

Kemi Badenoch
Minister for Women and Equalities

15th January 2023

Dear Minister

We understand you have received a letter from the Chair of the Petitions Committee about our petition: **Update the Equality Act to make clear the characteristic "sex" is biological sex**. It has over 10,000 signatures (in fact, now over 70,000) and is awaiting a response from government.

As you know, there is considerable uncertainty about the interaction between the Gender Recognition Act and the Equality Act 2010. Our call is for the government to end the confusion by using Section 23 of the Gender Recognition Act to amend the Equality Act 2010 along these lines:

(X) In this Act, references to female persons and women:

(a) also refer to a person who was born female and has acquired the male sex under the GRA 2004

(b) do not refer to a person who was born male and has acquired the female sex under that Act.

(X) In this Act, references to male persons and men:

(a) also refer to a person who was born male and has acquired the female sex under the GRA 2004

(b) do not refer to a person who was born female and has acquired the male sex under that Act.

The Equality Act protects people against sex discrimination, and allows for different facilities and services based on sex. Organisations that provide single-sex services need clarity about the law. Some jobs have an occupational requirement for a person of a particular sex. Single-sex associations, sports charities and schools are also legitimate

Getting the interaction between the GRA and the Equality Act right matters more than doing it quickly, and we appreciate that you have needed to take your time to consider our petition, particularly in light of the judgment in the For Women Scotland case (which may still be appealed), , and with questions around the Gender Recognition Reform (Scotland) Bill, which may be challenged by the UK government.

Sex Matters is a human-rights organisation campaigning for clarity about sex in law, policy and language | sex-matters.org | info@sex-matters.org

Directors: Michael Biggs, Rebecca Bull, Julia Casimo, Naomi Cunningham, Maya Forstater, Emma Hilton

Transgender people are protected from being discriminated against because they are transgender (i.e. they are covered by the protected characteristic of gender reassignment). This is true whether or not they have a GRC. Separately, everyone is protected against discrimination because of their sex.

The Equality Act works by considering people who “share protected characteristics”. Therefore the concepts of same-sex and opposite-sex are therefore important, and clarity about them is needed.

A government certificate can not give someone a legal right to override other people’s consent when it comes to bodily privacy, dignity and autonomy about sharing spaces with the opposite sex.

Section 9 of the GRA changes a person’s legally recognised sex “for all purposes”. But legislators recognised that this might not always give the effect intended in other acts. As Lord True and Mark Spencer MP told the House last year: “The effect of section 9 of the Gender Recognition Act 2004 is that a reference to a ‘woman’ in legislation, without more, will include someone who is a woman by virtue of a Certificate and will not include someone who is a man by virtue of a Certificate. In some cases, this might be the desired result but in others it might not.”¹

Making clear that “sex” and “gender reassignment” are separate protected characteristics, and that the terms sex, male, female, man and woman relate to biological sex, would resolve uncertainty for women, transgender people, employers, schools and service-providers. It would make it much easier to provide clear guidance and written policies that everyone can understand. And it will work with (not against) the grain of the Equality Act as enacted, clearing up many anomalies and difficulties of interpretation that arise if the GRA is taken to modify a person’s sex for the purposes of the Equality Act.

We note that the GRA section 23 (5) says: “Before an order is made under this section, appropriate consultation must be undertaken with persons likely to be affected by it.” We hope the Minister will consider starting such a consultation, and involving the EHRC and organisations concerned with women’s sex-based rights as well as trans-advocacy groups.

Yours sincerely



Maya Forstater
Executive Director



Helen Joyce
Director of Advocacy



Naomi Cunningham
Chair

¹ Lord True and Mark Spencer (2022) Review of legislative drafting Statement made on 23 May 2022
Statement UIN HCWS47

<https://questions-statements.parliament.uk/written-statements/detail/2022-05-23/hcws47>