Written evidence submitted by Dr Jane Clare Jones (GRA1413)

Dr Jane Clare Jones – The Institute of Feminist Thought (Founder and Director), *The Radical Notion* (Founder and Editor-in-chief)

About Jane Clare Jones: I hold an MPhil and PhD in feminist philosophy and am the founder and director of The Institute of Feminist Thought, an online feminist school which provides courses for women interested in learning about the history and theory of feminism. I am the founder and editor of *The Radical Notion*, a new feminist journal created to give women space to discuss their thoughts arising from the present political situation – given that we are being driven out of existing public spaces – and to expand feminist thinking in that light (https://theradicalnotion.org/). I am also the author of a report funded by the University of Oxford documenting the way sex has been redefined as gender identity by our census authorities, without due democratic process, and without consulting either data users or women concerned about the continued recognition and recording of the protected characteristic of sex (https://www.history.ox.ac.uk/women-and-equalities-law-historical-perspectives-present-issues).

Overview: My evidence is framed by my concerns about the implications of self-declared gender identity, the wider process of policy capture by which sex is being redefined as gender identity in law and public policy, the way the definition of sex in the GRA interacts with the Equality Act 2010, and the impact on women's rights to single-sex spaces and recognition as a protected sex-class in law.

I will deal with three questions together, because they significantly interact with each other:

Should the requirement for a diagnosis of gender dysphoria be removed?

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.

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?

If you were to remove the requirement for diagnosis, you would effectively be bringing in self-ID by the backdoor. We have already had a consultation on this issue, which, as you are no doubt aware, created a very heated and contentious debate, and the decision was not to introduce self-ID.

All the arguments and issues raised about why self-ID is problematic would apply to the question of whether to remove the requirement for diagnosis. Self-ID throws up significant questions about the definition of sex in law, how this impacts the protected characteristic of sex in the EA2010, and how this then impacts the functioning of the sex-based exemptions:

1. Removing diagnosis would effectively mean that British law encoded the idea that people's legal sex should be determined simply by an assertion of gender identity.
2. Gender identity is a controversial concept. It does not have a solid medical basis, and it functions effectively to redefine the concept of 'man' and 'woman' in law, or perhaps rather, to *create a massive contradiction* as to the definition of 'man' and 'woman' in law. The present form of the trans rights movement is committed to the belief that "To be a

man or a woman is contained in a person's gender identity." (Please see https://thepoliticalerasureofsex.org/wp-content/uploads/2020/10/The-Political-Erasure-of-Sex_Appendix.pdf). That is, to be clear, that someone is a 'man' or a 'woman' by virtue of gender identity and *not by virtue of their biological sex*. The present form of the trans rights project is committed to the over-writing of biological sex by gender identity in law, language and data collection. As Vic Valentine of the Scottish Trans Alliance said in the Scottish Parliament sessions on the Census (Amendment) (Scotland) Bill – which sought to change the sex question on the census to a gender identity question – "The principle of trans equality…[is]…about ensuring that how people live and identify…is more important than…their biological characteristics" (https://thepoliticalerasureofsex.org/wp-content/uploads/2020/10/The-Political-Erasure-of-Sex_Full-Report.pdf). Removing the requirement for diagnosis would underwrite the idea that people's legal sex is an artefact of the assertion of their gender identity, and would massively exacerbate the present conflict between gender-identity-based and sex-based concepts of sex, which is the fundamental source of the present bitter conflict between trans rights and women's rights organisations.

3. That conflict has its origins in the 2004 GRA. The GRA introduced a contradiction into the law with respect to the definition of sex. In the debates around the introduction of the GRA, Lord Filkin, who was responsible for steering the bill through Parliament on behalf of the government, repeatedly refused to address the issue of the fundamental points of law. When challenged about the fact that the government was redefining sex, or introducing a contradiction into the law with respect to the definition of sex, Filkin repeatedly appealed to a) the fact that there was a rigorous diagnostic/gatekeeping process and b) that therefore the GRA would only apply to a tiny number of people. Filkin used this as justification to avoid addressing the fundamental philosophical and legal issues. It is probably true that the legal contradiction created by the GRA was tolerable when it applied to less than 5,000 people. If the present form of the trans rights project is successful in achieving its aim of enabling anyone to change their legal sex on the basis of an assertion of gender identity, that contradiction in the law, and the impact it has on women's rights and sex-based services, will become very far from tolerable from many women's perspective.

4. As the political conflict which has been raging for the last several years makes evident, many women will not tolerate the erasure of the recognition of biological sex in law, and the impact that this has on their rights. As noted, this conflict was created by the contradiction in the law encoded in the GRA, and this has then been used by trans rights advocates to claim that the definition of sex in law has already been changed, or that there is no definition of sex in law, or that all other legislation referring to sex should be interpreted according to the definition encoded by the GRA. (See evidence given to the Scottish Parliament on the Census Bill: https://www.parliament.scot/S5_European/General%20Documents/CTEEA_CensusBill_CowanProfSharon_CTEEA_S5_18_CB_31.pdf and https://www.parliament.scot/S5_European/General%20Documents/CTEEA_Census_Bill_EqualityNetwork_CTEEA_S5_18_CB_27.pdf)

5. It should be noted that while advocates arguing for self-ID often claim that it has no impact on the EA2010 or on women's rights to single-sex services, organisations representing the trans rights position have explicitly petitioned the government to have the exemptions removed from the EA2010 (https://womansplaceuk.org/references-to-removal-of-single-sex-exemptions/).This clearly indicates that in fact they understand all too well that these exemptions are in conflict with the aim of redefining sex in law on the basis of gender identity; redefining all sex-based services as gender-based services; and, hence, removing women's right to single sex services and spaces. It should be further underlined that while trans rights advocates often claim that women are attacking their legal rights, it is, in fact, trans rights advocates who have explicitly asked for the removal of women's sex-based rights.

6. It should be further noted that this is not accidental: the aim of removing sex-based spaces has been central to the present form of the trans rights project since the early nineties. In 1993, The International Conference on Transgender Law and Employment Policy (ICTLEP), an association of transgender lawyers in the United states, first adopted the 'International Bill of Gender Rights.' https://www.digitaltransgenderarchive.net/files/2z10wq28m. In 1995, this Bill was published on the website of the UK trans rights lobby group Press for Change, https://www.webarchive.org.uk/wayback/archive/20060124120000/http://www.pfc.org.uk/gendrpol/gdrights.htm, and in the same year Stephen Whittle – one of the founders of Press for Change, and a significant figure in the passage of the GRA – participated in a reading of the Bill at the meeting of the ICTLEP in Houston, Texas. The first right outlined in the Bill is 'The Right to Define Gender Identity' which states that "all human beings have the right to define their own gender identity regardless of chromosomal sex, genitalia, assigned birth sex, or initial gender role." The fourth right is 'The Right of Access to Gendered Space and Participation in Gendered Activity,' which is framed as following directly from the right to define one's own gender identity, that is, from self-ID. This reads: "Given the right to define one's own gender identity and the corresponding right to free expression of a self-defined gender identity, no individual should be denied access to a space or denied participation in an activity by virtue of a self-defined gender identity which is not in accord with chromosomal sex, genitalia, assigned birth sex, or initial gender role." That is, to be clear, all access to space should be determined by gender identity, *not biological sex,* on the basis of self-determination or declaration. The present conflict over self-ID and access to women's single-sex spaces has thus been coming for nearly three decades, and is an essential, not accidental, feature of the present formulation of the trans rights project.

7. On this matter, it is also crucial for attention to be given to the formulation of the critical Section 9 of the GRA, which reads: "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)." The usage of the terms 'sex' and 'gender' in this section are contrary to their conventional usage; that is 'male/female' are *sex-terms not gender-terms.* The aim of this clause is to ensure that legal sex is subordinated to gender identification, as Stephen Whittle makes evident in this interpretation of the GRA given in 2007

(https://www.socresonline.org.uk/12/1/whittle.html), viz. "in the terminology of the Gender Recognition Act, gender identity becomes and *defines* legal sex." (1.4) It is notable that the part of this clause in parentheses, which reverses the conventional understanding of the relation of sex to gender, was not in the Bill as originally introduced, and that an FOI of emails between Scottish government officials in the run up to GRA reform in Scotland claimed that this parenthetical clause was introduced at the behest of Press for Change. The email reads: "When the GRA 2004 was being developed, Press for Change suggested the wording used in section 9 where sex and gender are used interchangeably. [redacted] advised that this was intentional in order to prevent trans people from being discriminated against in terms of their sex." What is meant here by 'preventing trans people from being discriminated against in terms of their sex' is most likely 'preventing trans people being excluded from sex-based services on the basis of their natal sex,' that is, 'preventing services being sex-based rather than gender-based' (https://www.gov.scot/binaries/content/documents/govscot/publications/foi-eir-release/2018/10/foi-18-02545/documents/foi--18-02545--related-documents/foi--18-02545--related-documents/govscot%3Adocument/FOI-%2B18-02545-%2Brelated%2Bdocuments.pdf Document 20).

8. All of these points direct us towards the interaction between the efforts to allow people to change their legal sex on the basis of self-ID; the efforts to fundamentally change the meaning of sex in law; how the redefinition enacted by the GRA interacts with other statutes referring to sex – especially the EA2010; and the rights of women to have access to sex-based rather than gender-based services. I have aimed to demonstrate here that these questions are all fundamentally related, and that the present form of the trans rights project is deeply committed to redefining sex in law on the basis of self-declared gender identity, and to ensuring that all sex-based services are reconfigured as gender-based services. The present conflict with women's rights is therefore an essential, not an accidental, feature of the present form of the trans rights project.

Conclusion: Against this background, I hope it is evident that removing the requirement for diagnosis would massively exacerbate the already existing problems with respect to the definition of sex in law, and would serve to further inflame the present conflict, which is causing a huge amount of damage across British public life. There is a contradiction in the law created by the GRA, and there is a great deal of uncertainty about how the GRA interacts with the EA2010 and its impact on the exemptions which give women rights to single-sex spaces and services. I would appeal to legislators in the strongest possible terms to fulfil their civic role in helping to resolve this bitter conflict by ensuring that clarity is provided around the issues of the definition of sex in law. In particular, I would ask for statutory guidance to be given to clarify that the definition of 'woman' as 'a female of any age' given in the EA2010 refers to biological sex, and would reiterate the call I made in a Joint Statement with other women's groups for the government to ensure that the exemptions in the EA2010 are functional and that women's given legal rights to single-sex spaces are upheld. https://feminist-institute.org/2020/09/26/joint-statement-on-gra-and-way-forward-on-sex-based-rights/

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