

**Written evidence submitted by Labour Women's Declaration working group
[GRA0922]**

EXECUTIVE SUMMARY

- I. The Scottish Government's proposed Bill does not offer a suitable alternative to reforming the GRA [2.1, 2.2, 2.3, 2.4]
- II. Considerable problems arise through confusion of the terms 'sex' and 'gender' in the GRA [3.1, 3.2]
- III. Equality monitoring and discharge of the Public Sector Equality Duty are compromised by this confusion [3.3]
- IV. Accurate guidance concerning the provision of single-sex services is urgently needed [4.1, 4.2]
- V. As a result of these confusions and inaccurate guidance, self-declaration of identity as a woman or man has become the de facto norm, acceptance of which is assumed by many to be a legal requirement, damaging women's sex-based rights [4.3]
- VI. Vulnerability, potential dangers, religious belief and discrimination are among the reasons why single-sex provision is required. [4.4, 4.5]
- VII. Undefined terms such as non-binary and gender-fluid cannot be the basis for law, and any problems arising from non-conformity to stereotypes is better addressed via existing law. [5.1, 5.2]

1. Who we are

We are the [Labour Women's Declaration](#) working group, co-ordinating work on behalf of the over-5,000 signatories to our [Declaration](#) - members and supporters of the Labour Party who are concerned about women's sex-based rights, and support the 2019 Labour Manifesto's commitment to them being "understood and enforced in service provision". We are making a submission in order to ensure that the impacts of these Acts, and of proposals for change, on women's rights and needs are fully understood and considered.

2. The Scottish Government's proposed Bill as an alternative reform of the GRA 2004

Does the Scottish Government's proposed Bill offer a more suitable proposal for reforming the Gender Recognition Act 2004?

2.1 We responded in detail to the Scottish Government's consultation earlier this year. Our response can be [read in full here](#): below we summarise our response to each of the four questions asked in that consultation.

2.2 We do not support the Scottish Government's proposal that applicants must live in their 'acquired gender' for three months before applying for a GRC: it is insufficient. A medical diagnosis is an important part of the current procedure which must be retained to protect both the individual undergoing gender reassignment, and the wider public. The notion that it is possible to 'live in' a gender (which the Scottish Government did not define) is regressive and we do not think it is something a government should require of its citizens. Unlike biological sex (which is objective and verifiable), 'acquired gender' is subjective: the

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requirement for a medical diagnosis provides some degree of objective evidence, and the current two-year period should be seen as the minimum amount of time to allow a male-bodied person to demonstrate to medical practitioners that they do not present a threat to women and girls.

2.3 We do not support the proposal that applicants must go through a period of reflection of at least 3 months before obtaining a GRC. We think a period of reflection is a good idea, but it should be longer and should be supported by a medical practitioner, again in order to protect the interests of the person undergoing gender reassignment, and provide reassurance to the wider public. We do not think the proposed penalty for a false declaration (not defined in the proposals) is either workable or appropriate since it would be impossible to 'prove' that an individual had been insincere in their belief about their gender identity.

2.4 We do not think the minimum age at which a person can apply for a GRC should be reduced from 18 to 16. Longitudinal research carried out over many years has shown that [childhood and adolescent feelings of gender dysphoria resolve with maturation](#): enabling 16- and 17-year-old adolescents to apply for a GRC would increase the pressure on them to fully transition when this might not be the right long-term outcome for them. Staff at the Tavistock Clinic have written and spoken about their concerns that [children and young people with complex needs have been 'fast-tracked' towards transition](#). We need much better information about how to support gender non-conforming and trans-identifying adolescents before reforming the law to reflect back at them what might be a very mistaken view of who they are.

2.5 Our submission to the Scottish Government also included detailed point-by-point analysis of how its proposed changes to the GRA would undermine the sex-based rights of women [as articulated in the Labour Women's Declaration](#).

3. The interaction of the GRA and the EA

- *Are there challenges in the way the Gender Recognition Act 2004 and the Equality Act 2010 interact? For example, in terms of the different language and terminology used across both pieces of legislation.*

3.1 An immediate problem arises in consideration of these two Acts concerning the definition of the word 'woman'. In the Equality Act, 'woman' is defined in Section 212 as 'a female of any age' and 'man' means a male of any age. These terms refer to biological sex classifications, as is clear in Section 11 where sex is stated to be a reference to a man or a woman. However, section 9 (1) of the GRA states that, for someone granted a full gender recognition certificate,

“the person's gender becomes for all purposes the acquired gender (so that, if the acquired gender is the male gender, the person's sex becomes that of a man and, if it is the female gender, the person's sex becomes that of a woman)”.

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Hence according to this section, it is possible for 'woman' to mean someone who is in fact male. Thus two different definitions of 'woman' are involved in the two Acts.

3.2 The European Office of the World Health Organisation makes a [clear distinction between sex and gender](#): "Gender is used to describe the characteristics of women and men that are socially constructed, while sex refers to those that are biologically determined." In the section of the GRA quoted above, the confusion and conflation of the terms 'sex' and 'gender' is obvious. In the Equality Act's section on the protected characteristic of gender reassignment, reference is made to 'reassigning the person's sex by changing physiological or other attributes of sex'. A person's biological sex cannot be changed, and 'attributes of sex' appears to refer to gender.

3.3 These failures of precision make both discussion of these Acts and implementation of the Equality Act particularly difficult. Equality monitoring has become confused and confusing, through the conflation of 'sex' and 'gender' on forms, as evidenced at <https://www.sexnotgender.info/equality-monitoring/the-list/> . Even government departments are not immune: <https://www.sexnotgender.info/equality-monitoring/government/> . This then causes problems for the implementation of the Public Sector Equality Duty to: ensure the elimination of discrimination, harassment and victimisation; advance equality of opportunity; and foster good relations between those sharing a protected characteristic and those who do not share it. Unless there is a clear delineation between those who share the protected characteristic of sex – be that female sex or male sex – and those who do not, these duties cannot be properly implemented.

4. The clarity and useability of the single-sex provisions of the EA

- *Are the provisions in the Equality Act for the provision of single-sex and separate-sex spaces and facilities in some circumstances clear and useable for service providers and service users? If not, is reform or further guidance needed?*

4.1 The 10th report of the WESC for the session 2017-19, 'Enforcing the Equality Act', chaired by Maria Miller, pointed up several key issues which remain unresolved. In <https://publications.parliament.uk/pa/cm201919/cmselect/cmwomeq/96/9602.htm> the government responded (on 15 October 2019) to paragraph 168 of the WESC Report, cited as Recommendation 14, saying that it intended to publish guidance and best practice guidelines for commissioners of services and service providers, particularly concerning how and when to commission specialist and single-sex services. It stated this would fulfil the rôle of a statement of law, including for compliance with the Public Sector Equality Duty. This guidance and the best practice guidelines are yet to be published, and indeed the government has said it no longer believes this is necessary. Thus the points raised in that report remain valid and will not be repeated here.

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4.2 Section 9(1) of the Gender Recognition Act states that the change of 'legal sex' entailed in the granting of a GRC is "for all purposes," but Section 9(3) qualifies this by making it subject to "provision made by this Act or any other enactment". The second part is frequently ignored, and despite the law being clear about a process to acquire a GRC before 'legal sex' is changed for any purpose, it has been frequently used to mean that anyone whose 'gender identity' is at odds with their birth sex should be understood to be the preferred 'sex' for 'all purposes'. See, for example, the decision concerning the [women-only pond on Hampstead Heath](#) . It is unfortunate that the notion that there is a presumption of the primacy of a 'legal sex' has not been clarified in the GRA to make clear that this only applies where there is no statement to the contrary.

4.3 Furthermore, Section 22(1) of the GRA making disclosure of someone's GRC status a criminal offence has had the effect of establishing self-declaration as de facto 'law', in that no-one can query a claim to 'be' the opposite sex. This has added to the problem of creating and maintaining single-sex services and provision traditionally accepted as single-sex (such as changing rooms) continuing to be solely for women and girls. All have become in effect mixed-sex, as those running such facilities fear being on the wrong side of the law if they challenge anyone who claims to identify as a woman. Many have written into their staff guidance that such claims must not be challenged.

4.4 (a) The need for single-sex services and provision, where 'sex' is understood as the immutable biological dimorphic property of mammals, has not gone away. It remains the case that girls learn (from peers, from TV, from the internet, from their parents etc) very young, as part of the informal messages they receive about how to stay safe, that they need to be cautious around men, and at puberty this caution becomes considerable anxiety as they experience unwanted comments, looks and touching. This is true even if they are also advised to 'be kind', or to please men, or otherwise ignore their anxiety. Of course, not all male people are a danger to women, but as it is impossible to discern which are the ones to avoid, it has long been standard practice to ensure that places where women may be vulnerable are strictly segregated. As one of our [Declaration signatories](#) points out: "Sex based violence and oppression is something women still face today, and should have the right to sex segregated spaces. This is even more important for vulnerable women, in shelters, fleeing domestic abuse, in prisons. Furthermore girls and women deserve to be safe in changing rooms in stores, pools and gyms alike - spike in attacks in mixed sex facilities shows how important this is."

(b) Additionally, women in prison, [very often women who have experienced abuse](#) from men according to the Prison Reform Trust, need single-sex provision for their dignity and safety, and to enable them to engage fully with rehabilitation programmes. Fear is not conducive to learning and change.

(c) For many religious women (particularly Muslims and Orthodox Jews) it is essential that provision is single-sex or they are unable to e.g. attend what had been understood to be 'women-only' swimming classes, if these are open to anyone who 'identifies as a woman'.

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(d) In the explanatory notes to the Equality Act, section 28, paragraph 740 gives as an example “A group counselling session is provided for female victims of sexual assault. The organisers do not allow transsexual people to attend as they judge that the clients who attend the group session are unlikely to do so if a male-to-female transsexual person was also there. This would be lawful.” Despite this example, which obviously refers to the fear experienced by those who have experienced sexual assault (and would also apply to those who have been in relationships characterised by coercive control by men), it is not by any means guaranteed that such services will in fact be single-sex. The reality is described by one of our [Declaration signatories](#): “As a working class woman who has lived in a hostel with a middle-aged sex offender who id'd as female I am disgusted and scared. Also, extremely hurt; never in my life have I been abused for saying I had a visceral, unconscious response to male bodies after I was raped. Never have I been called a bigot for wanting more than a few words to access the refuges, crisis centres and hostels I used in the aftermath of such a devastating thing. Never until I spoke about it with left wing 'trans allies'”.

4.5 There is a further reason for specific single-sex provision, namely in the efforts to repair the disadvantage suffered by women and girls as a result of historic socio-cultural discrimination. All-women shortlists, awards, and other forms of recognition of women in contexts where women have been under-represented, were all intended for those who are of the female sex, but in recent years have increasingly been opened up to anyone who ‘identifies as a woman’. Once again, it is the failure of clarity of how the single-sex exceptions of the Equality Act can be used, and assumptions that ‘gender reassignment’ in effect means self-identification and can be invoked in these circumstances, that has led to these efforts to right historic wrongs becoming potentially useless for their intended purpose.

5. Gender-fluid and non-binary people

- *Are legal reforms needed to better support the rights of gender-fluid and non-binary people? If so, how?*

5.1 The terms ‘gender-fluid’ and ‘non-binary’ are nowhere defined. What is meant here is thus impossible to discern. How the rights of these non-defined groups differ from ordinary human rights is not known. ‘Gender’ having not been defined in either the GRA or the EA, the notion of ‘gender-fluidity’ appears to muddy the waters yet more. ‘Non-binary’ begs the question of what binary is being referred to and, having been established, apparently opted out of. If the reference is to the dimorphic nature of sex in mammals, each individual is in one part or the other of that binary.

5.2 If the intention behind the terms ‘gender-fluid’ and ‘non-binary’ is to rid the individual of the constraints imposed by the socially-constructed expectations of gender, then this is congruent with what the Women’s Liberation Movement and many others have been trying to enable over the last 50 years. It does not require any legal reforms, merely effective application of laws preventing harassment inflicted on those who do not conform to societal expectations of sex-stereotypes.

6. RECOMMENDATIONS

A. Labour Women's Declaration working group recommends that the Government Equalities Office and the Equality and Human Rights Commission issue guidance on the Equality Act, as was promised in the government response to the previous WESC call referred to at 4.1 (WESC paragraph 168, cited as Recommendation 14). Such guidance should make clear the distinction between sex and gender (in line with European Office of WHO definitions).

B. We recommend further that there should be explicit guidance that certain services provided for women, including but not restricted to domestic abuse refuges, rape crisis centres, homelessness hostels, prisons and hospital wards, should be presumed to be for those who were observed and registered as female at birth, and that the single-sex exception can be applied in these services on a scenario-by-scenario basis. While the providers may choose to make different arrangements, these single-sex services cannot be challenged by those wishing to include those registered as male at birth, whether or not they have a GRC.

C. We recommend that successful applicants for a GRC are given written information making clear that the 'all purposes' validity of their Certificate may be over-riden by the provision of other Acts, including the Equality Act.

D. We recommend that the GRA Section 22(5) statement that "The Secretary of State may by order make provision prescribing circumstances in which the disclosure of protected information is not to constitute an offence under this section." be used to ensure that information can be disclosed to service providers of single-sex services in order for them to protect the intended delivery of the services, and for safeguarding purposes.

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