reforming the GRA in England and Wales said in paragraph 119:

“The Government’s view is that this provision would not be undermined by amendments to the legal recognition process set out in the GRA. Having a GRC will be a factor that employers consider when determining whether imposing an occupational requirement is a proportionate means of achieving a legitimate aim, but it is not the only factor.”<sup>[51]</sup>

5.26. The 2010 Act general occupational requirement exception will not change following GRA reform.

5.27. A further point which has been raised in this area is whether section 22 of the GRA,<sup>[52]</sup> on prohibition of disclosure of information, could make it harder to use the general occupational requirement exception.

5.28. Section 22(1) makes it a criminal offence for a person who has acquired “protected information” in an “official capacity” to disclose the information to any other person. “Protected information” means information which relates to a person who has made an application for a GRC and which concerns that application or, if the application is granted “otherwise concerns the person’s gender before it becomes the acquired gender”.

5.29. The Scottish Government considers it wholly appropriate to safeguard trans people in this way.

5.30. There are a variety of exceptions in section 22, at subsection (4) and in an Order made by the Scottish Ministers under section 22(6).<sup>[53]</sup> One point which might arise when using the general occupational requirements exception is that some people in an organisation (eg people in its HR department) may know about a person’s trans history but those actually taking the decisions on staff deployment (eg line managers) may not. In these circumstances, and when there is a legitimate case to use the general occupational requirements exception, the Scottish Government considers that it would be appropriate for information about a person’s trans history to be shared in a strictly limited, proportionate and legitimate way.

5.31. To facilitate this, the Scottish Government will consider before any Bill to reform the GRA is

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introduced to Parliament if:

- Further exceptions to section 22 should be made, by way of a further Order under section 22(6).
- Scottish Government guidance on section 22 should be issued.

5.32. We will outline our approach in this area when any Bill is introduced into Parliament.

#### *Occupational requirements - religious requirements*

5.33. Paragraph 2 of schedule 9 relates to religious requirements, and covers a narrow range of employment of ministers of religion and some lay posts to promote and represent religion. If the criteria are met, it is possible to refuse to employ a trans person in these posts.

5.34. Paragraph 3 of schedule 9 relates to other requirements relating to religion or belief, where, if the criteria are met, it is possible to refuse to employ a trans person for the work.

5.35. The 2010 Act exception for occupational religious requirements will not change following GRA reform.

#### *Occupational requirements – UK armed forces*

5.36. Paragraph 4 of schedule 9 allows trans persons to be excluded from service in the UK armed forces if this is a proportionate way to ensure the combat effectiveness of the armed forces. In practice, the Scottish Government's understanding is that all branches of the UK armed forces permit trans people to serve. However, the 2010 Act exception for occupational requirements relating to the armed forces will not change following GRA reform.

#### *Occupational requirements - employment services*

5.37. Paragraph 5 of schedule 9 would allow a trans person to be excluded by an employment service provider, under section 55 of the 2010 Act, if one of the exceptions set out in paragraphs 1 to 4 of the schedule (discussed above) apply. This will not change following GRA reform.

#### *Communal accommodation*

5.38. Schedule 23 sets out general exceptions which apply throughout the 2010 Act. Paragraph 3 relates to communal accommodation which in terms of sub-paragraph (5) is "residential accommodation which includes dormitories or other shared sleeping accommodation which for reasons of privacy should be used only by persons of the same sex".

5.39. Paragraph 3(1) of the schedule provides that

"A person does not contravene this Act, so far as relating to sex discrimination or gender reassignment discrimination, only because of anything done in relation to—

(a) the admission of persons to communal accommodation;

(b)the provision of a benefit, facility or service linked to the accommodation.”

5.40. Therefore, trans persons can be excluded from communal accommodation when this is required for reasons of privacy, and this is a proportionate means of achieving a legitimate aim.

5.41. As indicated above, the 2010 Act is generally a reserved matter for the UK Government. The UK Government’s consultation on reforming the GRA in England and Wales said in paragraph 121:

“The Government’s view is that this provision would not be undermined by amendments to the legal recognition process set out in the GRA. Having a GRC will be a factor that organisations or accommodation providers will consider when offering communal accommodation, but it is not the only factor.”<sup>[54]</sup>

5.42. The 2010 Act exception for communal accommodation will not change following GRA reform.

### *Sport*

5.43. The GRA as originally enacted included provision on sport at section 19 but this was repealed for Scotland, and England and Wales and replaced by section 195 of the 2010 Act.<sup>[55]</sup> Section 195 contains provision allowing restrictions on trans people participating in sport to be imposed if necessary to uphold fair competition or the safety of competitors.

5.44. An example given by the Equality and Human Rights Commission (“EHRC”) in their published guidance<sup>[56]</sup> on where a difference in treatment of a trans person may be lawful in relation to sport is:-

“competitive sports: a sports organisation restricts participation because of gender reassignment. For example, the organisers of a women’s triathlon event decide to exclude a trans woman. They think her strength gives her an unfair advantage. However, the organisers would need to be able to show this was the only way it could make the event fair for everyone.”

5.45. The Sports Council Equality Group (SCEG) includes representation from sportscotland, Sport England, Sport Wales, Sport Northern Ireland and UK Sport. The Sports Councils collectively own the Equality Standard for Sport,<sup>[57]</sup> which is a framework for assisting sports organisations to widen access and reduce inequalities in sport and physical activity from under represented individuals, groups and communities. To support sports with the Equality Standard, SCEG has produced guidance on trans participation in sport at domestic and international level.

5.46. SCEG is about to launch a review of the domestic guidance. This will involve consultation with a wide group of stakeholders including both women’s rights and trans rights groups to ensure all views are considered. The review is expected to be completed by the autumn of 2020.

### *Insurance*

5.47. Paragraph 23 of schedule 3<sup>[58]</sup> provides that it is not a contravention of section 29 in relation to gender reassignment discrimination, to do anything in connection with insurance business in relation to an existing insurance policy

to an existing insurance policy.

5.48. Paragraph 20 of schedule 9<sup>[59]</sup> provides that it is not a contravention of Part 5 of the 2010 Act, so far as relating to gender reassignment discrimination, to do anything in relation to an annuity, life insurance policy, accident insurance policy or similar matter involving the assessment of risk if it is reasonable to do so based on reliable data.

5.49. The 2010 Act exception for insurance will not change following GRA reform.

#### *Marriage and civil partnership*

5.50. Paragraph 25 of schedule 3<sup>[60]</sup> provides that an approved celebrant does not contravene section 29 of the 2010 Act, so far as relating to gender reassignment discrimination, only by refusing to solemnise the marriage, or register the civil partnership, of a person that the celebrant reasonably believes acquired their gender under the GRA.

5.51. This exception makes specific provision for Scotland, reflecting that the way in which marriages are solemnised and civil partnerships are registered is different in Scotland when compared with England and Wales.

5.52. The 2010 Act exception in relation to marriage and civil partnership will not change following GRA reform.

#### **Conclusion on the exceptions in the 2010 Act**

5.53. The Scottish Government considers that, as outlined above, there are a range of exceptions in the 2010 Act which can be used when appropriate to protect women, which might in some specific cases require the exclusion of trans women, if the conditions within the exception are met. These exclusions will not change following GRA reform.

5.54. The 2010 Act is largely reserved and responsibility for the legislation on the exceptions rests with the United Kingdom Government. The Women and Equalities Committee at the UK Parliament published a report on "Enforcing the Equality Act: the law and the role of Equality and Human Rights Commission" on 17 July 2019.<sup>[61]</sup>

5.55. Recommendation 15 by the Committee, and the UK Government response was:

"We do not believe that non-statutory guidance will be sufficient to bring the clarity needed in what is clearly a contentious area. We recommend that, in the absence of case law the EHRC develop, and the Secretary of State lay before Parliament, a dedicated Code of Practice, with case studies drawn from organisations providing services to survivors of domestic and sexual abuse. This Code must set out clearly, with worked examples and guidance, (a) how the Act allows separate services for men and women, or provision of services to only men or only women in certain circumstances, and b) how and under what circumstances it allows those providing such services to choose how and if to provide them to a person who has the protected characteristic of gender reassignment. (Paragraph 190)

As set out in response to recommendation 14 the Government is planning to develop and publish  
<https://www.gov.scot/publications/gender-recognition-reform-scotland-bill-consultation-scottish-government/pages/77/>

As set out in response to recommendation 14, the Government is planning to develop and publish non-statutory guidance on how the Equality Act 2010's single and separate sex service exemptions apply. There are limitations to what could be achieved through statutory guidance as there is no case law in this space that moves beyond interpretation of the original legislation, so it would not be possible to set out 'rules' for the application of exemptions: statutory guidance must reflect existing law, it is not a means of establishing new law."

5.56. The Scottish Government agrees that while the 2010 Act's single and separate sex service exemptions will continue to apply after reform of the gender recognition process, non-statutory guidance by the ~~UK~~ Government could be helpful.

## Conclusion

5.57. The Scottish Government has carefully considered whether moving to a statutory declaration-based system for obtaining legal gender recognition, as outlined in the draft Bill, would impact adversely on the rights of women.

5.58. The key question in this context is very much about whether a change in the system for obtaining legal gender recognition would adversely affect women's rights. The Scottish Government has concluded that it would not.

5.59. In reaching this view, the Scottish Government has considered international experience. As outlined in [Annex E](#), there are a variety of systems for obtaining legal gender recognition in other countries. There is no evidence from overseas which the Scottish Government is aware of which would suggest that moving to a statutory declaration-based system for obtaining legal gender recognition would impact adversely on the rights of women. Under the system which the Scottish Government is proposing for Scotland obtaining legal gender recognition will remain a serious step which could not be undertaken lightly.

**NEXT**[Chapter 6: Conclusion](#)**PREVIOUS**[Chapter 4: The Proposed New System For Obtaining Legal Gender Recognition](#)

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# Scottish Prison Service

## Gender Identity and Gender Reassignment Policy for those in our Custody

### 2014





## **FORWARD**

I am delighted to present this policy in support of our commitment to increase engagement with our employees and people in custody to improve the working and living environment by ensuring it is free of any transphobic and homophobic behaviour, bullying, harassment, victimisation and discrimination.

This policy has been developed to help aid your understanding of what Gender Identity and Gender Reassignment equality mean to the Scottish Prison Service (SPS) and provides guidance on how you as a staff member can help ensure that that no staff member (or prospective staff member), person in custody or key stakeholder receives less favourable treatment or is disadvantaged by any circumstances, conditions or requirements that cannot be justified.

The 2010 Equality Act defines gender reassignment as a protected characteristic and protects them from unlawful discrimination on this basis. People who are proposing to undergo, are undergoing or have undergone a process (or part of a process) to reassign their sex by changing physiological or other attributes of sex have the protected characteristic of gender reassignment.

This policy, one of the most comprehensive of its type and represents the culmination of years of dedicated partnership work by a diverse group of criminal justice sector and equality sector organisations.

Whilst many people contributed to this policy and I apologise for not being able to name them all individually, their dedication, drive, knowledge, commitment, expertise, and partnership working has been vital in progressing and improving this policy through to its successful completion.

Every staff member and person in custody is entitled to an environment which promotes dignity and respect. A working environment that is welcoming and accepting will enable all staff to be themselves at work. No form of intimidation, bullying or harassment nor any insulting, abusive or derogatory language or actions towards any person will be tolerated.

I would like to see all of us working together to create a culture where we all embrace and live the values of our organisation. Treating each other with dignity and respect is something to which we will always aspire and in which we can take pride.



*Colin McConnell*  
**Chief Executive**

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## **1. INTRODUCTION**

### **1.1 SPS commitment to Equality, Diversity and Human Rights**

SPS is fully committed to equality, diversity, inclusion, and respect for human rights. The SPS actively values diversity and inclusion, tackles inequalities, promotes and respects equality and human rights by taking action through a dynamic, systematic and evidence based approach.

The Mission of SPS is:

**Providing services that help to transform the lives of people in our care so they can fulfil their potential and become responsible citizens.**

**Helping to protect the public and reduce reoffending through the delivery of a safe and secure custodial services that empower offenders to take responsibility and fulfil their potential**

We deliver this through:

**Custody-** Managing safe and secure custodial environments;

**Order -**providing stability and order that helps offenders to transform their lives;

**Care-** Supporting wellbeing and treating with respect and humanity all in our care; and

**Opportunity** – Providing opportunities which develop the potential of our staff, our partnerships and the people in our care

Our Values are

**Belief** – we believe that people can change

**Respect-** we have proper regard for individuals, their needs and their human rights.

**Integrity-** We apply high ethical, moral and professional standards.

**Openness-**we work with others to achieve the best outcomes

**Courage-**we have the courage to care regardless of circumstances

**Humility-** we cannot do this on our own, we recognise we can learn from others

The SPS Strategy Framework for Valuing Diversity, Promoting Equality and Human Rights enables equality, diversity, inclusion and human rights to be mainstreamed at the core of all our work and to be embedded at all levels within the organisation.

The Scottish Prison Service recognises that its people in custody must not unlawfully discriminate against or harass any person in custody in regard to any protected characteristic, including gender reassignment and gender identity. SPS will work hard to continue to develop as an organisation by implementing trans-inclusive policies and practices with a view to becoming a trans positive organisation.

## **1.2 Purpose of the policy**

This policy aims to ensure that individuals who identify as transgender people or who intend to undergo, are undergoing or have undergone gender reassignment receive respect and fairness at all times from the Scottish Prison Service.

The purpose of this policy document is to:

- provide accurate and current information for all SPS employees in relation to gender reassignment and gender identity equality and human rights;
- outline the SPS procedures to be followed in the event of a transgender person being brought into custody;
- enable all people in custody within SPS custody to be treated fairly and without discrimination or harassment on grounds of gender identity and gender reassignment.

Ensuring that equality and human rights are upheld throughout all aspects of the person in custody's journey will require liaison between the Scottish Prison Service and other service providers within the criminal justice system, such as the Police Service, the Scottish Courts Service, the Crown Office Procurator Fiscal Service and Local Authority Social Work Departments.

The Scottish Prison Service requires all its sub-contractors to ensure that they are complying at all times with UK equalities and human rights law.

### 1.3 Policy key principles

In addition to assessing the gender identity and gender reassignment specific needs of a transgender person in custody, all the standard risk assessments and management procedures, including ACT 2 Care, should be carried out as for any other person in custody. The person in custody's behaviour should be managed as standard.

Professionalism and sensitivity, as always, should be maintained at all times. The person in custody's gender identity and corresponding name and pronouns must be respected.

The accommodation provided must be the one that best suits the person in custody's needs and should reflect the gender in which the person in custody is currently living. Any need for a single cell due to a person in custody's gender reassignment must be assessed, recorded and addressed as a priority. Restrictions to association with other people in custody should be avoided wherever possible. If any restrictions to association is required due to the behaviour, emotion condition or vulnerability of the person either one of the following would be appropriate;

- **Rule 95** to maintain good order or protect the interests or ensure the safety of any people in custody.
- **Rule 41(2)** if the behaviour is assessed to be linked to Gender Dysphoria. Where the Governor and healthcare professional for the purpose of this "specified conditions" include, but are not limited to
  - accommodation in a specified part of the prison,
  - accommodation separate from other people in custody
  - confining the person in custody to his own cell

#### **Gender Dysphoria**

Is distress, unhappiness and discomfort experienced by someone about their biological sex not fully matching their gender identity.

- **Act to Care** if any member of staff believe the people in custody is actively thinking about suicide or self-harm.

Rubdown and body searches should be conducted in accordance with the gender in which the person in custody is currently living, rather than their physical characteristics.

Confidentiality must be maintained. Information about a person in custody's gender reassignment should only be shared with other staff without the person in custody's permission where this is essential to manage the risk of crime. Staff must not reveal information about a person in custody's gender reassignment to other people in custody.

People in custody should be allowed access to items such as clothing, prosthetics, chest-binders, hair-pieces/wigs and other equipment needed to facilitate their gender reassignment and express their gender identity.

People in custody who are already undergoing gender reassignment must be allowed to continue receiving gender reassignment hormone treatment which began prior to imprisonment.

People in custody who are seeking to undergo gender reassignment must be allowed to access specialist assessment and treatment via the NHS Scotland Gender Reassignment Protocol. People in custody must be allowed access to gender reassignment hormone treatment, hair removal and/or surgeries they have been medically approved for via the NHS Scotland Gender Reassignment Protocol.

Where, for reasons of safety and risk management, a decision must be taken which differs from the person in custody's preferences in regard to their gender identity or gender reassignment status, the reasons for the decision must be clearly recorded on the PR2 system and then reviewed at the person in custody's next gender reassignment case conference.

Case conference decisions and any other notes, will be located in PR2 in ICM/ CIP/ Case conference.



## 1.4 Overview of terminology

The terminology we use to communicate is very important to enable equality of opportunity and create a respectful culture towards each other. The following definitions are those most commonly used in Scotland.

It is important to remember that people in custody who fall within the scope of this policy may describe their gender identities and experiences in very diverse ways. This may be due to them being either uncomfortable or unfamiliar with certain terms.

How a transgender person in custody attempts to explain their situation to other people in custody or staff can also be influenced by their beliefs about what explanation may get them the most acceptance within prison. For example, in order to try to ensure their gender identity is respected, a transgender person in custody may feel pressure to claim they are further along in their process of gender reassignment than they actually are. Alternatively, if they fear disclosing that they have undergone gender reassignment, a trans man may at first claim to have been born male and to have lost his penis in an accident or a trans woman may at first claim she is an intersex person who has always lived as a woman. The exact terms used at any point by an individual are much less important than upholding the principles of safety, dignity and respect as described in this policy.

The term **gender identity** refers to each person's deeply felt intrinsic sense of their own gender - of where they sit in relation to being a man or a woman.

**Gender assigned at birth** is the gender a person was originally registered as on their birth certificate, usually according to the appearance of their external genitals.

**Social gender** is the gender in which a person lives their day to day life. Where a person has transitioned to change their social gender role, then it may also be referred to as their **acquired gender** or **new gender**.

**Gender dysphoria** is distress, unhappiness and discomfort experienced by someone about their physical body and the gender they were assigned at birth not fully matching their gender identity. It is a recognised medical condition for which NHS gender reassignment treatment is available in Scotland.

The terms **transgender people** and **trans people** are both used to refer to a diverse range of people who find their gender identity does not fully correspond with the gender they were assigned at birth.

A person has the protected characteristic of **gender reassignment** if they propose to undergo, are undergoing or have undergone any part of a process of **transitioning** from the gender they were assigned at birth to live instead as the gender which matches their personal gender identity. In addition to changing name and social gender role, gender reassignment may also involve using hormones and/or surgery to alter the person's physical body.

The term **transsexual people** can be used to refer specifically to those trans people who clearly have the protected characteristic of gender reassignment.

When considering appropriate person in custody management decisions relating to gender identity and gender reassignment, it can be helpful to particularly consider three key groups of trans people who are likely to have different needs and issues:

- **trans men:** female-to-male (**FTM**) transsexual people who have started living permanently as men as part of a process of gender reassignment. They may or may not have undergone any genital surgery;
- **trans women:** male-to-female (**MTF**) transsexual people who have started living permanently as women as part of a process of gender reassignment. They may or may not have undergone any genital surgery;
- **non-reassigned trans people:** transgender people who have not permanently changed the gender in which they live. They may propose to undergo future gender reassignment but at present are still continuing to live predominantly as the gender they were assigned at birth. Additionally, this group can also include:
  - **transvestite / cross-dressing people** who occasionally wear items of clothing traditionally associated with the other gender without proposing to undergo gender reassignment;
  - **gender-variant / non-binary-gender people** who have highly complex gender identities and don't identifying clearly as either men or women;
  - **intersex people** who have been born with aspects of their chromosomes, internal reproductive systems or external genitals which are not clearly male or female. Historically, intersex people were referred to as **hermaphrodites** but this is now an out-dated term.

## 1.5 Most common gender reassignment journey



## **2. INFORMATION SHARING**

### **2.1 Key principles regarding information sharing**

**Information about a person in custody's gender reassignment must be handled very carefully** and in full compliance with data protection and medical confidentiality standards because **it is highly sensitive information with serious potential safety and security consequences**. It is particularly important that it is not disclosed by service providers either deliberately or accidentally to other people in custody.

Information about a person in custody's gender reassignment may only be shared between service providers where this is a fair and proportionate way to achieve the legitimate aims of ensuring the safety and dignity of the person in custody, the safe operation of the service more generally and/or to aid the prevention or investigation of crime.

**If a person in custody has a gender recognition certificate it is a criminal offence to share information about their gender history without their permission**. However, there is an exception which allows information to be shared without permission where necessary to aid the prevention or investigation of crime. Where the purpose of the information sharing is for risk assessment then the sharing of anonymised information can be carried out to enable risk assessment in situations where there is no prevention of crime rationale.

### **2.2 Liaison between service providers prior to reception**

Where an external service provider, such as the Scottish Court Service, is aware that a transgender person may potentially require to be received into a SPS establishment, good practice is for the external service provider to notify the Reception First Line Manager of the relevant SPS establishment at the earliest possible opportunity so that coordinated work can be undertaken to ensure appropriate consistency of care.

Where an external service provider is seeking clarification about whether a particular establishment is the correct one to send the transgender person to, the enquiry should be handled by the Reception First Line Manager with support as required from a Unit Manager and/or Equality and Diversity Manager. The SPS Headquarters Equality and Diversity Team or the Contract Team for the Private Establishments should also be notified at the earliest possible opportunity without disclosing the person in custody identity.

Coordinated work between different service providers prior to reception of a transgender person into an establishment, should be undertaken with the aim of addressing:

- consistency in respecting the transgender person's gender identity, name, title and pronoun use;
- consistency in provision of any medical assistance required, such as access to hormone medications and additional property in use (for example: hair-pieces/wigs, make-up, gendered clothing and prosthetics);

- health and social care needs: especially relating to mental health issues, potential fears about safety, privacy and dignity within establishment custody and ongoing or anticipated gender reassignment medical needs;
- risk assessments for the safety of the person in custody and others.



## **2.3 Information sharing with escort provider**

Only the information which is strictly necessary for ensuring safety and dignity during transportation between establishments and/or courts should be shared with transportation escort providers. The gender reassignment related information to be shared should usually be limited to:

- the current name, title and gender pronoun used by the person in custody.
- the current gender of staff that should search the person in custody.
- any medication or additional property in use which the person in custody needs access to during transportation (medication which is not needed during the transportation period does not need to be notified to the escort provider).
- the extent to which the person in custody needs protection from other people in custody during transportation.

The SPS requires the transportation escort provider to ensure that full compliance with data protection and medical confidentiality standards is maintained at all times and that information about a person in custody's gender reassignment is handled as highly sensitive information.

The SPS requires the transportation escort provider to follow its instructions and policy regarding gender identity and gender reassignment equality, including specific instructions about how to refer to the gender of particular individual people in custody, the gender of staff to search particular people in custody and how to manage any safety concerns for particular people in custody.

In the absence of information from the SPS about a transgender person in custody (for example, during the initial transportation of a new person in custody from court to an establishment) then the transportation escort provider should sensitively and discretely ask the person in custody which gender they live in, treat the person in custody as the gender they say they are living in and urgently notify the Reception First Line Manager of the establishment listed on the person in custody's warrant.

Transportation escort providers should be aware that a person in custody may, for various reasons, seek to influence which establishment they are transported to. Transportation to a different establishment from what is listed on the warrant should only occur if agreed with a SPS Reception First Line Manager.

### **3. RECEPTION PROCESS**

#### **3.1 Rubdown**

All people in custody must be rubdown searched in accordance with SPS security standards. People in custody should be rubdown searched by staff, **in accordance with the social gender in which they are living**. Where the person in custody's social gender is unclear, the person in custody must be asked which gender they wish to be searched by and their answer recorded and the rubdown search conducted accordingly.

#### **3.2 Confirming the person in custody's warrant and PR2 computer entry**

At the time of initial reception of a person in custody, SPS reception staff must clarify that the details of the warrant are correct.

If any aspect of the person in custody's appearance, behaviour or statements gives cause for uncertainty about the correctness of the gender recorded on the warrant, or the person in custody is perceived as possibly having the protected characteristic of gender reassignment, then **the Reception First Line Manager must be immediately contacted**.

In order to determine the correct name and gender which should be entered on PR2 for the person in custody, the Reception First Line Manager should **sensitively ask the person in custody to clarify in private**:

- how they self-identify their gender;
- which gender they are currently living in and whether this is different from the gender they were originally assigned at birth;
- if they have transitioned to start living in a different gender from that assigned at birth, then what was the approximate start date of their gender transition;
- have they changed their name, title and/or gender on any personal documents (such as bank card, drivers licence, NHS card, etc);
- if they have a gender recognition certificate (they are not obliged to say).

If there is **no evidence** as yet that the person in custody has transitioned to start living in a different gender from that assigned at birth, then the Reception First Line Manager should enter the person in custody on the PR2 computer system as the gender they were assigned at birth.

**Where there is any evidence** that the person in custody is living in a different gender from that assigned at birth then the Reception First Line Manager must enter the person in custody on the PR2 computer system as the social gender they are living in. If the person in custody already has a PR2 entry in their previous gender, then create a new PR2 record with a new number.

To record that the person in custody has the protected characteristic of gender reassignment and to link any previous gender PR2 entry, the Reception First Line Manager must:

1. Click on **Person in custody** on the top line on PR2 which will produce a drop down list;
2. On the person in custody drop down list, click on **Gender Reassignment** which will produce a gender reassignment personal data table;
3. In the gender reassignment personal data table, enter the person in custody's previous PR2 number if one exists, the approximate start date of their transition, and the date of issue on any gender recognition certificate seen.

The name, title and pronouns used by the person in custody should be used in all verbal communication with and about the person in custody, **even where these do not correspond with the details recorded on the warrant.** If the details on the warrant appear incorrect, then the Reception First Line Manager should seek advice from the relevant Duty Clerk within the Scottish Court System.

The Reception First Line Manager should ensure that all the reception staff respect the person in custody's gender identity and avoid discussing the person in custody's situation in front of other people in custody.

### 3.3 Additional Gender Recognition Act 2004 rights

The social gender in which the person in custody is living should be fully respected regardless of whether or not the person in custody provides any evidence of having a gender recognition certificate under the Gender Recognition Act 2004. **Applying for a gender recognition certificate is optional and is not required in order to have protection from gender reassignment discrimination.**

Under the Gender Recognition Act 2004 the granting of a full gender recognition certificate enables a person's UK birth certificate to be reissued in their acquired gender. This therefore marks the final end of the person's documents and records being completely updated, so they all will show only the gender the person is living in rather than still having any in the gender originally assigned at birth.

**An individual can apply for gender recognition once they have been living permanently in their new social gender for over two years.** They need to provide evidence that their documents and records (except their birth certificate) were changed over two years previously to show their social gender instead of their birth gender. **No surgery is needed to receive a gender recognition certificate.**

If a person in custody provides evidence that they have received a gender recognition certificate, it becomes a **criminal offence**, rather than civil, for staff **to disclose information about the person in custody's gender history without the person in custody's consent.** There is an **exception allowing disclosure without consent for the prevention or investigation of crime.**

Where it is known that the person in custody has received a gender recognition certificate, the Reception First Line Manager should enter the date of its issue within the gender reassignment personal data table in the person in custody's PR2 record.

It becomes a **criminal offence**, rather than civil, for a member of staff to generally disclose information about the prisoner's gender history without the prisoner's definite consent. There is an exception which allows disclosure without consent for the prevention or investigation of crime.

For more information about the additional privacy protections for people who have received a gender recognition certificate, go to <http://www.grp.gov.uk>

### **3.4 Admitting the person in custody in the holding area**

The person in custody should be placed in the holding area corresponding to the social gender which the person in custody identifies as being. If deemed necessary to ensure safety, the person in custody may be placed in an individual non-shared holding area.

### **3.5 ACT 2 Care interview**

A transgender person in custody should be assessed under ACT 2 Care procedures in the same way as other people in custody. The risk of self-harm or suicide is higher among the transgender population than the general population; however the ACT 2 Care interview must establish the level of risk for the individual person in custody rather than rely on generalities. Where difficulties accessing gender reassignment or experiencing prejudice are contributing to the risk of self-harm or suicide of a transgender person in custody, these must be addressed as a priority.

Only in exceptional circumstances, such as when an acute suicide or self-harm risk has been identified through the ACT 2 Care interview, can any temporary restrictions be applied to unsupervised access to gender reassignment related additional property in use (such as prosthetics, hair-pieces/wigs, chest-binders and dilators). Even where suicide or self-harm risk temporarily prevents unsupervised access to certain gender reassignment equipment, access should still be provided for periods of association with other people in custody and while supervised by staff.

### **3.6 Healthcare interview**

NHS staff should familiarise themselves with the NHS Scotland Gender Reassignment Protocol ([http://www.sehd.scot.nhs.uk/mels/CEL2012\\_26.pdf](http://www.sehd.scot.nhs.uk/mels/CEL2012_26.pdf)) and sensitively ask the person in custody whether they have accessed any of these gender reassignment medical services either via the NHS Scotland Gender Reassignment Protocol or through private medical services.

Any gender reassignment hormone medication (such as hormone tablets, injections and topical gels) a person in custody is already receiving on prescription prior to imprisonment should be identified, recorded within the person in custody's healthcare records and access continued in the same manner as any other prescribed medication would be continued within prison.

Any gender reassignment equipment (additional property in use) which a person in custody has in their possession upon reception into an establishment (such as prosthetics, hair-pieces/wigs, chest-binders and dilators) should be identified, recorded within the people in custody's healthcare records and access continued in the same manner as for any other medical equipment required for other medical conditions.

Where a person in custody requests access to gender reassignment equipment which they do not already have within their possession upon reception into establishment and healthcare staff agree the equipment is needed, then reasonable steps should be taken to arrange prompt access to the required gender reassignment equipment.

### **3.7 Body search**

All people in custody must be body searched in accordance with SPS security standards. **People in custody should be body searched in accordance with the social gender in which they are living.**

**Where the people in custody's social gender is unclear, the person in custody must be asked which gender they wish to be searched by and their answer recorded and the body search conducted accordingly.** Once the social gender in which they currently live is clarified, the person in custody should be searched according to that social gender.

Any physical variation encountered due to gender reassignment during searching should be responded to in a similar professional and respectful manner as per any physical variation encountered due to disability during searching.

During the body search process the person in custody should be sensitively asked to remove any items such as prosthetics, wigs or chest-binders to enable the skin underneath to be seen. The items removed must be searched to ensure they have not been tampered with. Care should be taken to avoid accidental damage. The items must be returned immediately once they have been searched. Sufficient time must be provided for the person in custody to replace the items and a mirror provided if required.

See **APPENDIX B** for a hand-out for Prison Officers on searching transgender people in custody.

### **3.8 Initial shower and change**

The safety and possible enhanced privacy requirements of people in custody with the protected characteristic of gender reassignment should be taken into account when organising and supporting the person in custody to shower and change.



## **4. INITIAL ACCOMMODATION**

### **4.1 Initial actions by Unit Manager**

The initial period following reception of a new person in custody by an establishment represents a particularly high risk period as there may be limited information about the people in custody's individual needs and circumstances. There is a high likelihood that decisions about whether the person in custody needs to be transferred to a different gender of establishment may not be able to be made before the first night in custody.

**Upon taking over responsibility for the people in custody's safety and welfare, the Unit Manager must carry out the following actions:**

- review information available about the people in custody's gender reassignment;
- conduct risk assessment, especially regarding accommodation.

The Unit Manager must record on PR2 the reasons for their decisions of how to manage the transgender people in custody's initial first night in custody. The Unit Manager must continue to make interim decisions about the management of accommodation and searching for up to seven days until the initial case conference takes place.

**Within 72 hours of people in custody's reception** into the establishment, the Unit Manager must carry out the following actions:

- assess person in custody needs (such as access to additional items in use) and create an action plan to address these;
- request additional information (such as a fax from the person in custody's GP confirming gender reassignment details) as needed for the initial case conference;
- arrange the time and attendance for an **initial gender reassignment case conference taking place within seven days of reception** of the person in custody. For full details see **Section 6** of this policy.

### **4.2 Accommodation prior to initial case conference**

The Unit Manager must make **risk-assessed interim decisions regarding accommodation for up to seven days until the initial case conference takes place**. The person in custody may remain in 'first night' facilities for longer than one night. The Unit Manager must follow **Section 6.4** of this policy which details key accommodation decision-making principles.

### **4.3 Searching prior to initial case conference**

Prior to the initial case conference, searching of the transgender person in custody must be conducted as detailed in **Section 3.1** and **Section 3.7** of this policy.

If there are any difficulties experienced, or concerns expressed, by the person in custody or by staff in regard to searching the person in custody, then the Unit Manager

should decide how best to temporarily deal with the difficulties or concerns and record this on PR2. Support can be sought from the SPS HQ Equality and Diversity Team.

## **5. EXISTING PERSON IN CUSTODY**

### **5.1 Gender reassignment assistance request**

Where an existing person in custody makes a request for assistance from the SPS because they are **experiencing distress about their gender identity** not matching their gender assigned at birth (gender dysphoria) or that they are **considering gender reassignment** then this must be taken seriously. **Any member of staff receiving such a request from an existing person in custody must inform the Unit Manager.** The person in custody may be in acute need of emotional support and may be at risk of self-harm or suicide. ACT 2 Care procedures should be used as standard to manage any risk of self-harm or suicide. The safety of the person in custody may also be at risk due to reactions of other people in custody to their gender identity or gender reassignment request.

Either the member of staff to which the person in custody initially made the request, or the Unit Manager, **must urgently provide the person in custody with the opportunity to discuss in private away from other people in custody:**

- how they self-identify their gender;
- how they are feeling and any concerns about their current and future safety, dignity and privacy;
- whether they have told any other people in custody about how they feel and, if so, were the reactions supportive or hostile;
- any initial thoughts they have about their needs regarding gender-related additional property in use. (The person in custody should be advised that any decisions about possible provision of additional property in use will need to be taken at a case conference);
- any initial thoughts they have about the possibility of gender reassignment, such as whether they are considering changing their name or seeking access to NHS medical gender reassignment services.

The information provided by the person in custody during this initial discussion should be recorded on PR2 and used by the Unit Manager as part of conducting any urgent risk assessment for the person in custody. **The Unit Manager must arrange for a gender reassignment case management conference to take place within seven days of the person in custody making their request for assistance.**

An existing person in custody has the right to change their name, title and social gender role at any time regardless of whether or not they have undergone any gender reassignment medical specialist assessment.

Follow **Section 6** of this policy which details the case conference procedures.

### **5.2 Changing gender on PR2 for existing person in custody**

When an existing person in custody undergoing gender reassignment reaches the point of moving from accommodation in their birth gender to accommodation in their new social gender, then their existing record on PR2 in their birth gender should be marked as liberated for reason 'gender reassignment', a new PR2 record number

created in their new social gender, and the old number entered in the PR2 gender reassignment personal data table.

## **6. MANAGEMENT**

### **6.1 Case conference timing and purpose**

The person in custody's gender reassignment case management should include holding an **initial case conference within seven days:**

- of a transgender person in custody's reception to establishment;
- of an existing person in custody requesting assistance due to experiencing gender dysphoria or considering gender reassignment.

After the initial case conference, **further gender reassignment case conferences should be held at least monthly for the first three months, then at least quarterly longer-term.** Once all case management issues relating to the person in custody's gender identity and gender reassignment appear to have been successfully resolved, the case conference frequency should switch to one review every six months. If the person in custody's circumstances change significantly at any time, then monthly gender reassignment case conferences should be resumed.

Gender reassignment case management conferences **can be integrated into other case management conferences** being held in regard to the person in custody but must still address the issues given below and include the people specified during the gender reassignment related discussions and decision-making.

The gender reassignment case conferences should examine all the circumstances of the particular case, including the person in custody's viewpoint and wishes, take into account the expert opinion of any NHS Gender Identity Clinic medical specialist treating the person in custody, and **conduct full risk assessments in order to make decisions about how to ensure:**

- the safety, dignity and privacy of the person in custody (and others where relevant), in terms of accommodation and searching, and especially as the person in custody progresses through changing the social gender in which they live;
- provision of access to additional "property in use" necessary for gender reassignment (such as gendered clothing, hair-pieces/wigs, make-up, prosthetics, dilators, chest-binders, etc.);
- provision of access to NHS gender reassignment services (such as specialist assessment, hormone treatment, hair removal and various surgeries) in accordance with the requirements of the NHS Scotland Gender Reassignment Protocol ([http://www.sehd.scot.nhs.uk/mels/CEL2012\\_26.pdf](http://www.sehd.scot.nhs.uk/mels/CEL2012_26.pdf));
- provision of access to social contact and support for mental health;
- provision of access to mainstream offender outcomes provision;
- appropriate management of any transfer to an alternative establishment;
- appropriate management of the liberation of person in custody and any liaison with social work services.

The person in custody has the right to a copy of any reports (other than highly confidential reports of a security intelligence nature) written in preparation for the case conference and a full copy of the case conference decisions and rationale. Where reports refer to other named people in custody, these names should be redacted.



Where reports refer to named staff, these names may be redacted where deemed necessary by the establishment Governor.

## 6.2 Case conference participation roles

The gender reassignment case conferences **should involve the following people** wherever possible:

- the Unit Manager who has organised the case conference;
- the person in custody concerned;
- the person in custody's Personal Officer or Key Worker;
- the person in custody's social worker (if they have one);
- a representative of the local healthcare team;
- the local equality and diversity manager;
- if the person in custody wishes, a representative of a transgender organisation;
- others as required (for example, a manager from another establishment if a transfer is being considered).

If the person in custody is receiving treatment via a NHS Gender Identity Clinic, then their medical specialist should be invited to attend any case conference where the issue of access to gender reassignment medical treatments are expected to be discussed. The NHS Gender Identity Clinic medical specialist may choose to make a written submission to the case conference rather than attend in person.

The **Unit Manager** should chair the case conferences. The Unit Manager is responsible for ensuring that the minutes of the gender reassignment case conferences clearly record all decisions made and the reasoning for those decisions. The Unit Manager must send copies of the minutes to the Governor of the establishment and to the SPS HQ Equality and Diversity Team.

The **person in custody** has the right to be present at all the gender reassignment case conferences relating to the person in custody. The person in custody has the right to raise within the case conferences any gender identity or gender reassignment equality concerns, comments or complaints they have regarding the SPS or any subcontractor. If the case conference is unable to resolve the concern or complaint to the person in custody's satisfaction, information should be provided to the person in custody about relevant further standard complaint procedures. The person in custody should be supported to share their views and preferences within the case conference and should not be made to feel as though they are being interrogated, patronised or ignored.

The person in custody's **Personal Officer or Key Worker** and their **social worker** (if they have one) should bring relevant knowledge, information and perspectives about the person in custody's social integration, behaviour and personal needs to all aspects of the case conference discussions.

The **representative of the healthcare team** should bring relevant healthcare knowledge, information and perspectives to case conference discussions about:

- provision of access to additional "property in use" necessary for gender reassignment (such as gendered clothing, hair-pieces/wigs, make-up, prosthetics, dilators, chest-binders, etc);
- provision of access to NHS gender reassignment services (such as specialist assessment, hormone treatment, hair removal and various surgeries) in

accordance with the requirements of the NHS Scotland Gender Reassignment Protocol ([http://www.sehd.scot.nhs.uk/mels/CEL2012\\_26.pdf](http://www.sehd.scot.nhs.uk/mels/CEL2012_26.pdf));

- provision of access to social contact and support for mental health.

The **local equality and diversity manager** should bring relevant human rights and equalities knowledge, information and perspectives to all aspects of the case conference discussion. They should also help assess the compliance of all case conference decisions with human rights and equalities legal requirements. They may seek support from the SPS HQ Equality and Diversity Team, and for particularly complex cases a representative of the SPS HQ Equality and Diversity Team can by mutual agreement be substituted in place of the local equality and diversity manager.

A **representative of a transgender organisation** may only be included in the case conference if the person in custody agrees. If agreed, then the transgender organisation representative should bring relevant expert transgender-specific equality knowledge, information and perspectives to all aspects of the case conference discussion. If the person in custody does not agree to a representative of a transgender equality organisation being included in the case conference, the Unit Manager can still provide anonymised information about the situation to a transgender organisation to gain their expert perspective prior to the case conference taking place.

### 6.3 Information needed for case conferences

The Unit Manager must take all reasonable steps to gather together the following information prior to **all** gender reassignment case conferences:

- any safety risks faced by the person in custody, or others, in regard to the person in custody's gender identity and gender reassignment status;
- the current suitability of the person in custody's accommodation in terms of establishment, unit and cell-sharing decisions and justifications;
- the person in custody's level of integration with other people in custody and any ideas for safely improving this;
- if the person in custody is currently removed from association, then what is the justification for the removal from association, what is the current and expected duration and what mental health support, social contact and other facilities does the person in custody currently have access to;
- how the person in custody is currently being rubbed down and body searched and any concerns which have been expressed by the person in custody or staff about searching;
- the person in custody's needs for access to NHS gender reassignment services (such as hormones, hair removal, speech therapy and surgeries) and how to facilitate access via the NHS Scotland Gender Reassignment Protocol;
- any changes to the person in custody's name and social gender which have either taken place or which are proposed.

The Unit Manager must also take all reasonable steps to gather together the following additional information prior to the **initial** gender reassignment case conference:

- any confirmation of what the person in custody says is their current name. For example, this could take the form of an identity document, a statutory declaration of change of name or a statement from a professional who knows the person in custody (such as a GP or social worker);
- any confirmation of what the person in custody says is the length of time, if any, they have been living in a social gender that differs from the gender they were

assigned at birth. For example, this could take the form of the date of issue of a piece of ID that shows either a title or a gender (such as a bank card, a passport or a driving licence) or a statement from a professional who knows the person in custody (such as a GP or social worker);

- any confirmation of the gender reassignment medical treatment, if any, the person in custody says they have received or are currently receiving. For example, this could take the form of a statement from their GP, from a medical specialist at a NHS gender identity clinic or from a private sector medical specialist.

## 6.4 Accommodation

The case conference should review the individual circumstances of the person in custody to determine the suitability of the person in custody's accommodation across the three aspects of establishment placement, unit placement and cell-sharing suitability. The general principles which should guide the case conference decisions are detailed below:

Where a transgender person in custody is **still living predominantly in the gender assigned at birth, then establishment allocation should usually be the gender assigned at birth.**

Where the person in custody is **permanently living in their new social gender** instead of the gender they were assigned at birth, **then establishment allocation should usually be the new gender in which they are living.**

A transgender person in custody may remain in 'first night' facilities for longer than one night to enable better assessment of how to manage their safety in mainstream accommodation.

A transgender person in custody **must be placed in single cell accommodation unless the Unit Manager has carefully assessed that a shared cell is sufficiently safe and provides sufficient privacy** for both the transgender person in custody and the other person in custody.

The case conference may recommend the person in custody to only share a cell with specific other people in custody, for example, with a particular named person in custody who has been established not to be a significant safety threat.

**Restrictions to association with other people in custody should be avoided wherever possible.** If any restrictions to association are required to maintain good order or protect the interests or ensure the safety of any person in custody then this should be managed via *Prison and Young Offender Institutions (Scotland) Rules 2011 - Rule 95*, or *Rule 41(2)* where the restrictions have been recommended by a healthcare professional treating the person in custody for the medical condition of gender dysphoria. Where a person in custody is held out of association, defensible decisions have to be recorded and authorised by a senior manager and Prison Directorate if more than 72 hours. The case management information must be updated weekly where a person in custody is held out of association.

**A female-to-male person in custody living permanently as a man without genital surgery should be allocated to a male establishment.** However, if he requests to be

allocated to a female establishment due to **high level of concern about sexual assault risk in a male establishment, then he should be kept out of association until an urgent case conference** responds in detail to his request.

**A male-to-female person in custody living permanently as a woman without genital surgery should be allocated to a female establishment. She should not be automatically regarded as posing a high sexual offence risk to other people in custody** and should not be subject to any automatic restrictions of her association with other people in custody. However, if there is clear evidence that she, as an individual, may pose a sexual offence risk, then this should be dealt with as for any other person in custody posing a risk. Only where a risk assessment determines it is justified, should she be subject to increased staff supervision or restrictions of her association with other people in custody.

## 6.5 Searching

The case conference should review the individual circumstances of the person in custody to determine how best to manage rubdown and body searches of the person in custody and how to meet any associated staff training needs. The general principles which should guide the case conference decisions are detailed below:

People in custody should be **rubdown and body searched in accordance with the social gender in which they are living**, rather than according to their physical body. Where the person in custody's social gender is unclear, the person in custody should be asked which gender they wish to be searched by and their answer recorded and their rubdown and body searches conducted accordingly.

The genital appearance of a transgender person in custody **must not** be used to determine which gender of Prison Officer should search them. There is no legal requirement for a transgender person to undergo any surgery as part of their gender reassignment. If a person in custody has recently undergone genital surgery or has on-going physical complications from such surgery, then specialist medical guidance should be sought on how to avoid harm to the person in custody during searching.

The decision rationale for any changes to how a person in custody is to be searched must be recorded fully at a gender reassignment case management conference.

Any provocative, disruptive or offensive language or behaviour by a person in custody towards SPS staff during searching can be addressed by placing the person in custody on report as per any other person in custody violation of establishment rules.

Any staff concerns about performing searches on transgender people in custody should be initially addressed through the provision of additional staff training and information about gender reassignment and equality requirements. In particular, the following points should be emphasised during staff training:

- that the current name and social gender of the person in custody must be respected;
- that any physical variation encountered due to gender reassignment during searching should be responded to in a similar professional and respectful manner as per any physical variation encountered due to disability during searching;
- that during the body search process the person in custody should be sensitively

asked to remove any items such as prosthetics, wigs or chest-binders to enable the skin underneath to be seen. The items removed must be searched to ensure they have not been tampered with. Care should be taken to avoid accidental damage. The items must be returned immediately once they have been searched. Sufficient time should be provided for the person in custody to replace the items and a mirror provided if required.

See **APPENDIX B** for a short hand-out for Prison Officers on searching transgender people in custody.

## **6.6 Access to additional property in use**

People in custody with the protected characteristic of gender reassignment may require access to property in use which may not be traditionally associated with their social gender role or readily available in a particular gender establishment. Suitable access to additional property in use which is necessary to support their gender reassignment process should be provided to all remand and sentenced people in custody with the protected characteristic of gender reassignment, regardless of which establishment they have been allocated to.

Access to this additional property in use should not be viewed as ‘special’ treatment. It is more appropriately viewed as a form of accessibility requirement. Many of the items count as medical equipment.

Only in exceptional circumstances, such as when an acute suicide or self-harm risk has been identified through an ACT 2 Care interview, can any temporary restrictions be applied to unsupervised access to gender reassignment related additional property in use. Even where suicide or self-harm risk temporarily prevents unsupervised access to certain gender reassignment medical equipment, access should still be provided for periods of association with other people in custody and while supervised by staff.

Additional property in use items should be reviewed and agreed at the person in custody’s gender reassignment case management conferences in consultation with any gender reassignment medical specialist, the representative of the healthcare team and the person in custody.

It is important to note that the items required may change over time as many are dependent upon the stage of gender reassignment reached by the person in custody.

Some examples of possible additional property which may be needed are set out below but this list should not be considered to be exhaustive:

- Clothing (including underwear) in accordance with the person in custody’s gender identity
- Sanitary wear
- Shaving equipment and cream
- Hair removal cream
- Facial Cosmetics
- Binder for breasts
- Wigs and hair pieces
- Prosthetics (breast or genital forms)
- Dilation medical supplies



## **6.7 Access to NHS gender reassignment**

People in custody have the right to access to NHS medical assessment and treatment. The criteria for access is contained within the NHS Scotland Gender Reassignment Protocol: [http://www.sehd.scot.nhs.uk/mels/CEL2012\\_26.pdf](http://www.sehd.scot.nhs.uk/mels/CEL2012_26.pdf)

Any gender reassignment hormone medication (such as hormone tablets, injections and topical gels) a person in custody is already receiving on prescription prior to imprisonment should be identified, recorded within the person in custody's healthcare records and access continued in the same manner as any other prescribed medication would be continued within prison.

Decisions on the appropriateness of hormones, hair removal, speech therapy or surgery as part of a process of gender reassignment are clinical decisions, which should be taken by doctors (specialised in the fields of gender reassignment, endocrinology and/or surgery) applying the same principles of the NHS Scotland Gender Reassignment Protocol as would be applied in relation to people at liberty.

The fact of a person's imprisonment, and the situation in which that places them, especially if a long-term high security person in custody, may have a bearing on the exercise of that clinical judgement in that it may be more difficult for the person in custody to effectively live in their acquired gender during the early stages of their assessment and treatment.

A person in custody who initially refuses assessment by a gender reassignment medical specialist has the right to change their mind and request assessment at any later date. Whenever a person in custody requests such specialist assessment, the necessary arrangements to facilitate this should be undertaken promptly.

## **6.8 Access to social contact and support for mental health**

People in custody have a right to adequate positive social contact to support mental health and wellbeing.

People in custody have the right to receive visits from friends or relatives without discrimination or harassment on grounds of gender reassignment from staff or other people in custody. Adaptations to standard visiting procedures should be considered where necessary to enable a more adequate level of privacy and positive social contact for people in custody with the protected characteristic of gender reassignment.

The risk of depression, anxiety, self-harm and suicide is higher among the transgender population than the general population; however the case conference must establish the level of risk and current needs for the individual person in custody rather than rely on generalities. Where difficulties accessing gender reassignment or experiencing prejudice are damaging the mental health of a transgender person in custody, these should be addressed as a priority.

Staff or person in custody concerns about social contact and mental health difficulties should be addressed urgently by the Unit Manager and then reviewed at the next case conference. The person in custody's current need for, and current level of access to, social contact and support for mental health must be reviewed as part of the gender reassignment case conferences and any decisions on increasing access should be

clearly recorded. This is particularly vital for people in custody who have restrictions on their association with other people in custody or who are unable to be accommodated within the general establishment population due to safety concerns and are on Rule 95 or Rule 41(2).

## **6.9 Access to mainstream offender outcomes provision**

People in custody have the right to access mainstream offender outcomes provision without discrimination or harassment on grounds of gender reassignment. People in custody who have permanently changed the gender in which they live should be assisted to access mainstream offender outcomes provision in their new gender. If there is a need to consider how this can be done in a safe environment this should be discussed and decisions agreed at a gender reassignment case conference.

Where a person in custody has changed name, title and/or social gender, their new details must be used for any new certificates, reports and references relating to mainstream offender outcomes provision. In order to provide privacy about their gender reassignment history, people in custody should be assisted to get any existing certificates, reports and references reissued to reflect their new name, title and gender. Payment of any associated administration charge made by examination bodies is the responsibility of the person in custody and not SPS.

Only gender reassignment related information which is strictly necessary for ensuring safety during mainstream offender outcomes provision may be shared with subcontracted service providers. The gender reassignment related information to be shared should usually be limited to:

- The current name, title and gender pronoun used by the person in custody.
- The current gender of staff that should search the person in custody.
- Any medication or additional property in use which the person in custody needs access to during periods of mainstream offender outcomes provision (medication which does not need to be taken specifically during these periods does not need to be notified to the sub-contracted provider).
- The extent to which the person in custody needs protection from other people in custody during provision of mainstream offender outcomes provision.

The SPS expects all its subcontractors to ensure that full compliance with data protection standards is maintained at all times and that information about a person in custody's gender reassignment is handled very carefully as highly sensitive information.

The SPS expects all its subcontractors to follow its instructions and policy regarding gender identity and gender reassignment equality, including specific instructions about how to refer to the gender of particular individual people in custody, the gender of staff to search particular people in custody and how to manage any safety concerns for particular people in custody.

The person in custody has the right to know what information about their gender identity and gender reassignment is being shared between the SPS and its subcontractors. The information which is shared must be accurate and kept up-to-date.

## **6.10 Transfer to an alternative establishment**

Where a transfer to an alternative establishment is being considered for a transgender person in custody, a gender reassignment case conference should be convened which additionally involves a manager from the potential alternative establishment.

The case conference should explore the specifics of how the person in custody will be accommodated if transferred to the alternative establishment and the decision rationale recorded fully. The case conference should consider whether the transfer is likely to improve or reduce the following:

- respect for the person in custody's gender identity;
- the dignity of the person in custody in regard to their gender identity;
- the person in custody's mental health and wellbeing;
- the person in custody's social integration and access to mainstream offender outcomes provision;
- the safety of the person in custody and other people in custody.

Where there are concerns about potential reduction in any of the above as a result of the proposed transfer, the gender reassignment case management conference should consider and record decisions about strategies for preventing such reduction and clarify the rationale behind the proposed transfer.

## **6.11 Liberation of person in custody and social work liaison**

People in custody have the right to access liberation and subsequent social work provision without discrimination or harassment on grounds of gender reassignment.

People in custody who have permanently changed the gender in which they live should be assisted to access liberation and subsequent social work provision in their new gender.

Where a person in custody has changed name, title and/or social gender, their new details must be used for any new certificates, reports and references relating to liberation and subsequent social work provision. In order to provide privacy about their gender reassignment history, people in custody should be assisted to get any existing certificates, reports and references reissued to reflect their new name, title and gender. Payment of any associated administration charge made by examination bodies is the responsibility of the person in custody and not SPS.

Only the information which is strictly necessary for preventing crime during subsequent social work provision may be shared with social work service providers without the person in custody's consent. The final gender reassignment case management conference held by the SPS should seek to determine what gender reassignment information the person in custody consents to being passed to social work service providers and then conduct a full risk assessment to determine whether any additional gender reassignment information needs to be passed to social work services for the purpose of preventing crime. Any information passed on must be accurate and up-to-date.

The person in custody has the right to know what information about their gender identity and gender reassignment is being shared between the SPS and the social work service provider.

## **APPENDIX A: Relevant Legislation**

### **The Equality Act 2010 - Gender Reassignment**

Under the Equality Act 2010, a person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.

Gender reassignment does not need to involve any medical supervision or surgical procedures; it could simply involve a permanent change of the social gender role in which the person lives their life, (for example through a permanent change of name and gender presentation).

The Equality Act 2010 provides the following types of gender reassignment protection in, amongst other areas, the provision of services and public functions:

- **Direct discrimination** is when someone is treated less favourably than others because of the protected characteristic of gender reassignment;
- **Indirect discrimination** is where a rule or policy or way of doing things has a worse impact on someone with the protected characteristic of gender reassignment than someone without that protected characteristic, where this cannot be objectively justified;
- **Harassment** is unwanted conduct related to the protected characteristic of gender reassignment which has the purpose or effect of violating someone's dignity or which creates a hostile, degrading, humiliating or offensive environment;
- **Victimisation** is treating someone less favourably because they have taken (or might be taking) action under the Equality Act or because they are supporting somebody who is doing so;
- **Discrimination by perception** is where someone is treated less favourably because they are perceived to have the protected characteristic of gender reassignment even though the person doesn't actually have that protected characteristic;
- **Discrimination by association** is when someone is treated less favourably than others because they are connected in some way (such as a friendship or a family relationship) with another person with the protected characteristic of gender reassignment.

### **The Equality Act 2010 – Disability**

Due to the fact that **gender dysphoria** is a recognised medical condition which can cause a great deal of distress, anxiety and depression, some people with the protected characteristic of gender reassignment may also be protected by the provisions of the Equality Act 2010 relating to disability. The Equality Act 2010 creates a legal requirement to make reasonable adjustments to the way a service is provided to ensure disabled people receive the same standard of service as non-disabled people. This may, for example, include changing a policy as it applies to disabled people or providing additional staffing support to disabled people in custody.

### **The Human Rights Act 1998**

The Human Rights Act 1998 incorporates the European Convention on Human Rights into UK law for everyone. It means that everyone has the right not to be discriminated

against on grounds of gender identity and gender reassignment in relation to any of the human rights contained in the European Convention on Human Rights.

The right to respect for private and family life, home and correspondence:

- This includes the right to privacy about undergoing gender reassignment so the Scottish Prison Service must not reveal without permission, except to protect safety or prevent crime, any information about a person in custody's gender reassignment.
- This includes the right to have any new name, title and gender used in all correspondence and in public sector records.

The right to freedom of expression:

- This includes the right to freedom of expression of gender identity whether or not this conforms with the sex assigned at birth. Free expression of gender identity can involve modification of bodily appearance or function by medical, surgical or other means and other expressions of gender, including dress, speech and mannerisms.

#### **The Data Protection Act 1998**

Under the Data Protection Act 1998, information relating to a person's gender reassignment would constitute 'sensitive data' for the purposes of the legislation. It can only be processed for certain specified reasons set out in the Act. For more information, see guidance from the Information Commissioner:

<http://www.informationcommissioner.gov.uk>

#### **The Gender Recognition Act 2004**

For information about the Gender Recognition Act 2004, please see **Section 3.3** of this policy and also <http://www.grp.gov.uk>



## **APPENDIX B: Guide to Searching Transgender People in custody**

Conducting rubdown and body searches in accordance with SPS policies is a difficult but essential part of your core duties as a Prison Officer. All people in custody must be searched in a professional and respectful manner.

Inappropriate comments must not be made about the physical characteristics of any person in custody. Any physical variation encountered due to gender reassignment during searching must be responded to in a similar professional and respectful manner as for any physical variation encountered due to disability during searching.

If you are unsure how to search a transgender person in custody, then seek clarification from the Unit Manager or Reception First Line Manager currently responsible for the person in custody concerned.

### **Existing person in custody seeking gender reassignment:**

You should not change how you search an existing person in custody until such time as a SPS gender reassignment case conference decides a change is appropriate and your line manager notifies you accordingly.

### **Where a SPS gender reassignment case conference decision exists:**

You must comply with the existing case conference decision on how a particular transgender person in custody is to be searched. If you have any concerns about the case conference decision, please notify the Unit Manager so that consideration of the points you have raised can take place at the next case conference for that person in custody. Meanwhile, you must still comply with the existing case conference decision.

### **New transgender person in custody where case conference has not yet been held:**

Carry out rubdown and body searches in accordance with the social gender the person in custody currently lives in, if this is known. Where the social gender in which the person in custody is living is unclear, discretely ask the person in custody which gender they wish to be searched by. Their answer must be recorded and the rubdown and body searches conducted accordingly. The genital appearance of a transgender person in custody must not be used to determine which gender of Prison Officer should search them. There is no legal requirement for a transgender person to undergo any surgery as part of their gender reassignment.

### **Searching gender reassignment equipment:**

During the body search process the person in custody should be sensitively asked to remove any items such as prosthetics, wigs or chest-binders to enable the skin underneath to be seen. The items removed must be searched to ensure they have not been tampered with. Care should be taken to avoid accidental damage. The items must be returned immediately once they have been searched. Sufficient time should be provided for the person in custody to replace the items and a mirror provided if required.

### **Inappropriate behaviour by person in custody during search:**

Any provocative, disruptive, offensive or abusive language or behaviour by a transgender person in custody towards you during searching should be addressed by placing the person in custody on report as per any other person in custody violation of establishment rules.

## **APPENDIX C: Additional Assistance**

### **SPS Equality and Diversity Headquarters Staff**

|   |  |
|---|--|
| Priscilla Chipo Marongwe<br>E&D Business Partner<br>Scottish Prison Service<br>Room 120, Calton House<br>5 Redheughs Rigg<br>EDINBURGH<br>EH12 9HW<br>Direct: 0131 244 8620<br>General: 0131 244 8587<br><a href="mailto:priscilla.marongwe@sps.pnn.gov.uk">priscilla.marongwe@sps.pnn.gov.uk</a> | Vince Fletcher<br>Equality and Diversity Manager<br>Scottish Prison Service<br>Prisons Directorate<br>Calton House<br>5 Redheughs Rigg<br>EDINBURGH<br>EH12 9HW<br>Tel: 0131 2448606<br><a href="mailto:vince.fletcher@sps.pnn.gov.uk">vince.fletcher@sps.pnn.gov.uk</a> |
|---|--|

### **Scottish Transgender Alliance (STA)**

Assists public bodies with transgender equality, human rights and inclusion.

James Morton & Nathan Gale

Address: Equality Network, 30 Bernard Street, Edinburgh, EH6 6PR.

Office : 0131 467 6039

Email: [sta@equality-network.org](mailto:sta@equality-network.org)

Website: [www.scottishtrans.org](http://www.scottishtrans.org)

### **NHS Scotland Gender Reassignment Protocol**

[http://www.sehd.scot.nhs.uk/mels/CEL2012\\_26.pdf](http://www.sehd.scot.nhs.uk/mels/CEL2012_26.pdf)

### **Patient information about gender reassignment hormones and surgeries**

<http://www.gires.org.uk/transpeople.php>

### **Sandyford NHS Gender Identity Clinic**

An initial appointment with one of the Sandyford gender reassignment medical specialists can be arranged by phoning the clinic administrator on 0141 211 8137.

This NHS service will see anyone of any age who lives in Scotland.

Address: 2-6 Sandyford Place, Glasgow, G3 7NB

Website: [www.sandyford.org](http://www.sandyford.org)

Online booklet: [www.sandyford.org/media/88274/genderidentityservice\\_sf\[1\].pdf](http://www.sandyford.org/media/88274/genderidentityservice_sf[1].pdf)

### **Bent Bars Project**

*A letter-writing project for lesbian, gay, bisexual and transgender people in custody.*

Address: P.O. Box 66754, London, WC1A 9BF

Email: [bent.bars.project@gmail.com](mailto:bent.bars.project@gmail.com)

Website: [www.bentbarsproject.org](http://www.bentbarsproject.org)

### **Out Side In**

*A person in custody support group for lesbian, gay, bisexual and transgender people in custody.*

Address: OSI, PO Box 119, Orginton, Kent, BR6 9ZZ

Tel: 01689 835 566

# Dear Boris

As Lesbian, Gay and Bisexual people, we believe that our rights, and the rights of women, are being eroded by the blurring of biological sex and gender identity.

We'd like to talk because we're hopeful that there are many points on which we can agree.

Let's start with sport.

Who could forget the time you flattened a child at a rugby demo? We're sure you felt absolutely terrible. So do you agree with us that allowing biological men to compete against women is unfair and presents a real threat of harm?

You've recently had a spell in hospital. So would you agree with us that single sex wards provide the privacy and dignity people need when they're feeling at their most vulnerable?

You're a father. Are you alarmed by the 4,400% increase in the numbers of girls being referred to gender

clinics over the last decade? Would you agree with us that encouraging kids who do not conform to gender stereotypes to take puberty blockers or consider irreversible surgery is usually wrong? We would contend that many of those children, if not medicalised, would simply grow up to be gay.

And you've waved a rainbow flag or two in your time. Would you be surprised to learn that lesbians are being accused of transphobia and even threatened with sexual violence if they rebuff the advances of a male-bodied person who 'identifies' as a woman?

We truly believe that most sensible people understand that when the rights of one group compromises the rights of another, the only way to find a fair resolution is through open and honest dialogue. At the moment Prime Minister, LGB people and women are denied a voice.

**Let's have a conversation.**

@ALLIANCELGB [www.lgballiance.org.uk](http://www.lgballiance.org.uk)

**LGB ALLIANCE**

# What is a lesbian?

It may seem obvious. Surely everyone knows the answer.

Yet many candidates in this election claim the answer is “anyone who says they are”.

It doesn't matter if a person was born male takes no hormones and has no surgery: someone who “identifies” as a woman – and as a lesbian – MUST be accepted as one. We as lesbians are also told we MUST use the person's “preferred pronouns” and be fine admitting the person into women's single-sex spaces.

Lesbians, gays and bisexuals have fought long and hard for equality as people who are same-SEX attracted. But if, as many politicians now argue, gender (the way you feel) is more important than our biological SEX our rights are completely undermined.

For example, lesbians who say we would never date people who “identify as women” but retain their male anatomy are increasingly accused of being transphobic.

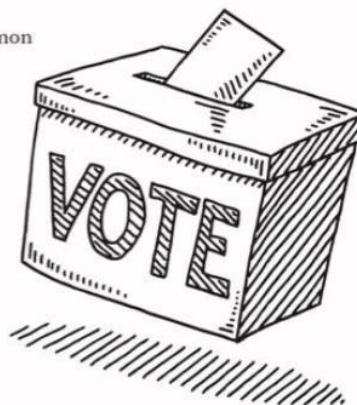
Believe it or not, some lesbian dating apps now even remove women who state they are solely attracted to biological women.

We're grateful that many trans people who want, and deserve, a life lived in peace and dignity with full equality under the law, are also horrified by the impact of this extreme approach.

The implications of this change for gay people are profound. But we are just the canaries in the coalmine. The creeping erasure of “sex” as a fundamental idea has equally dangerous implications for all of society and women in particular.

We believe a lesbian is a woman – an adult human female – who is attracted to other women. We also believe that single-sex spaces in prisons, women's refuges and changing rooms are necessary.

Visit [www.lgballiance.org.uk](http://www.lgballiance.org.uk) for more common sense responses to important questions.



**LGB ALLIANCE**

[www.lgballiance.org.uk](http://www.lgballiance.org.uk) @ALLIANCELGB

Promoted by LGB Alliance. LGB Alliance, Kemp House 152 - 160 City Road, London, EC1V 2NX

Attention Rebecca Hilsenrath,  
Chief Executive Officer,  
Equality and Human Rights Commission,  
Fleetbank House,  
2-6 Salisbury Square,  
London  
EC4Y 8JX

23 Oct 2019

Dear Rebecca

#### **Formal request for EHRC intervention at Stonewall**

A group of influential lesbians, gay men and bisexuals resolved at a meeting in central London last night to set up a new LGB Alliance to counteract the confusion between sex and gender which is now regrettably widespread in the public sector and elsewhere.

The participants – who included former employees and supporters of the lobby group Stonewall, plus doctors, psychiatrists, academics and lawyers with expertise in child safeguarding – agreed a mission statement for the new organization, focusing on biological sex rather than the gender theories which many regard as pseudo-scientific and dangerous.

This follows a continuing refusal by Stonewall, originally set up to fight legal discrimination against gay men lesbians and bisexuals, to respond to a petition (attracting 9,500 signatures), asking it to acknowledge the range of valid viewpoints around sex, gender and transgender politics in 21<sup>st</sup> century Britain.

We believe that it is now time to ask the EHRC to intervene and moderate between so many competing viewpoints. Stonewall is in receipt of very significant public funding and the wider public must be reassured that this money is being spent in a responsible way, particularly in light of the disproportionate monies being dispensed toward the trans community and the relative paucity of funds dispensed toward the lesbian community.

We think that you may want to review what might soon be termed “Stonewall Law”. The instructions now given by Stonewall to public bodies, with no legislative authority or public discussion, replace the Equality Act’s reference to gender reassignment with “gender identity”. So successful has “Stonewall Law” been that the planned compulsory education in Primary and Secondary schools from 2020 will tell children that “gender identity” is a reality which they need to understand. We believe this is dangerous and misleading.

In addition, we fear that Stonewall, in a wide range of public sector interventions, including its educational activities, may be in breach of its quasi-statutory duty under the 2010 Equality Act to foster good relations between those of a protected characteristic and those not. Both its most recent Chief Executive and current Chair have dismissed out of hand the widespread concerns of thousands of other lesbians at the erosion of their most basic rights and dignities. We hope you might want to review the neglect of lesbians in all areas of the work of Stonewall with often catastrophic consequences for young lesbians.

Incredible though it may seem, Stonewall, originally set up to promote the rights of people who are same sex attracted, may also be in breach of the Equality Act so far as sexual orientation is concerned. Under the law "Sexual orientation means a person's sexual orientation towards persons of the same sex". Stonewall has redefined the meaning of this by stating that "homosexuality ..... might be considered..... a term used to describe someone who has a romantic and/or sexual orientation towards someone of the same gender." Here we see a clear example of Stonewall's purposeful elision of sex and gender. Combined with Stonewall's view that everyone "chooses" their "gender identity" this theory surely contradicts the wording of the law and need to be formally reviewed.

We would be most grateful for your earliest response and stress that we are happy to work with the EHRC in a positive and constructive manner.

Yours sincerely

Kate Harris  
on behalf of LGB Alliance  
[lgballiancefuture@gmail.com](mailto:lgballiancefuture@gmail.com)



Kate Harris  
LGB Alliance  
By email to:  
[lgballiancefuture@gmail.com](mailto:lgballiancefuture@gmail.com)

Date: 14 November 2019

Dear Kate,

Thank you for your letter dated 23 October 2019.

The area of sex, gender and transgender rights (and in particular the interplay between sex and gender) comprises both a complex field of law and the subject of significant and important public debate and I very much appreciate you writing to share your concerns.

The Commission works to enhance public understanding of, and ensure compliance with, the Equality Act 2010 under which, as you know, the characteristics of sex, sexual orientation and gender reassignment are all protected equally.

We support a trans-inclusive approach and recognise concerns about the balancing of rights in this area. Our work aims to help clarify the law, and in particular the interplay between the 2010 Act and the Gender Recognition Act 2004, which is an especially complex area of law.

We have made or are planning to make a number of public statements and publish guidance to promote understanding of the position under the 2010 Act with respect to sex, gender and transgender rights. These include:

- [Our response to the government's consultation on reforms to the Gender Recognition Act 2004.](#)
- [Our statement on sex and gender reassignment: legal protections and language.](#)
- Our forthcoming guidance for schools on trans pupils.

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We will continue to set out our views on the law around sex, gender and transgender rights and on concerns that arise around balancing rights in this area. In doing so, it is important that we engage with all relevant stakeholders, including both Stonewall and LGB Alliance.

You will appreciate that we do not control, or have responsibility for, policy positions taken by Stonewall or any other third sector organisation. Nor do we control or have responsibility for how Stonewall, or any other third sector organisation, decides to allocate its funding. We have carefully considered all the concerns raised in your letter with regard to positions adopted by Stonewall. I am afraid that none of these is capable of forming the basis of the deployment of any of the Commission's statutory powers, which do not apply in these circumstances.

You raise in your letter the public sector equality duty on fostering good relations between people who share a protected characteristic and those who do not. The PSED applies to public bodies and in addition to private organisations or charities only when they are carrying out public functions (for example, a security company running a private prison or private care homes providing care on behalf of a local authority). It is our view that Stonewall is not carrying out any public function to which the PSED applies.

We remain vigilant as to any breaches of the 2010 Act, by any organisation on any relevant matter, and consider any issues arising under our strategic plan and internal prioritisation procedures. If you have examples of legal definitions contrary to provisions of the 2010 Act being provided by Stonewall, you can share these with the following members of the Commission's policy team: [emily.hindle@equalityhumanrights.com](mailto:emily.hindle@equalityhumanrights.com) and [lorel.clifton@equalityhumanrights.com](mailto:lorel.clifton@equalityhumanrights.com).

Yours sincerely,



**Rebecca Hilsenrath**

Chief Executive

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Rebecca Hilsenrath,  
Chief Executive Officer,  
Equality and Human Rights Commission,  
Fleetbank House,  
2-6 Salisbury Square,  
London  
EC4Y 8JX

3 February 2020

Dear Rebecca,

I have been instructed to write on behalf of the LGB Alliance (LGBA) following your exchange of letters with the LGBA's Kate Harnis on 23 October and 14 November 2019. I would be grateful if you could send your reply to [lgballiancefuture@gmail.com](mailto:lgballiancefuture@gmail.com), copying me in at the address above.

In her letter of 23 October 2019 Kate suggested that Stonewall might be in breach of the duty imposed by s149 of the Equality Act 2019 to foster relations between groups of people defined by reference to characteristics protected by the Equality Act 2010. The letter stated that Stonewall's "most recent Chief Executive and current Chair have dismissed out of hand the widespread concerns of thousands of other lesbians at the erosion of their most basic rights and dignities" and suggested that the Commission "might want to review the neglect of lesbians in all areas of the work of Stonewall with often catastrophic consequences for young lesbians". The letter of 23 October also expressed concern about the definition adopted by Stonewall of sexual orientation which makes reference to the gender, rather than to the sex, of the individual's preferred sexual/ romantic partner. This definition has obvious implications for the perceived legitimacy of lesbian women's choices as regards sexual partners.

In your response of 14 November you stated that the Commission "support[s] a trans-inclusive approach" but "recognize[s] concerns about the balancing of rights in this area", referring to the "interplay between the 2010 Act and the Gender Recognition Act 2004" as "an especially complex area of law". You indicated that the Commission did "not control, or have

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responsibility for, policy positions taken by Stonewall or any other third sector organization [or ... for ... how [any such] third sector organization [] decides to allocate its funding". You further stated that none of the matters raised in the letter of 23 October "is capable of forming the basis of the deployment of any of the Commission's statutory powers, which do not apply in these circumstances", going on to state that Stonewall is a private body which does not carry out any public function to which the PSED applies.

I have been asked to write to set out the LGBA's concerns on a number of matters, and to request that the Commission take a fresh decision as to appropriate action to take in response to LGBA's concerns. The specific action that the LGBA requests that the Commission take at this point is an inquiry under s16 of the Equality Act 2006 in the form of a thematic review of the evolution and adoption of policy by public sector organisations in relation to transgender rights.

The LGBA is of course aware of the very significant resources the Commission is currently deploying on its formal investigations into the BBC and the Labour Party. It is also aware, however, of your indication to the Women and Equalities Committee in evidence to its recent inquiry into the enforcement of the Equality Act 2010 that the Commission had the capacity to undertake inquiries as well as the formal investigations which are currently under way.<sup>1</sup> The LGBA is also mindful of the comments made by the WEC in its Summary of the report on that inquiry, that:

- "We want to see a model that can act as a sustainable deterrent to achieve system-wide change that tackles institutional and systemic discrimination";
- the Commission should be "ensuring that all who have powers to change the way in which employers, public bodies and service providers operate use those powers to eliminate discrimination and to advance equality";
- the Commission should increase its enforcement activity "for example by making regulators, inspectorates and ombudsmen not only key partners in creating a critical mass of enforcement action but also key targets for enforcement action when those same regulators, inspectorates and ombudsmen fail to meet their own equality duties".

The inquiry that the LGBA seeks is precisely one which has the capacity to achieve system-wide change and facilitate the appropriate use by public bodies of their powers. It is not the case that Stonewall, to which the LGBA's concerns relate, is a regulatory body. It is, however, an organization which wields very significant influence over employers, including many public sector employers, and in the sphere of education, as well as over the public discussion of transgender rights.

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<sup>1</sup> Answer to Q574



# 11KBW

It is arguable that Stonewall carries out some functions of a public nature. Even if that is not the case, its approach to matters with which the LGBA is concerned is extremely influential on public bodies including the Government Equalities Office, the Department for Education and many local authorities, schools and colleges.

Stonewall operates the Diversity Champions Network and the associated annual Workplace Equality Index which it states is “The definitive benchmarking tool for employers to measure their progress on lesbian, gay, bi and trans inclusion in the workplace”. Among the top 100 workplaces listed in the 2019 Index were MI5 and MI6, the National Assembly for Wales, the Welsh and Scottish Governments, the MOJ, the Environment Agency, the Royal Navy and Royal Marines, British Army and Royal Air Force, the National Crime Agency, the Crown Office and Procurator Fiscal Service; multiple universities, councils, police services and NHS bodies. Most if not all of these bodies will have received training from Stonewall, and all of them will have made financial contributions to the organization. Stonewall’s views have the potential to have a significant impact on what public bodies do and how they understand their legal obligations.

Stonewall also runs an annual Education Equality Index which it describes as “a comprehensive benchmarking exercise for local authorities, showcasing how well they’re celebrating difference and tackling homophobia, biphobia and transphobia in schools as well as supporting LGBT young people in their local communities”. In 2019 it reported that 28 local authorities had taken part in the index, described by Leicestershire County Council as “Britain’s definitive auditing tool for local authorities to benchmark their success in tackling homophobia, biphobia and transphobia in local schools and supporting LGBT young people in their local communities”. The Government’s Equalities Office funds Stonewall training on gender in the classroom which is delivered free to primary schools in England serving disadvantaged pupils.<sup>2</sup> And Stonewall states that it has trained over 2300 teachers and distributed its first guide for practitioners working in early years foundation stage.<sup>3</sup>

Stonewall’s characterization of the existing law is at times misleading. Its materials frequently state that the Equality Act 2010 protects from discrimination on the basis of “gender identity” (defined as “A person’s innate sense of their own gender, whether male, female or something else ... which may or may not correspond to the sex assigned at birth”<sup>4</sup>). The characteristic protected by the Equality Act is, of course, that of “gender reassignment”, which is expressly defined by reference to a process of transition (whether undertaken or intended).

<sup>2</sup> <https://www.stonewall.org.uk/gender-classroom>

<sup>3</sup> <https://stonewallimpact.org.uk/transforming-institutions/>

<sup>4</sup> See e.g. <https://www.stonewall.org.uk/harassment-workplace>, [https://www.stonewall.org.uk/sites/default/files/Sexual\\_Orientation\\_The\\_Equality\\_Act\\_Made\\_Simple.pdf](https://www.stonewall.org.uk/sites/default/files/Sexual_Orientation_The_Equality_Act_Made_Simple.pdf), <https://www.stonewall.org.uk/help-advice/discrimination/discrimination-consumer>

Stonewall's advice on "Discrimination as a consumer" states that "Schools must respect a student's gender identity. They should use their preferred pronouns and allow them to use the toilets and single sex facilities appropriate to the gender they identify with". It also states that "A clothes shop must allow trans women to use the female changing room".<sup>5</sup> The first is inaccurate as a statement of law because it conflates gender identity with gender reassignment. The second is inaccurate because it uses the term "trans women" to denote a protected class ("trans" being defined elsewhere by Stonewall as "An umbrella term to describe people whose gender is not the same as, or does not sit comfortably with, the sex they were assigned at birth. Trans people may describe themselves using one or more of a wide variety of terms, including (but not limited to) transgender, transsexual, gender-queer (G-Q), gender-fluid, non-binary, gender-variant, crossdresser, genderless, agender, nongender, third gender, bi-gender, trans man, trans woman, trans masculine, trans feminine and neutrois"<sup>6</sup>).

Further, the "Discrimination as a consumer" guidance misrepresents the exceptions set out in paragraph 28 of Schedule 3 of the Equality Act 2010. That paragraph provides that the prohibition on discrimination in relation to facilities and services (s29 of the Act) is not breached "because of anything done in relation to a matter within sub-paragraph (2) if the conduct in question is a proportionate means of achieving a legitimate aim", the matters being "(a) the provision of separate services for persons of each sex; (b) the provision of separate services differently for persons of each sex; (c) the provision of a service only to persons of one sex". Stonewall's advice on "Discrimination as a consumer" states that "The Equality Act does allow for LGBT people to be treated differently in certain, very limited and exceptional circumstances. In general, these exceptions only apply in situations where full inclusion has been sought but is not possible and the decision to exclude an LGBT person must be clearly justified ...". The reference to "full inclusion ha[ving] been sought" is not to be found in the statutory provision.

Stonewall's (mis)statement of the legal position appears to be driven by its views on what the law should be. Its document *A Vision for Change 2017-2022* states that the Equality Act 2010's provisions on genuine occupational requirements, "participating in sport, accessing single-sex services, serving in the Armed Forces, or attending school" have the effect that "a trans person's rights are not the same as everyone else's [and] ... trans people in these areas are not protected from discrimination and harassment in the way other people are". The document calls for the reform of the Act to "protect all trans people" with a redefinition of the protected characteristic from "gender reassignment" to "gender identity" and the removal of the terms "gender reassignment" and "transsexual". And in its 2015 written evidence to the Women and Equalities Committee Inquiry into Transgender Equality Stonewall had expressed:

<sup>5</sup> <https://www.stonewall.org.uk/help-advice/discrimination/discrimination-consumer>

<sup>6</sup> <https://www.stonewall.org.uk/help-advice/glossary-terms>



# 11KBW

“deep[] concern that exemptions within the Act actively remove protections for trans people. Schedule 3, Part 7, permits service providers to deny ‘transsexual’ people access to separate or single-sex spaces. Exemptions in Schedule 9 in the area of occupational requirements allows employers to have a requirement for employees ‘not to be a transsexual person’, including in the Armed Forces. In addition, Part 14 permits differential treatment in ‘gender-affected sport’. Stonewall also believes that these exemptions sit in contention with the Gender Recognition Act as they imply that being a ‘transsexual person’ supersedes a person’s legal gender”.”

Stonewall’s position is one which, in the view of the LGBA, prioritises the rights of trans people over those of others. It is not possible for LGBA to assess whether and to what extent Stonewall misrepresents the law in relation to its Education or Workplace Equality Indices as neither the questions nor the scoring are available to the LGBA. Nor is it clear to the LGBA what approach Stonewall takes in its schools training. There is cause for concern, however, that the approach which Stonewall advocates, and represents in its published material as being the current law, forms the basis of its training and assessment of organisations and will impact on the attitudes and actions of those organisations, many of them public bodies.

There is evidence that the stance advocated by Stonewall has already had an impact on the policies adopted by public bodies. One example has arisen in relation to single-sex accommodation in the NHS, a policy adopted to safeguard the safety and dignity of patients, in particular women. The Eliminating Mixed Sex Accommodation Guidance (2010)<sup>7</sup> made it clear that “NHS organisations are expected to eliminate mixed-sex accommodation, except where it is in the overall best interest of the patient, or reflects their personal choice... mixing in bathrooms or WCs is still unacceptable, as is requiring patients to pass through opposite-sex areas to reach their own facilities”. The Mental Health Act 1983: Code of Practice (updated 2017) states that:

“All sleeping and bathroom areas should be segregated, and patients should not have to walk through an area occupied by another sex to reach toilets or bathrooms. Separate male and female toilets and bathrooms should be provided, as should women-only day rooms. Women-only environments are important because of the increased risk of sexual and physical abuse and risk of trauma for women who have had prior experience of such abuse. Consideration should be given to the particular needs of transgender patients”.”

By contrast, the NHS England and NHS Improvement’s recently issued *Delivering same-sex accommodation* document (September 2019) now states that, while:

<sup>7</sup> <http://data.parliament.uk/WrittenEvidence/CommitteeEvidence.svc/EvidenceDocument/Women%20and%20Equalities/Transgender%20Equality/written/20371.html>

<sup>8</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/215932/dh\\_121860.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/215932/dh_121860.pdf)

<sup>9</sup> Mental Health Act 1983: Code of Practice. Department of Health. 2015. <https://www.gov.uk/government/publications/code-of-practice-mental-health-act-1983>

“Under the Equality Act 2010, individuals who have proposed, begun or completed reassignment of gender enjoy legal protection against discrimination ... good practice requires that clinical responses be patient-centred, respectful and flexible towards all transgender people whether they live *continuously or temporarily*<sup>10</sup> in a gender role that does not conform to their natal sex. General key points are that:

- Trans people should be accommodated according to their presentation: the way they dress, and the name and pronouns they currently use.
- This may not always accord with the physical sex appearance of the chest or genitalia.
- It does not depend on their having a gender recognition certificate (GRC) or legal name change.
- It applies to toilet and bathing facilities (except, for instance, that pre-operative trans people should not share open shower facilities)...

Non-binary individuals, who do not identify as being male or female, should also be asked discreetly about their preferences, and allocated to the male or female ward according to their choice”.

Whatever position an individual may adopt as to the correct balance between the rights of trans people and those of other NHS users, it cannot be denied that the position asserted in the *Delivering same-sex accommodation* document marks a profound change from that in the 2010 and 2017 documents, and that it rests upon a particular view of the Equality Act 2010 which appears to be consistent with that advocated by Stonewall. It is far from clear what bodies were consulted by NHS England and NHS Improvement in connection with the *Delivering same-sex accommodation* document.

The Women and Equalities Committee dealt in its report on enforcing the Equality Act 2010 with the lack of clarity concerning single-sex services, including questions of gender and sex and the interplay between such services and the rights of trans people. It recommended that the Commission develop a statutory Code of Practice:

“with case studies drawn from organisations providing services to survivors of domestic and sexual abuse. This Code must set out clearly, with worked examples and guidance, (a) how the Act allows separate services for men and women, or provision of services to only men or only women in certain circumstances, and (b) how and under what circumstances it allows those providing such services to choose how and if to provide them to a person who has the protected characteristic of gender reassignment”.

The Commission would be assisted in its drafting of any such Code of Practice if it were to carry out the inquiry that the LGBA seek.

That there is a large degree of confusion in this area is indicated by the Commission’s own publication *Protecting Human Rights: Key Challenges for the UK’s third Universal Periodic Review* (2016),

<sup>10</sup> Original emphasis.

# 11KBW

which stated that the Equality Act included “gender” and “transgender status” as protected characteristics (in place of “sex” and “gender reassignment”). While these misstatements of the law may appear trivial, their implications may be profound when it comes to determining the relationship between the rights of trans individuals to be treated in accordance with their self-identified gender identity, and the sex-related rights of others.

There is legitimate cause for concern that a single organisation, Stonewall, is driving much of the policy development in a difficult and contested area. Whether or not there is a sufficient basis on which the Commission could take a view that unlawful discrimination has occurred or the PSED been breached, the LGBA’s view is that it would be appropriate for the Commission to adopt a broad approach and to launch a s16 inquiry in the form of a thematic review of the evolution and adoption of policy by public sector organisations in relation to transgender rights. The LGBA further request that if, during the course of that inquiry, it appears that any organisation has failed to comply with the requirements of the Equality Act including, where relevant, the PSED, the Commission consider carrying out assessments investigations under s20 Equality Act 2006 and/or assessments under s31 Equality Act 2006 as appropriate, with a view to making recommendations for future action.

Finally I wish to convey the hopes of the LGBA that an inquiry along the lines proposed might contribute to constructive and respectful dialogue about a matter of profound public interest.

Yours sincerely,



Aileen McColgan

Aileen McColgan  
11 KBW  
11 King's Bench Walk  
London EC4Y 7EQ

By email to:  
lgballiancefuture@gmail.com  
cc. aileen.mccolgan@11kbw.com

Wednesday 18 March 2020

Dear Aileen

Subject: [Evolution and adoption of policy by public sector organisations in relation to transgender rights](#)

Thank you for your letter dated 3 February 2020. You have requested, on behalf of the LGB Alliance, that the Commission undertake "an inquiry under s16 of the Equality Act 2006 in the form of a thematic review of the evolution and adoption of policy by public sector organisations in relation to transgender rights." Your letter provides details of advice given, and activities undertaken, by Stonewall and refers to several NHS policy documents.

As you know, the Commission can conduct an inquiry under section 16 of the

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Equality Act 2006 into any matter which relates to sections 8 or 9 of the Equality Act 2006 (equality and diversity or human rights).

As a strategic regulator with a wide remit, we prioritise our work in accordance with our [Strategic Plan 2019 - 2022](#), which was subject to statutory consultation and was recently laid in Parliament. In deciding on our priorities, we considered our '[Is Britain Fairer?](#)' research as well as the outcome of our consultation on the plan. We have been mindful that our stakeholders want us to prioritise more – to focus on fewer priorities and to achieve real impact in those areas.

We have already concluded our business planning for Year 2 of the Strategic Plan, which focuses on our key priorities in the Plan. Therefore for these reasons, I am afraid we are currently unable to take the action requested in your letter.

You mention in your letter the need for guidance on single-sex services. The Commission is currently scoping guidance for service providers on the Equality Act 2010 separate- and single-sex exceptions; we expect this to take the form of a practical tool to help service providers make informed and considered decisions when providing services.

We note the LGB Alliance's commitment to constructive and respectful dialogue. This is welcome and reciprocated and we are actively considering how best to contribute to this important debate.

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Our current strategic plan comes to an end in April 2022 and we will begin consulting on our next strategic plan in 2021. This consultation will inform our priorities for the following three years and the LGB Alliance may wish to submit a response when this consultation opens.

Yours sincerely,



**Rebecca Hilsenrath**  
**Chief Executive**

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[equalityhumanrights.com](https://equalityhumanrights.com)



Equality and Human Rights Commission,  
Attn Rebecca Hilsenrath,  
Chief Executive,  
Fleetbank House,  
2-6 Salisbury Square,  
London, EC4Y 8JX

cc Aileen McColgan QC

25 Mar 2020

Dear Rebecca,

Thank you for your letter dated 18 March 2020. We fully appreciate that the entire country is in the grips of an unprecedented health crisis, and that this will have added to your already heavy workload. Indeed, we might have understood if this had led you to state that you were unable to reply at this time to our detailed letter to you, sent to you by our barrister Aileen McColgan, by virtue of *force majeure*. Instead, you took over 30 days to provide what was, in essence, a non-reply since it did not address any of the complex issues we raised. This was naturally disappointing.

As you can see, an enormous amount of detailed research went into the letter sent to you. You do not acknowledge the findings of that research or the serious concerns expressed. You state that although you have the power to meet our request for a section 16 inquiry, you are "currently unable to take the action requested in your letter" as you need to prioritise commitments made for year 2 of your plan. This leads us to believe that you have not fully absorbed either the seriousness of the concerns we raise or the need for prompt action to be taken in order to correct, and start to reverse, damage already done.

We therefore feel compelled, in this letter, to draw attention to issues that in our view cannot wait for the later review you propose and require urgent attention.

You mention that your work has been set "in accordance with our Strategic Plan 2019 – 2022" which decided priorities based on the results of a study called "Is Britain Fairer?" This is worrying. Your own report on this consultation reinforces the importance of our concerns.

"The Equality and Human Rights Commission has a duty under the Equality Act 2006 to review and consult on the development of its Strategic Plan. In developing a new Strategic Plan for 2019-22, we ran a public consultation from 2 November 2018 to 7 January 2019. This report provides an overview of the consultation process and sets out how we took into account the consultation responses. We received more than 1,000 responses, which have helped us to develop our plans for the next three years and beyond."

The sample consulted was minimal – 1,000 responses – and only included LGBT groups rather than any lesbian, gay or bisexual groups. In other words, same-sex orientation (a protected characteristic) was excluded from this consultation. Could you let us know which LGBT “stakeholders” you consulted?

Below we list all the contributions you reference in your document “Your views on our strategic plan 2019 – 2022” [https://www.equalityhumanrights.com/sites/default/files/strategic\\_plan\\_2019-22\\_consultation\\_report.pdf](https://www.equalityhumanrights.com/sites/default/files/strategic_plan_2019-22_consultation_report.pdf) which came from LGBT groups and describe the priorities they would like you to consider:

Access to health services is very varied for trans people, as there are numerous health bodies all dealing with the same issues in different ways. This Aim could provide an opportunity to promote a uniform approach based on the EA 2010. —LGBT charity, Britain

To reduce barriers to trans people accessing appropriate health services, the Commission should extensively consult with trans communities and transled organisations to identify barriers to access (including where equalities legislation is breached) and develop a plan for addressing these in the years ahead (including considering enforcement action where necessary). —LGBT charity, Britain

Issues for trans people include persistent discrimination and prejudice, breaches of confidentiality and concern about disclosure. —LGBT charity, Britain

LGBT asylum seekers are particularly vulnerable and face significant disadvantages when detained, including discrimination and harassment from other detainees and even from some members of staff. This Aim should include the needs of LGBT asylum seekers in detention. —LGBT organisation, Britain

Include ensuring LGBT people are treated equally within the VAWG sector. —LGBT forum, England

We believe that these comments rather prove our point. You can see that the priority of most of the LGBT groups you consulted is trans people. This is because Stonewall has conducted a campaign, as laid out in the letter sent to you from Aileen McColgan QC, to promote the rights of trans people ahead of those of same-sex attracted people – particularly lesbians, and to misrepresent the Equality Act.

It is clear that your strategic plan should be reviewed. No plan is set in stone and we believe that the arguments in our letter are valid and of significant public importance. To continue down the path you have laid out in your letter would mean continuing to reinforce the harm already done. A large and influential lobbying group, Stonewall, has been successful in encouraging public bodies to enforce the law as Stonewall would like it to be rather than as it is.

We urge you to reconsider your decision to plough ahead without any further conversation with LGB Alliance until 2021. Notwithstanding the extraordinary circumstances in which we all find ourselves, we are ready to help and support you to fulfil your mission correctly and in line with the actual wording of the Equality Act.

Yours sincerely

K Harris

BR Jackson

Kate Harris  
LGB Alliance  
[lgballiancefuture@gmail.com](mailto:lgballiancefuture@gmail.com)

Kate Harris  
LGB Alliance  
Kemp House  
152 – 160 City Road  
London EC1V 2NX

By email to:  
lgballiancefuture@gmail.com

Friday 29 May 2020

Dear Kate,

**Subject: Your letter to us dated 25 March 2020 (received 16 April 2020)**

I hope that you are keeping well at this uncertain time.

Thank you for your letter dated 25 March 2020, which we received by email on 16 April 2020. I am sorry for the delay in our response. This was caused by new pressures we are facing across the organisation as a result of the pandemic.

Thank you also for highlighting your further concerns with us. We assess

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[equalityhumanrights.com](http://equalityhumanrights.com)

against our strategic priorities all requests to conduct an inquiry under section 16 of the Equality Act 2006. This is because inquiries require significant time and resources. We have assessed the issues raised in your correspondence and have concluded that they do not meet our current strategic priorities. Our main priorities are set out [here](#) and have a particular focus on responding to the Coronavirus pandemic.

I would like to clarify two further points you raised in your letter.

Your letter expresses concern that we “do not acknowledge the findings of [our] research or the serious concerns expressed” in your previous letter to us of 3 February 2020. I would like to reassure you that our legal team carefully considered all the issues raised and information provided in that letter. As part of our compliance work, we actively keep under review the compliance of public bodies with their public sector equality duty under the Equality Act 2010.

Your letter also refers to the consultation we undertook as part of preparing our Strategic Plan 2019 – 2022 and expresses concern that “the sample consulted was minimal” and that “same sex orientation...was excluded from this consultation.” We consulted widely on the development of our new strategic plan, including through more than 1,000 formal respondents. This is our highest ever total, and includes organisations with an interest in sexual orientation. I would like to reassure you that this consultation was open to the public, such

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that any member of the public or organisation was able to submit responses; the consultation ran from 2 November 2018 to 7 January 2019. 31% respondents indicated that the protected characteristic of sexual orientation was important to them. The Commission has work programmes in a number of areas that look at the protected characteristic of sexual orientation. An example of this is our work to address data gaps. We continue to highlight issues facing groups who share the protected characteristic of sexual orientation in our responses to parliamentary inquiries on the impact of Coronavirus.

Yours sincerely,



**Rebecca Hilsenrath**  
**Chief Executive**

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## Annex 1

Meeting agenda sent by LGB Alliance to Private Office Official:

### AGENDA

Meeting between [REDACTED] Strategic Policy Adviser to Liz Truss,  
Kate Harris and Bev Jackson of LGB Alliance  
Monday, 12 October 2020 at 2 pm, Zoom

1. Responses to the Secretary of State's announcement.
2. How can we help?
3. Lady Berridge's statement in the House of Lords gave us some cause for concern. *"My Lords, on single-sex spaces, the overwhelming majority of occasions on which they are used—we can all bear testament to that— is on self-identification, and the Government do not intend to interfere with that. There are of course exemptions under the Equality Act where it is justified to do so, where, in the case of a refuge, it could be justified to recommend different services or refuse a service. However, one of the main things that the Government are hoping that the response to the consultation will achieve is time for feelings on both sides to be allayed and for people to speak to one another and exchange views on this matter with respect, compassion and dignity."* Can we expect any announcements on reversing the incorrect implementation of the Equality Act and tightening up the provisions on single-sex spaces?
4. Stonewall – given that Stonewall now opposes the policy of HM Gov, will they still be consulted across Gov departments and allowed into schools, universities etc?
5. Two 'Trojan horses' that are a cause for concern:
  - "Conversion therapy": Misappropriation and misuse of this term by gender identity campaigners. Project sponsored by Ozanne Foundation and members of LGBT Foundation – some in receipt of public money.
  - Defining misogyny as a hate crime: if based on gender rather than sex it would actually reduce protections for women.
6. GEO – who should we be talking to? Our concerns - LGBT advisory panel; LGBT action plan; LGBT medical lead – Michael Brady. **All oppose LT strategy**
7. Equal Rights Caucus conference, led this year jointly by Argentina and the UK. How can we get involved? The conference is for parliamentarians, but who is briefing them?
8. AOB

**Email 1 – Origin = Meeting between member of private office and LGB Alliance**

LGB Alliance is inviting you to a scheduled Zoom meeting.

Topic: [REDACTED], Kate Harris & Bev Jackson

Time: Oct 12, 2020 14:00 London

**Email 2 – Origin = LGB Alliance CCing member of private office in this email.**

Hello Kemi - we just wanted to get in touch to let you know what we are doing.

It is clear that there is an irresponsible and completely unjustified attempt to make life uncomfortable for you after the debate on Monday. We at LGB Alliance are working with a number of others to shine a light on what is actually going on here.

18 groups who share a niche belief in gender identity theory have set out to confuse the public and present you as being unsupportive of "LGBT" people. We will expose this as the nonsense it is in several ways:

1. we will be sending a letter to The Times supporting you
2. we have approached Evan Davis at the PM programme asking for a slot - he says they are full today but will let us know if a gap appears!
3. we are approaching the Today programme after they highlighted Jayne Ozanne's story this morning requesting balance
4. we are trying to get coverage in the press to explain precisely what conversion therapy is and that it simply does not exist as a problem in the UK. Also that the real story that all these "LGBT" groups should be concerned about is what Dr David Bell calls "the conversion therapy of young LGB people to turn them into trans when they would be perfectly happy as LGB" - my paraphrase!

In haste but want you to know we have your back, we are working hard and we far out number the gender identity campaigners.

Best wishes

Kate  
[REDACTED]



It is clear that there is an irresponsible and completely unjustified attempt to make life uncomfortable for you after the debate on Monday. We at LGB Alliance are working with a number of others to shine a light on what is actually going on here.

18 groups who share a niche belief in gender identity theory have set out to confuse the public and present you as being unsupportive of "LGBT" people. We will expose this as the nonsense it is in several ways:

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In haste but want you to know we have your back, we are working hard and we far out number the gender identity campaigners.

Best wishes

Kate

██████████

Kate Harris

LGB Alliance

@ALLIANCELGB

#### **Email 4 – Origin – Emails between LGB Alliance and an official**

Hi ██████,

We look forward to meeting you at 5.30 p.m. today.

Best wishes,

Kate and Bev

LGB Alliance is inviting you to a scheduled Zoom meeting.

Topic: Kate Harris and Bev Jackson with [REDACTED]

Time: Feb 8, 2021 05:30 PM London

Join Zoom Meeting

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Email 5 – LGB Alliance email CCing a member of private office



We hope you will be able to join us for our first anniversary webinar! We are really looking forward to it and we'd love to have you there!

Best wishes,

Kate Harris and Bev Jackson

Join us at "The Gay Spot" Thu 22 Oct at 1900! Registration is free - copy & paste this link into your browser:

<https://www.eventbrite.co.uk/e/lgb-alliance-is-one-year-old-lets-celebrate-tickets-124270122281>  
<<https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.eventbrite.co.uk%2F%2F%2Flgb-alliance-is-one-year-old-lets-celebrate-tickets-124270122281&data=04%7C01%7CSonia.zvedeniuk%40trade.gov.uk%7Caf81eeca3e0d4cbb63aa08d876015a63%7C8fa217ec33aa46fbad96dfe68006bb86%7C0%7C1%7C637389095487808335%7CUnknoun%7CTWFpbGZsb3d8eyJWljiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C3000&sdata=F6bXOMq1pgwuJS9vC0Ep9tdfZ9Bdw0eQzyqStle7b%2BE%3D&reserved=0>>  
<<https://mcusercontent.com/4cd527ba553c7e55491414f31/images/2df38f4e-f420-4076-a4bb-b291943951b1.jpeg>>

Helen Joyce, journalist and author, in conversation with Malcolm Clark, Kate Harris & Bev Jackson of LGB Alliance

About this Event

Welcome to the first edition of "The Gay Spot".

A year ago, 70 people gathered at Conway Hall, London, to discuss setting up a new LGB organisation. The meeting decided that a new group was needed and set certain priorities:

One year on, we will look at what has been achieved and what is coming next. Please join us!

- \* To reaffirm that biological sex is important and cannot be changed
- \* To stand up for the rights of people with same-sex sexual orientation
- \* To reject the deeply regressive ideology of gender identity extremists who tell us that it is "transphobic" to be homosexual
- \* To lobby against legislation introducing gender self-ID

- \* To ensure schools teach only evidence-based Relationships and Sex Education
- \* To lobby against the medicalisation of children with gender dysphoria, many of whom will otherwise grow up to be gay or lesbian
- \* To secure a seat at the table wherever LGB matters are being discussed
- \* Above all, we insisted that issues relating to sex and gender must be discussed in the public forum; "no debate" is not an option in a democratic society.

#### NOTE:

This is the first in a series of online events - named The Gay Spot in honour of black American lesbian Ruth Ellis.

Ruth Ellis, black lesbian pioneer, died in October 2000, aged 101. Ellis & her lifelong partner, Ceciline "Babe" Franklin, moved to Detroit in 1937. "From the 40s to the 60s, the couple's house was known as the 'Gay Spot'. Black same-sex couples were not welcome at white gay bars, nor were they welcome at black straight clubs. Their home gave the community a place to dance, sing and socialise". Well we may not be dancing or singing but we want the Gay Spot to be a place where LGB people whose views often go unheard can speak up loud and proud.

#### WHO'S WHO?

Malcolm Clark - filmmaker, king of the Twitter thread

Kate Harris - former Stonewall activist, co-founder LGB Alliance 2019

Bev Jackson - founding member GLF 1970, co-founder LGB Alliance 2019

Helen Joyce - journalist currently writing a book about gender-identity ideology

#### **Email 6 – Email to Marcus Bell, Director of the Equality Hub, from the LGB Alliance, CCing a member of private office into the email - no response recorded**

Hello Marcus - here is the correspondence between LGB Alliance and EHRC from Oct 2019 - May 2020 - sorry there is a lot to read but we hope it will be useful.

I believe that the Secretary of State may be aware of the content of these letters, as I think Elysia McCaffrey may have shared some of the detail and background. Fundamentally, LGB Alliance asked EHRC to investigate Stonewall for being in breach of the Equality Act in several ways.

After the first rebuttal from the CEO, Rebecca Hilsenrath, we instructed Aileen McColgan QC to write a follow up letter. Her analysis of the issues is forensic and detailed. Again EHRC rejected all of our suggestions. We are approaching the new Chair of EHRC, Baroness Falkner, to request a meeting, as we have made no progress with Rebecca Hilsenrath.

This is the timeline of correspondence:

From LGB Alliance - 23 Oct Equality & Human Rights Commission 23 Oct letter.pdf

From EHRC 14 Nov 402Harris.pdf

From LGB Alliance - LGBA EHRC letter 3 February(1).pdf

From EHRC - LGBA response letter - 18 March

From LGB Alliance - scan EHRC letter final 25 Mar.pdf

From EHRC - 20200529 - EHRC Response to LGBA Letter.pdf

We hope the info provided will be useful in illustrating the enormous influence of Stonewall across public bodies up to and including the EHRC - which - in our view - should be implementing the law rather than colluding with groups who seek to undermine and misrepresent it.

Kind regards Kate

Kate Harris

LGB Alliance

@ALLIANCELGB

[www.lgballiance.org.uk](http://www.lgballiance.org.uk)

#### **Email 7 – LGB Alliance Email on The Times**

FYI - our letter to The Times going in tomorrow below. Please can you share with Daniel as I don't have his email. We really hope this will put the cat amongst the pigeons and be helpful for the Government. We need to expose the hypocrisy of the debate as it was framed on Monday.

We are still trying to get on radio or TV and will push further next week.

Our campaign on conversion therapy is just beginning and we are in full support of the government's approach to explore this very complex subject carefully and slowly.

Best wishes and have a great weekend - Kate

----- Original Message -----

From: "SM - Times, Times Letters" <[REDACTED]>

To: [REDACTED]

Date: 12/03/2021 18:19

Subject: Re: Letter to The Times - exclusive

Dear Kate.

Thank you for you letter. It will appear tomorrow, edited as below. The full list of signatories will be published online.

All best,

[REDACTED]

Times letters

Sir, On March 8 we heard a series of MPs say that they oppose conversion therapy. We all do — as long as we agree on what it means. No one mentioned the most glaring example: gender non-conforming young people, especially girls, being converted from lesbian, gay or bisexual to “trans”. Many girls think they’re boys, and vice-versa, because they’re being taught that everyone has a gender identity that may differ from their sex. They hear from online forums that they may be “trans” and that it’s fine to block puberty, take hormones and have surgery. This is conversion therapy in 2021 — it is just a reworking of ugly homophobia.

We ask the government to study the evidence, including the findings of the upcoming Cass inquiry. Support is needed for gender non-conforming children, who are now getting the impression that the answer to their problems is a lifetime of medication. Authentic Equity Alliance; Conservatives for Women; Fair Play for Women; Labour Women’s Declaration; Lesbian Labour; LGB Alliance; LGB Alliance Cymru; LGB Alliance Scotland; Merched Cymru; Sex Matters; Transgender Trend; Women Uniting; Allison Bailey, barrister; Josephine Bartosch, journalist; Dr David Bell, psychiatrist, former president of the British Psychoanalytic Society; Dr Michael Biggs, associate

professor of sociology, university of Oxford; Dr Heather Brunskell-Evans, philosopher; Dr Az Hakeem, consultant psychiatrist; Dr Debbie Hayton, physics teacher; Dr Tessa Katz, GP; Kellie-Jay Keen, Standing for Women; Graham Linehan, writer. For the full list of signatories go to: [thetimes.co.uk/letters](https://eur02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fthetimes.co.uk%2Fletters&data=04%7C01%7CSonia.zvedeniuk%40trade.gov.uk%7C5335e60594064f01256608d8e58b1686%7C8fa217ec33aa46fbad96dfe68006bb86%7C0%7C1%7C637511732840039739%7CUnknown%7CTWFpbGZsb3d8eyJWljoIMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikl1haWwiLCJXVCI6Mn0%3D%7C1000&sd=ata=%2FSPSFgPQbVBKDNK9ok0i9pOY8FjXUuQgfPcjaRPPbOWQ%3D&reserved=0)  
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On Fri, 12 Mar 2021 at 15:43, Kate Harris [REDACTED]

[REDACTED] > wrote:

Is there any way to remove the name of Jane Harris, writer, from the signatories?  
Her name was added by me and it was an error.

Sincere apologies

Kate Harris  
[REDACTED]

On 12/03/2021 15:00 Kate Harris [REDACTED]  
[REDACTED]

On Conversion Therapy

On Monday 8th March we heard a series of MPs say the same thing: they oppose conversion therapy. We all do - as long as we agree what it means. No-one mentioned the most glaring example: gender non-conforming young people, especially girls, being converted from lesbian, gay or bisexual to "trans".

Many girls think they're boys and vice versa because they're being taught that everyone has a gender identity which may differ from their sex. They hear from online forums

that they may be "trans" and it's fine to block puberty, take hormones and have surgery. This is conversion therapy in 2021 -- it's just a reworking of ugly homophobia.

We ask the government to study the evidence, including the findings of the upcoming Cass inquiry. Support is needed for gender non-conforming children, who are currently getting the impression that the answers to all their problems is a lifetime of medication.

Signed by 12 groups and 27 individuals:

Authentic Equity Alliance

Conservatives for Women

Fair Play for Women

Labour Women's Declaration

Lesbian Labour

LGB Alliance

LGB Alliance Cymru

LGB Alliance Scotland

Merched Cymru

Sex Matters

Transgender Trend

Women Uniting

Allison Bailey, barrister

Josephine Bartosch, journalist

Dr David Bell, psychiatrist, a former President of the British Psychoanalytic

Society

Jonny Best, musician

Dr Michael Biggs, associate professor of sociology, university of Oxford

Dr Heather Brunskell-Evans, philosopher and Foucault scholar

Jo Campbell, concerned lesbian of Manchester

Maureen Chadwick, writer

Simon Edge, novelist



Maya Forstater, founder Sex Matters  
Eileen Gallagher OBE, writer & producer  
Kath Gotts, composer & lyricist  
Dr Az Hakeem, consultant psychiatrist  
Jane Harris, writer  
Dr Debbie Hayton, physics teacher  
Rob Jessel, journalist  
Dr Madeleine Jowett, university lecturer  
Dr Tessa Katz, GP  
Kellie-Jay Keen, Standing for Women  
Graham Linehan, writer  
Ann McManus, writer  
Tish Naughton, blogger  
Jessica Silverstone,  
Caroline Spry, film producer  
Dr Kathleen Stock OBE, professor of philosophy  
Robert Wintemute, professor of human rights law  
Miranda Yardley, human rights activist

EC1V 2NX

sent by Kate Harris, LGB Alliance, Kemp House, 152- 160 City Road, London



Kate Harris  
LGB Alliance  
@ALLIANCELGB

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<<https://eur02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.lgballiance.org.uk%2F&data=04%7C01%7CSonia.zvedeniuk%40trade.gov.uk%7C5335e60594064f01256608d8e58b1686%7C8fa217ec33aa46fbad96dfe68006bb86%7C0%7C1%7C637511732840039739%7CUnknown%7CTWFp>

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data=LqqoMhTz34p2CalgqJyIQ7i4%2Bhnap8SO2EMwoGYVvw%3D&reserved=0>

On 12/03/2021 14:23 SM - Times, Times Letters [REDACTED]  
[REDACTED]  
[REDACTED]

This is an automatic acknowledgement of your email to the letters  
department of The Times.

Thank you for writing. Letters must be exclusive to The Times and  
should we use your letter, we may edit it.

If you did not provide your full address and daytime telephone  
number, please resubmit your email with this information added, to allow us to confirm your  
identity. We will publish only a shortened address, and may contact you to discuss your letter.

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If you sent the letter as an attachment, please resend it as plain text  
in the body of an email.

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Kate Harris

LGB Alliance

@ALLIANCELGB

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Kate Harris

LGB Alliance

@ALLIANCELGB

[www.lgballiance.org.uk](http://www.lgballiance.org.uk)

**Email 9 – Email to Baroness Barran from LGB Alliance CCing member of private office**

Daniel El-Gamry | Special Adviser (Equalities) | No 10 Policy Unit | 10 Downing Street |  
[REDACTED]

From: [REDACTED]

Sent: 27 March 2021 17:28

To: [REDACTED]

Cc: [REDACTED]  
[REDACTED]

Subject: FOR BARONESS DIANA BARRAN - LGB Alliance and Online Abuse

<https://twitter.com/dianabarran/status/1375184579808595974?s=20>  
<<https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Ftwitter.com%2Fdianabarran%2Fstatus%2F1375184579808595974%3Fs%3D20&data=04%7C01%7CSonia.zvedeniuk%40trade.gov.uk%7C6285af7f71c2438ade2908d8f158d27e%7C8fa217ec33aa46fbad96dfe68006bb86%7C0%7C0%7C637524711384303576%7CUnknown%7CTWfpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IkhWwILCJXVCi6Mn0%3D%7C1000&sdata=M65y3o8mnQKoQ%2BIQaTITi2o5nzJVOmuFW%2Fyzo8cSqTw%3D&reserved=0>>

Good afternoon Baroness Barran

We were delighted to read on Twitter of your interest in challenging online abuse against women and LGBTQ+ people. We would be very interested to meet you virtually to discuss our own experience of this - which may be different from what you heard about on your recent call with various groups. We represent a view which rejects the current LGBTQ+ orthodoxy and for that reason alone we are the target of some extraordinarily unpleasant and defamatory comments.

We are pleased to be working with GEO, EHRC, the office of the Minister for Equalities and others to put forward our views on the importance of recognising biological sex, fact based RSE for children at school, an end to the medicalisation of gender non-conforming children and rights for exclusively same-sex attracted (not same-gender) people.

Some of the worst abuse we get is from MPs and members of the House of Lords. We have complained to the Parliamentary Standards Commissioner and others, but it appears that any parliamentarian may spread lies about our organisation with impunity. With this in mind, and the subject overall, may we request the privilege of a Zoom call with you to discuss further?

I attach a brief introduction to LGB Alliance and a link to our first anniversary webinar where we share some of our thinking. <https://www.youtube.com/watch?v=gHtNmUnbG3U&t=2584s>  
<<https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.youtube.com%2Fwatch%3Fv%3DgHtNmUnbG3U%26t%3D2584s&data=04%7C01%7CSonia.zvedeniuk%40trade.gov.uk%7C6285af7f71c2438ade2908d8f158d27e%7C8fa217ec33aa46fbad96dfe68006bb86%7C0%7C0%7C637524711384313538%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C1000&sdata=KCiEaC4S9F2PEw0eTu5hadytudB0skLCOOAXgb1ss30%3D&reserved=0>>

We look forward to hearing from you.

Many thanks and kind regards

Kate Harris

[REDACTED]

LGB Alliance

@ALLIANCELGB

[www.lgballiance.org.uk](http://www.lgballiance.org.uk)

<<https://eur02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.lgballiance.org.uk%2F&data=04%7C01%7CSonia.zvedeniuk%40trade.gov.uk%7C6285af7f71c2438ade2908d8f158d27e%7C8fa217ec33aa46fbad96dfe68006bb86%7C0%7C0%7C637524711384313538%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C1000&sdata=7Vos5DuGINNy6Ox2l3%2FXG7WvostEQwOUK90C8GzSqUc%3D&reserved=0>>

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**Email 1 – Email sent by LGB Alliance to Rt Hon Penny Mordaunt MP, redirected to SoSWE Private Office**

Thanks [REDACTED], copying [REDACTED] in to take forward.

[REDACTED] | Senior Private Secretary to The Rt Hon Elizabeth Truss MP, Secretary of State for International Trade

Department for International Trade | King Charles Street | London | SW1A 2AH

[REDACTED]

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[REDACTED]  
[REDACTED]

From: [REDACTED]  
[REDACTED]

Sent: 24 March 2021 18:40

To: Secretary of State for International Trade [REDACTED]

Subject: Fwd: FW: Stop transing the gay away

Good evening,

Please see the email below regarding equalities issues that PMG has asked be passed onto SoS DIT in  
her equalities role. Can you please pass this onto the relevant PS to pick up?

Many thanks,

[REDACTED]

----- Forwarded message -----

From: [REDACTED]  
[REDACTED]

Date: Wed, 24 Mar 2021 at 16:13

Subject: Fwd: FW: Stop transing the gay away

To: [REDACTED]  
[REDACTED]

----- Forwarded message -----

From: [REDACTED]

Date: Wed, 24 Mar 2021 at 15:23

Subject: FW: Stop transing the gay away

To: [REDACTED]  
[REDACTED]

Hi [REDACTED]

Penny asked if you could pass this to GEO please.

Best wishes,  
  
[REDACTED]

(Secretary to The Rt Hon Penny Mordaunt MP, Member of Parliament for Portsmouth North)  
  
[REDACTED]

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Ground floor, 1000 Lakeside, North Harbour, Cosham, PO6 3EN |

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served=0> | @PennyMordaunt

From: Katharine Harris [REDACTED]  
Sent: 24 March 2021 13:49  
To: MORDAUNT, Penny  
[REDACTED]  
Subject: Stop transing the gay away

Dear Penny Mordaunt

We are writing to you following the motion on LGBT Conversion Therapy debated in the House of Commons on Monday 8 March 2021.

LGB Alliance represents lesbians, gay men and bisexuals and we are united in our opposition to attempts to coerce or intimidate people into changing their sexual orientation.

Having listened to the debate carefully, and having been involved in these issues for some time, we believe there are two matters that did not receive enough consideration:

1) Sexual orientation and “gender identity” are two distinct categories which need to be considered separately.

2) Affirming a gender non-conforming child as trans, who would otherwise grow up to be lesbian, gay or bisexual, is itself a form of conversion therapy.

The government should not add “gender identity” to sexual orientation in any legislation on conversion therapy. They are separate issues. Many activists who support the ban on conversion therapy promote what’s called the “affirmative model” for the treatment of gender dysphoria. They believe a girl who asserts she is a boy must be affirmed as a boy, and call any psychotherapy to explore the causes for the child’s distress “conversion therapy”.

This means adding “gender identity” to a policy on “gay conversion therapy” would criminalise therapists who want to do their job. If the therapist helps the child or young person explore their feelings or underlying mental health issues they could risk a prison sentence. This is what has happened with a Bill banning conversion therapy recently enacted in Victoria, Australia. We were disturbed to hear MPs praise that Bill as a fine example.

Besides criminalising therapists, adding gender identity to such a Bill would put children and young people, particularly LGB young people, at risk of progressing to a medical transition with lifetime consequences they may later regret. Evidence shows that in 80% of children with gender dysphoria, the condition resolves with puberty. It also shows that the vast majority of these distressed teenagers (75% of whom are girls) would likely grow up lesbian or gay if not medicalised.

As lesbians, gay men and bisexuals, we oppose conversion therapy. The Equalities Minister Kemi Badenoch in the debate was right to say that c therapy has “no place in a civilised society”. Neutral therapy for gender dysphoria is not “conversion therapy”.

We are here to protect the interests of young people who would grow up lesbian or gay if not medicalised. We would be delighted to meet you to discuss these complex and sensitive issues further.

Please contact us at

Bev Jackson and Kate Harris

LGB Alliance

[REDACTED] | @ALLIANCELGB |  
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LGB Alliance, Kemp House, 152-160 City Road, London, EC1V 2NX <[https://imgs-us.onepagecrm.com/email\\_messages/2p8P9mUgletgBEh9b9Dpt6sYe0QfJeOb](https://imgs-us.onepagecrm.com/email_messages/2p8P9mUgletgBEh9b9Dpt6sYe0QfJeOb)>

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[REDACTED]

Head of Office & Senior Private Secretary

Office of the Paymaster General & Minister of State, Rt Hon Penny Mordaunt MP

70 Whitehall | London SW1A 2AS

[REDACTED]

[REDACTED]

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Office of the Paymaster General

Rt Hon. Penny Mordaunt MP

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Email 2 – Agenda discussion for July 2020 meeting between LGB Alliance and MfE’s Office**

LGB Alliance's suggested agenda

- Intros
- How did we get here? The confusion between “sex” and “gender”
- LGB Alliance aims
- Equality Act
- Representation
- Information share – our support for the Minister
- Schools campaign (for information only)

From: Action XST - HMT

Sent: 13 July 2020 13:28

To: [REDACTED]  
[REDACTED]

Subject: FW: Powerpoint presentation LGB Alliance/MfE meeting

Sharing slides they have sent through

From: [REDACTED]



Sent: 13 July 2020 13:10

To: [REDACTED]

Cc: [REDACTED]  
[REDACTED]  
[REDACTED]

Subject: Re: Powerpoint presentation LGB Alliance/MfE meeting

Dear [REDACTED],

Here is the Powerpoint presentation for our call at 2 pm. As Kate has already mentioned: please don't be alarmed, we're only going to speak to the first few slides. The rest are for your information.

Kind regards,

Kate Harris and Bev Jackson

On Mon, 13 Jul 2020 at 13:36, Action XST - HMT

[REDACTED] wrote:

Hi Kate,

The Minister is working remotely, so grateful if you could send any slides through in pdf, powerpoint or similar. Re zoom, I'll defer to Florence.

Thanks,  
[REDACTED]

[REDACTED] | Assistant Private Secretary | Exchequer Secretary to the Treasury and Minister for Equalities | HM Treasury, 2/07, 1 Horse Guards Road, SW1A 2HQ

[REDACTED] [www.gov.uk/hm-treasury](http://www.gov.uk/hm-treasury)  
<<https://eur02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.gov.uk%2Fhm-treasury&data=02%7C01%40trade.gov.uk%7C139be875b87741f5cfb808d8272a8f38%7C8fa217ec33aa46fbad96dfe68006bb86%7C0%7C0%7C637302411180875683&sdata=vIY0bjGi56mwHt3rd02vAwMv2SXM3YH5zD3fVnOcr2A%3D&reserved=0>>

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**Email 3 – Email and Letter sent to SoSWE sent by LGB Alliance**

From: Kate Harris [REDACTED]

Sent: 08 July 2020 17:52

To: TRUSS, Elizabeth [REDACTED]

Cc: [REDACTED] Bev Jackson [REDACTED]

Subject: Letter on GRA reform

Good afternoon - I have pleasure in attaching a letter for the Minister. I hope it is of interest and as always, we are happy to discuss in more detail as required.

Kind regards

Kate Harris

LGB Alliance

[REDACTED]

@ALLIANCELGB

[www.lgballiance.org.uk<https://eur02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.lgballiance.org.uk%2F&data=02%7C01%7C\[REDACTED\]%40trade.gov.uk%7C51b406e2fb6f408bca8e08d823e4b532%7C8fa217ec33aa46fbad96dfe68006bb86%7C0%7C0%7C637298812767916909&sdata=I9HdZcH55Tj%2FXKOYjl7tnIKBFbFogI0MIRTQrcUUyGE%3D&reserved=0>](https://eur02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.lgballiance.org.uk%2F&data=02%7C01%7C[REDACTED]%40trade.gov.uk%7C51b406e2fb6f408bca8e08d823e4b532%7C8fa217ec33aa46fbad96dfe68006bb86%7C0%7C0%7C637298812767916909&sdata=I9HdZcH55Tj%2FXKOYjl7tnIKBFbFogI0MIRTQrcUUyGE%3D&reserved=0)

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**To:** Minister for Equalities, Kemi  
Badenoch, MP

**From:** LGBT Policy

**Meeting  
details:** 14:00 - 14:30,  
13 July 2020

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Officials** [REDACTED] Director GEO; [REDACTED] Head of LGBT Policy  
**Attending:**

### **Meeting background**

This is an introductory meeting with the LGB Alliance to listen to their lobbying priorities. Those priorities are: Relationships and Sex Education guidance in schools, GRA reform, healthcare for young people who are questioning their gender, and diversity of thought on sex and gender identity. The LGB Alliance say they are critical of the concept of gender identity and believe that it poses a danger to the rights of LGB people and women.

We anticipate that this will be more of a listening brief, to allow LGB Alliance to share their concerns and perspective with you, rather than to agree definitive actions.

[REDACTED] previously met with the LGB Alliance on 20 May to discuss their main concerns.

### **Background and lines to take**

#### **GRA Reform**

*The LGB Alliance opposes any reform of the GRA or move towards self ID. They support the current GRC requirements remaining as they are* [REDACTED]

- We are aware that the debate on reform of the GRA has become highly polarised, generating strong views and profound differences of opinion. It is important that any debate on reform should be conducted in an environment of respect and empathy, and that all views are heard.
- The Government believes that transgender people should be able to live their lives with dignity and free from discrimination.
- Changing your legal gender is a serious and meaningful decision. We want to ensure that we maintain the appropriate checks and balances in the system, while removing unnecessary bureaucracy for those taking this step.

- For many years transgender people have used single-sex spaces in their acquired gender without issue. We have no interest in curtailing or policing this.
- [REDACTED]
- [REDACTED]
- This will outline how we intend to make the process of applying for a gender recognition certificate more accessible.
- [REDACTED]
- Improving the gender recognition process is just one aspect of how we can improve the lived experience of transgender people. We are committed to improving services for those undergoing gender reassignment and tackling waiting times for gender identity clinics.
- We are also committed to tackling violence, discrimination or abuse against transgender people wherever it occurs.

## Relationships and Sex Education Guidance

*The LGB alliance are likely to have concerns over the content of the new Relationships Education curriculum, as well as what additional learning resources may be used in schools. Detailed queries relating to the content of LGBT inclusive RSE should be directed to the DfE, as they are responsible for the Relationships and Sex Education Guidance.*

- From September, Relationships Education (RE) will be compulsory in all primary schools in England and Relationships and Sex Education (RSE) compulsory in all secondary schools, as well as making Health Education compulsory in all state-funded schools.
- As outlined in the DfE's statutory guidance, schools should ensure that all of their teaching is sensitive and age appropriate in approach and content.
- At the point at which schools consider it appropriate to teach their pupils about LGBT, they should ensure that this content is fully integrated into their programmes of study for this area of the curriculum rather than delivered as a standalone unit or lesson. Schools are free to determine how they do this, and we expect all pupils to have been taught LGBT content at a timely point as part of this area of the curriculum.
- The guidance states schools must consult parents in developing and reviewing their RE and RSE policy. Schools should ensure that the policy meets the needs of pupils and parents and reflects the community they serve.
- The intention is that through these subjects, children will be taught about the importance of respectful relationships and the different types of loving and healthy relationships that exist. This can be done in a way that respects everyone's views and meets the needs of all pupils.

• [REDACTED]

- As outlined in the DfE's statutory guidance, schools should ensure that all of their teaching is sensitive and age appropriate in approach and content. Schools should ensure that the policy meets the needs of pupils and parents and reflects the community they serve.
- The RSE statutory guidance sets out clear advice on choosing resources. Schools should assess each resource they intend to use, to ensure that it is appropriate for the age and maturity of pupils, and sensitive to their needs. These resources must also be factually accurate. We also expect schools to consult with parents on these matters and to make reasonable decisions about the content of their curriculum.

## Healthcare for young people

*The LGB Alliance are likely to enquire whether research into the rise in young people being referred to Gender Identity Services is underway. They are concerned that young people should be protected from making life-changing decisions whilst they are still developing. Detailed queries relating to healthcare should be directed to DHSC who are responsible for this area.*

- The Government is absolutely committed to ensuring that appropriate support and care is given to any young person who is questioning their gender.
- The Gender Recognition Act only applies to those aged 18 or over. The GRA consultation did not explicitly seek views on this and we have no plans to change it.
- The GRA is also concerned with the process for seeking to change their legal gender, rather than provision of healthcare.
- Healthcare for young transgender people therefore falls outside the scope of reform of the Gender Recognition Act.
- The Minister for Women and Equalities has stated, as a separate matter, that we also wish to ensure under-18s continue to be protected from taking life-changing decisions before they are capable.
- We are clear that protecting young people is about ensuring the appropriate processes are in place, rather than withholding support, and we will be exploring what this means with the Department for Health and Social care who lead in this area.
- We are aware that the Tavistock and Portman NHS Foundation has seen an increasing number of individuals, particularly natal born females, referred to its Gender Identity Development Service in recent years.
- [REDACTED]
- The wellbeing of all young people is a key concern and the appropriate experts will lead on reviewing the facts in this area.

## Sex and Gender

*The LGB Alliance are critical of the view that gender and sex are different. They are concerned that sex-based rights are in danger of being eroded in favour of gender-identity.*

- Language and our understanding of terms relating to sex and gender have moved on a lot over the last decade, and we are aware that this may be causing confusion and difficulty for people.

- Although many people make a distinction between a person's sex and their gender, this is not a distinction that is often re-produced in day-to-day usage of the terms, nor in the law, which uses the two terms interchangeably.
- This may cause confusion in some circumstances. However, it is important to note that any passing or structural use of the term gender does not affect how the law works in practice.
- As the UK's national statistics institute, the Office for National Statistics take the lead on researching and defining terms which are key to data collection, such as sex and gender identity.
- Different data collection methodology and question designs are being explored by the ONS as part of a multi-year programme of work.
- The 2021 Census will include a binary 'male/female' option for recording sex, as it always has done, as well as a voluntary question on 'gender identity'

## International Conference

- Unfortunately we have had to postpone delivery of our international LGBT Conference, Safe to Be Me in light of the Covid-19 crisis. We are exploring a variety of alternative options and will provide an update in due course. Ensuring the safety of our delegates remains an utmost priority.

### *Participation in the International Conference via the Equal Rights Coalition (ERC):*

- The international LGBT conference civil society attendance will be based on ensuring equal coverage of global participation.
- The Equal Rights Coalition (ERC) is a grouping of 42 states committed to progressing LGBT equality internationally.
- The ERC's membership works with international civil society and allows governments and international civil society to share their national policies and practices on this agenda.
- The United Kingdom took over as co-chair of the ERC on 14 June 2019, along with Argentina.
- Stonewall and Kaleidoscope Trust are two active UK international LGBT human rights organisations in the Equal Rights Coalition and were asked to provide support to the UK government for the duration of our tenure as ERC co-chairs in partnership with Argentina. It is their role to co-ordinate the international civil society participation.
- They were chosen for their record and expertise in working with international stakeholders at a government level. An international civil society organisation is expected to have active international programmes or charity work across multiple countries.
- There is no domestic focus to the work of the ERC.



## **Organisational background and biographies**

### **LGB Alliance**

The LGB Alliance was established in 2019. Their four stated aims are:

1. To advance the interests of lesbians, gay men, and bisexuals at a time when they are under threat from concerted attempts to introduce confusion between biological sex and the notion of gender;
2. To amplify the voices of lesbians and highlight the dual discrimination we experience as women who are same-sex attracted in a male dominated society. We support women's reproductive rights and bodily autonomy;
3. To protect children and young people from being taught unscientific gender doctrines, in particular the idea that they may have been born in the wrong body, which may lead to life-changing, and potentially harmful medical practices;
4. To promote respectful freedom of speech and informed dialogue."

They have expressed their foundational reasoning on their website, and have summarised their views in the below paragraph:

*"We believe that biological sex is observed at birth and not assigned. In our view, current gender ideologies are pseudo-scientific and present a threat to people whose sexual orientation is towards people of the same sex, or both sexes. In addition, we believe that these ideologies are confusing and dangerous to children."*

They are critical of the view that gender and sex are diverse, not necessarily aligned, and are opposed to the self-identification of gender and any efforts to recognise this in law.

[REDACTED]

In this meeting, you will be meeting with:

#### **Bev Jackson**

Bev Jackson's bio on the LGB Alliance website states that she was a founding member of the UK Gay Liberation Front (founded 1971), and is a pro-refugee activist and author. [REDACTED]

#### **Kate Harris**

Kate Harris's bio on the LGB Alliance website states she was once a fundraiser with Stonewall, that she is a lesbian and veteran civil-rights campaigner. [REDACTED]



# Our letter to MPs on conversion therapy

## Letters

(30th March 2021).

Last week we wrote to all MPs. Replies are coming in and we've got some introduction meetings lined up. Here's what we sent them:

### Stop transing the gay away

We are writing to you following the motion on LGBT Conversion Therapy debated in the House of Commons on Monday 8 March 2021.

LGB Alliance represents lesbians, gay men and bisexuals and we are united in our opposition to attempts to coerce or intimidate people into changing their sexual orientation.

Having listened to the debate carefully, and having been involved in these issues for some time, we believe there are two matters that did not receive enough consideration:

- 1) Sexual orientation and "gender identity" are two distinct categories which need to be considered separately.
- 2) Affirming a gender non-conforming child as trans, who would otherwise grow up to be lesbian, gay or bisexual, is itself a form of conversion therapy.

The government should not add "gender identity" to sexual orientation in any legislation on conversion therapy. They are separate issues. Many activists who support the ban on conversion therapy promote what's called the "affirmative model" for the treatment of gender dysphoria. They believe a girl who asserts she is a boy must be *affirmed* as a boy, and call any psychotherapy to explore the causes for the child's distress "conversion therapy".

This means adding “gender identity” to a policy on “gay conversion therapy” would criminalise therapists who want to do their job. If the therapist helps the child or young person explore their feelings or underlying mental health issues they could risk a prison sentence. This is what has happened with a Bill banning conversion therapy recently enacted in Victoria, Australia. We were disturbed to hear MPs praise that Bill as a fine example.

Besides criminalising therapists, adding gender identity to such a Bill would put children and young people, particularly LGB young people, at risk of progressing to a medical transition with lifetime consequences they may later regret. Evidence shows that in 80% of children with gender dysphoria, the condition resolves with puberty. It also shows that the vast majority of these distressed teenagers (75% of whom are girls) would likely grow up lesbian or gay if not medicalised.

As lesbians, gay men and bisexuals, we oppose conversion therapy. The Equalities Minister Kemi Badenoch in the debate was right to say that conversion therapy has “no place in a civilised society”. Neutral therapy for gender dysphoria is not “conversion therapy”.

We are here to protect the interests of young people who would grow up lesbian or gay if not medicalised. We would be delighted to meet you to discuss these complex and sensitive issues further.

### Recent Posts

#### **Conversion Therapy Update**

**LGB Alliance’s Response to the Government Consultation on Banning Conversion Therapy**

**UN expert endangers LGB Rights**

**Pleadings by the Trustees of LGB Alliance in the case of Mermaids (Appellant) and the Charity Commission for England and Wales (Respondent)**

**Response to the letter by Taiwo Owatemi, Shadow Secretary of State for Women and Equalities in the UK**

### Recent Comments



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*Registered Charity Number 1194148*

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**JOHN NICOLSON M.P.** ✓

@MrJohnNicolson

...

Immensely moving documentary. Opponents of the #GRA will, I hope, watch and learn. #trans #lgbt



[bbc.co.uk](https://bbc.co.uk)

**BBC Scotland - Transsexual Stories - Bee's story**

Bee is a diva, with her quick wit and make-up brushes she can make anyone look fierce.

12:04 AM · Apr 15, 2020 · Twitter for iPad



**JOHN NICOLSON M.P.** ✓

@MrJohnNicolson

...

Women who support [#LGBTQ](#) rights can often feel bullied by all the transphobic pile ons from the sinister [@AllianceLGB](#) (whoever they are). Here's one of many messages I've had. tonight. Name withheld out of fear of intimidation.

re, absolutely no need to respond, k  
ht I'd let you know that there are loa  
n in the party who fully support you  
on on trans rights. Please keep fight  
fight so we don't descend into popu

1:16 AM · Apr 21, 2020 · Twitter for iPad





**LGB Alliance**  
@ALLIANCELGB

...

To everyone who is annoyed by the defamatory remarks made about us by the MP (really!)  
[@MrJohnNicolson](#), who clearly doesn't have a clue who we are or what we do: please make a donation to us IN HIS NAME and we will tweet out your message."  
[#FactsNotLies](#)

10:11 AM · Apr 21, 2020 · Twitter for iPhone



**LGB Alliance**  
@ALLIANCELGB

...

Thanks to the anonymous donor who says: "John Nicholson MP may not remember which constituency he is supposed to be standing for \*cringe\* and may not have tried "manvagina" but blocks women, and doesn't listen to their concerns. Misogynist."

8:30 PM · Apr 21, 2020 · Twitter for iPhone



**LGB Alliance**  
@ALLIANCELGB

...

Thanks to Georgia for her donation. She writes: "For the male chauvinist John Nicholson who doesn't care that awful men can and do take advantage of "Self-ID" policies in order to victimise women & girls. Women's rights are not yours to give away."

9:40 PM · Apr 21, 2020 · Twitter for iPhone



**LGB Alliance**  
@ALLIANCELGB

...

Thanks to Jessica Evans for her donation. Jessica writes: "Misogynist homophobic John Nicholson MP has inspired me to donate to an organisation that listens to women."

10:18 PM · Apr 21, 2020 · Twitter for iPhone



**LGB Alliance**  
@ALLIANCELGB

...

Thanks to the anonymous donor who writes: "Donating in the name of that oily spiv, John Nicholson, and all the straight male 'lesbians', whose lack of empathy for women rather gives the lie to their 'womanhood'."

11:53 PM · Apr 25, 2020 · Twitter for iPhone



**LGB Alliance**  
@ALLIANCELGB

...

And thanks once again to Mr John Nicholson for donating. He writes: "I'm sorry I accused you of being a hate Group. I now realise that sexuality is different to identity and are not compatible when men dressed as women expect lesbians to fancy their Male genitals. JN X"

11:50 PM · Apr 21, 2020 · Twitter for iPhone

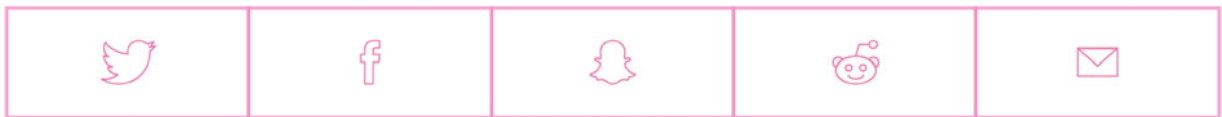


TRANS

# LGB Alliance fundraising page ripped down – twice – after ‘violent and abusive’ language and campaign of abuse against gay MP

VIC PARSONS | APRIL 30, 2020

+ SAVE FOR LATER



The LGB Alliance.

**The anti-trans lobby group LGB Alliance has had not one but two fundraising pages taken down, following an abusive**

<https://www.pinknews.co.uk/2020/04/30/lgb-alliance-fundraising-justgiving-gofundme-john-nicolson-snp-transpobia-hate-group/>



Fundraising platforms JustGiving and GoFundMe have both permanently removed pages set up by the pressure group.

This follows weeks of targeted harassment and abuse from its supporters against gay SNP politician John Nicolson, who attracted the attention of the fringe group when he began publicly voicing support for the trans community.

The LGB Alliance encouraged its supporters to donate to their JustGiving fundraiser in Nicolson's name and tweeted the messages their supporters left on their page – including multiple messages in which Nicolson was called a homophobe and a misogynist.

**Fred Sargeant**

@FredSargeant



Thank you John Nicholson, a UK homophobe & trans chauvinist, for providing such a great fundraising impetus for [@AllianceLGB](#)

**LGB Alliance** @ALLIANCELGB · 21 Apr

To everyone who is annoyed by the defamatory remarks made about us by the MP (really!) @MrJohnNicolson, who clearly doesn't have a clue who we are or what we do: please make a donation to us IN HIS NAME and we ...

[Show this thread](#)

**LGB Alliance** @ALLIANCELGB · 21 Apr  
To everyone who is annoyed by the  
defamatory remarks made about us by the MP  
(really!) @MrJohnNicolson, who clearly doesn't  
have a clue who we are or what we do, please



**PinkNews**



[Show this thread](#)

0:31 · 22 Apr 20 · [Twitter for Android](#)

**63 Retweets** **321 Likes**

LGB Alliance supporter Fred Sargeant called gay MP John Nicolson a "homophobe".

Nicolson told *PinkNews* that he welcomed JustGiving's decision to take down the "transphobic" LGB Alliance's fundraising page.

"LGB Alliance is a hate group which encourages the trolling of trans people and those who champion their rights," Nicolson said.

"They're not registered as a charity. Their accounts are unpublished. And their operating methods on social media are sinister and intended to intimidate."

JustGiving confirmed that the LGB Alliance's fundraising page had been permanently removed, adding that "violent and abusive language" is not tolerated.

"We expect everyone on our platform to treat others with respect and set this out clearly in our guidelines for users," a JustGiving spokesperson told *PinkNews*.

"Violent and abusive language on the site will not be tolerated and pages which contravene our guidelines are removed."

On Twitter, the LGB Alliance **falsely claimed** that its JustGiving account was removed "in relation to the success of the recent campaign".

The group then doubled down on its efforts by setting up a GoFundMe page, which was also taken down mere hours later.



The LGB Alliance's GoFundMe was removed hours after the group set it up.

## What is the LGB Alliance?

The LGB Alliance was set up six months ago, claiming to advocate for lesbians, gays and bisexuals – a claim **immediately and fiercely disputed by lesbians, gays and bisexuals themselves**, who called it out for being anti-trans.

<https://www.pinknews.co.uk/2020/04/30/lgb-alliance-fundraising-justgiving-gofundme-john-nicolson-snp-transpobia-hate-group/>





The controversial group has raised tens of thousands of pounds on fundraising platforms.

The funds from its supporters – which include neo-Nazis who the LGB Alliance has refused to denounce – have paid for newspaper adverts opposing trans rights and calling trans women “predators”, as well as a much-derided logo redesign, a pop song and a February conference in Scotland to which it invited a confirmed homophobe to speak about how LGBT+ clubs in schools are dangerous to girls.



An LGB Alliance supporter tweeted this picture of a panel on which Women Make Glasgow made the anti-gay comment, at the LGB Alliance's "Scotland launch". (Twitter/MerchaniVal)

This view is shared by LGB Alliance founder Malcolm Clark, who **opposes LGBT+ clubs in schools because of the risk of "predatory gay teachers"**.

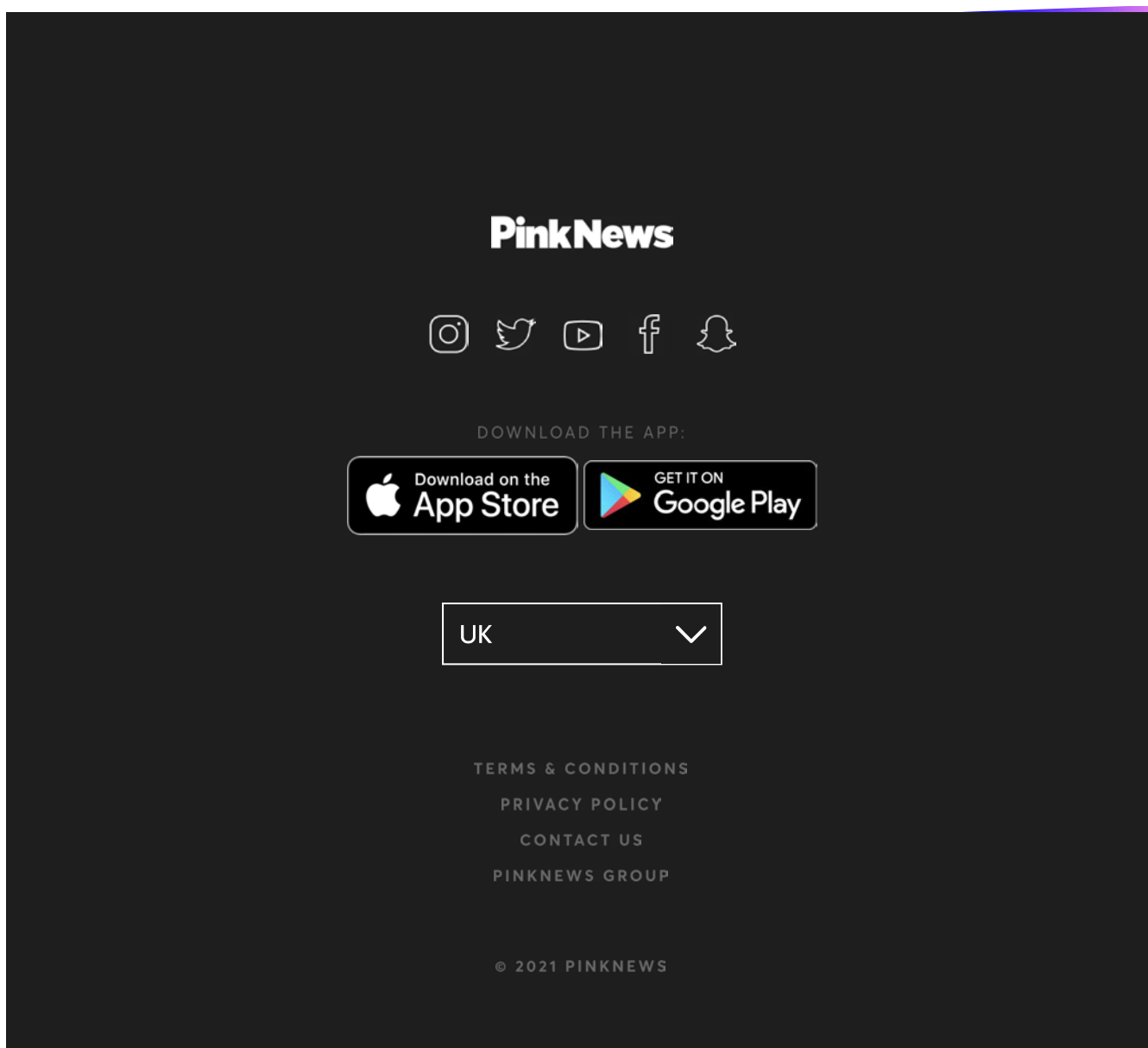
The "transphobic hate group" is currently applying to be registered as a UK charity – something that **tens of thousands of people are protesting against**.

*PinkNews* has contacted the LGB Alliance for comment.



More: [GoFundMe](#), [John Nicolson](#), [Labour Campaign for Trans Rights](#), [lgb alliance](#), [lgbt clubs](#), [malcolm clark](#), [transphobia](#)

## Related Articles







John Nicolson MP  
SNP Shadow DCMS Secretary  
Member, DCMS Committee  
House of Commons  
Westminster, London  
SW1A 0AA

Dear Mr North,

Thank you for your e-mail. As someone who has been on the receiving end of a torrent of abuse from the LGB Alliance, I find your decision disturbing.

In theory, my disagreement with the Alliance is over policy; I am an openly gay man, a member of the LGBT+ community, and a supporter of GRA reform. Support for this modest reform, already passed by many of our European neighbours has resulted in the Alliance tweeting that I am a “misogynist”, a “homophobe”, “women-hating” and “rape-enabling”.

The Alliance has raised money by promising to retweet comments about me no matter how offensive. As a result, it was thrown off the country’s two largest crowd funder sites as a hate group. One such comment pretended to come from me saying: “Sometimes I like to dress up as a woman and talk to myself in the mirror while stroking my penis. Being a male MP means I can do whatever I want including insulting lesbians.”

JustGiving explained its decision by saying “violent and abusive language is not tolerated. We expect everyone on our platform to treat others with respect.” I can think of no other charity which would behave in this sinister and disturbing way.

It’s clear from your published decision today that you share my concerns about Alliance activities. Can you, therefore, explain to me why the abusive nature of the Alliance’s conduct hitherto was deemed an insufficient reason to refuse its application? Moreover, did the Alliance provide you with any explanation for its past conduct? Did the Alliance provide you with any promises about its future behaviour, or that of its directors, one of whom has tweeted offensively and obsessively about me more than one hundred times in the last year (again not the behaviour one could imagine from any other charity director)? Now that it’s been registered as a charity, would the past behaviour I’ve described result in its charitable status being suspended or revoked if repeated?

Being on the receiving end of the Alliance’s venom is unpleasant for me as a politician, but I’m infinitely more concerned about the traumatic effect its activities have on one of the most vulnerable groups in society: trans people. I know from correspondence I’ve received just how distressing the venomous pile-ons are. I can’t imagine what it must be like to be a young trans person, watching in despair as attack mobs—disproportionately using anonymous profiles—belittled their lived experience and their very existence as trans people.

Some charity.

I look forward to your response.

Yours sincerely,

*John Nicolson*

John Nicolson MP





**Malcolm Clark** @TwisterFilm · Oct 7, 2021

2./ At a @DCMS hearing its head Melanie Dawes was questioned by @mrjohnnicolson who compared @ALLIANCELG to racists and slammed the BBC for including it in "balanced discussions". @dawes\_melanie agreed with Nicolson's assertion and opined that such balance was unfortunate. 🙄



2

3

25



**Malcolm Clark**  
@TwisterFilm

3./ Forget that @mrjohnnicolson is an MP so self-obsessed he took to Twitter only this week to try to bully BA because they didn't realise the world spins round his ego. He oversees social media but seems happy to use it publicly to try to sort out his holiday car insurance. 🙄👉



**Malcolm Clark**

@TwisterFilm

...

I see @MrJohnNicolson has been frothing at the mouth again. What fun it's going to be persuading just 2249 people in his constituency to change their vote. Luckily, he's so self-obsessed he's no inkling that many SNP members loathe his pomposity even more than we do.



10:14 PM · Nov 21, 2020 · Twitter for iPhone



**Malcolm Clark**  
@TwisterFilm



1./ Boo hoo. A young gay bloke with the backing of the bloated ego that is [@MrJohnNicolson](#) couldn't even convince the local SNP to make him a candidate never mind the electorate. Here's why I'm relieved this particular gay man won't be "taking the seat". 🙄



thenational.scot

**Candidate who moved from No to Yes aims to take Edinburgh seat for SNP**

A NO voter who has moved to Yes is hoping to oust Labour rebel Daniel Johnson in Edinburgh Southern at next year's Holyrood election.

9:40 PM · Oct 9, 2020 from Lecce, Apulia · Twitter for iPhone





**Malcolm Clark**  
@TwisterFilm



3./ As you'd expect P News lift it word for word and then sprinkle some of their own froth on it plus anything else @MrJohnNicolson has invented during an evening's convivial tweeting. Since John and PN are both serial fantasists here's the truth (again). 📌



**Malcolm Clark** @TwisterFilm · Nov 30, 2020

1. So what's the truth about @ALLIANCELG and what's just myth? Last week saw another surge of crazy accusations against us. We believe passionately in free speech and robust debate so we tend to respond more in sorrow than in anger even when the claims are entirely unhinged. 📌



**Malcolm Clark**  
@TwisterFilm



8./ That won Naomi backing from that elephantine ego and @ALLIANCELG obsessive @MrJohnNicolson an MP who took a leaf out of her book when he recently concocted his own conspiracy theory claiming we were part of a secret global plot to take over the SNP. 😂



**Malcolm Clark**  
@TwisterFilm



Replying to [REDACTED] @MrJohnNicolson and 2 others

John's original posts were uninformed, intellectually lazy (hardly surprising cos he never had an original thought in his life) and abusive. When you condemn his idiocy and ignorance that started all this I'll happily angst about women's responses to his arrogance.

8:35 PM · Sep 29, 2020 from Lecce, Apulia · Twitter for iPhone



**Malcolm Clark**  
@TwisterFilm



4./ These brave feminists are also constantly trolled, bullied and misrepresented by elected mediocrities and narcissists like [@patrickharvie](#) and [@MrJohnNicolson](#) who seem intent on proving Scotland's intellectual decline has entered a new and inexorable phase.

12:13 PM · Oct 25, 2020 · Twitter Web App

10 Retweets 1 Quote Tweet 84 Likes



Reply



**Malcolm Clark** @TwisterFilm · Oct 25, 2020  
Replying to [@TwisterFilm](#)



5./ Nicolson and Harvie make the days when Donald Dewar, John Smith, Margo MacDonald and Jim Sillars represented us seem like some sort of Golden Age in Scottish political life. Can you imagine any of them labelling feminists a hate group (or trying to get a gay group silenced)?

1

10

80



**Malcolm Clark** @TwisterFilm · Oct 25, 2020



6./ [@ForwomenScot](#) deserve your support just for opposing Nicolson and Harvie's oversized egos but their judicial review is far more important than that. They spotted that the Scottish government - smarting from its defeat in the Gender Recognition debate - was up to no good.

1

11

72

