

### **Who am I and why am I sending evidence?**

I am a young woman at the start of a career in research and am deeply personally invested in feminist advocacy. I am very concerned by the conflation of 'gender' and 'sex' within official institutions as I believe this does great damage to women's ability to challenge sexism. To keep things brief I have selected just two questions to highlight the potential impact on women's rights of the issues you are consulting on.

### **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.**

Yes. The Equality Act 2010 makes it clear that sex is a protected category, alongside gender reassignment and other categories such as age, religion or belief, and pregnancy and maternity. Members of the female sex are to be protected from discrimination that occurs on the basis of their membership of this class. A key measure preventing indirect discrimination on the basis of sex is the provision of single-sex services where appropriate, as outlined in the Equality Act.

The wording of the Gender Recognition Act 2004 is confused on the distinction between *gender* (the way a person presents or identifies themselves with reference to typical norms for males and females) and *sex* (whether someone is, in a biological sense, male or female). It is on the basis of *sex* that women are legally protected under the Equality Act. Transgender people, whether or not they have a gender recognition certificate, are protected by the Equality Act on the basis of gender reassignment; if they are also biologically female then they are also protected on the basis of sex.

Section 9, part 1 of the Gender Recognition Act states that:

**"Where a full gender recognition certificate is issued to a person, 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)." (emphasis mine).**

In the first part of this clause we see reference to an *acquired gender*- that is, the adoption of a new social role in accordance with personal identification and preference. We then see this conflated with *sex*- the biological fact of being male or female. This conflation of gender and sex creates the legal fiction that a person who is biologically male is of the female sex, and vice versa, since the conferring of a certificate does not have the power to alter the biological sex of a person.

This is in clear conflict with the prevention of discrimination on the basis of sex and the provision of single sex services as outlined in the Equality Act. The term 'sex' no longer distinguishes between who have the protected characteristic of female sex and those who have the legal fiction of female sex despite being of the male sex. The effect of this is that a person's actual sex ceases to be a demographic recognised by the law. "Female" now becomes a category comprising of mostly people who are actually female, and some people who are legally recognised as female despite being actually, in a biological sense, male.

It is easy to see how this could lead to discrimination against females in practice. For instance, women are the subject of employment discrimination on the basis of sex- largely caused by their actual or perceived potential for motherhood, and negative bias and perceptions of members of the female sex. There have been many successful employment discrimination cases where women have argued that they were unfairly paid less than their male counterparts, for instance at the BBC.

Males who wholly or partially transition to a female social role are also vulnerable to discrimination on the basis of gender reassignment, but not on the basis of sex, since their sex is male. However, the wording of the Gender Recognition Act elides this distinction. A woman who found she was being paid less than a male colleague may be unable to make a claim of discrimination on the basis of sex, if this colleague had a gender recognition certificate that conferred the legal fiction of female sex. This could be despite his having benefitted for decades from both the actual fact and the perception of maleness.

If we believe, as the Equality Act states, that sex is an axis of discrimination, then the Gender Recognition Act must be amended so that it has the power to recognise an acquired gender, but not a legal falsehood of sex. If we do not believe that sex is an axis of discrimination, then we must ask ourselves what is the reason for the centuries-long underrepresentation of women in public life, if it has nothing to do with either the actual fact or the perception of their female bodies?

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

If this is to be done, then the terms 'gender-fluid' and 'non-binary' must be clearly and unambiguously defined. Conflation with 'sex' must be avoided, since gender-fluid and non-binary people are unambiguously of either the male or female sex and to obscure this would prevent equalities monitoring on the basis of sex as required by the Equality Act 2010.

Care must be taken to avoid discriminating against women in any such measures, and to consider the philosophical or ideological implications of the wording and implementation of these measures. For instance, if we define 'non binary' as meaning a person does not identify with masculine or feminine gender norms, what does this say about gender-non-conforming women, or lesbians? Are they not women? Do they not face discrimination on the basis of sex?

It is not discrimination to be asked to comply with demographic monitoring (eg the census, records on personal documents) accurately reflecting the reality of biological sex, or to use single-sex facilities in accordance with one's actual, biological sex. In fact, such measures are necessary for equalities purposes preventing direct and indirect discrimination on the basis of sex.

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