

Briefing from Sex Matters for a meeting of the Women and Equalities Committee on 13th December 2023

Recent cases

For Women Scotland: On 1st November the Court of Session [upheld the judgment by Lady Haldane](#) that a gender-recognition certificate (GRC) changes a person's sex for the purposes of the Equality Act. This is a Scottish judgment but it is likely to be persuasive more broadly. It means that:

- **the natural categories of "male" and "female" are not recognised** by the Equality Act 2010
- **the law treats transgender people with and without a GRC differently**, even though they are not different.

Section 35: On 8th December the [Court of Session upheld the lawfulness](#) of the UK government's use of [Section 35](#) to block the Gender Recognition Reform (Scotland) Bill. The reasons were based on this interpretation of the Equality Act, and the risk it poses to women's rights and safeguarding.

The twelve adverse effects of the GRA on the Equality Act

The S35 reasons highlighted impacts in eight areas, where existing adverse effects on the Equality Act would be exacerbated by expanding the cohort of people able to get GRCs:

1. **Clubs and associations.** Women's associations including associations of lesbians and for sport are not allowed to exclude men who identify as women from membership if they have a GRC.
2. **The Public Sector Equality Duty (PSED).** The legal definition makes a difference to the groups whose needs and disadvantages a public body is required to consider and advance.
3. **Equal pay.** A single employee with a GRC in a workplace could lead to an equal-pay issue being falsely identified, or to a failure to identify such an issue.
4. **Single-sex and separate-sex services.** Service-providers are finding it difficult to operate even though it is lawful. This leads to chilling effects: disincentivising single-sex services and self-exclusion from them.
5. **Competitive sports.** A GRC makes it more complex to exclude male people from female sports.
6. **Occupational requirements.** Legal and operational risks when trying to advertise roles.
7. **Schools and colleges.** Single-sex schools would have problems if under 18s were able to get GRCs.
8. **Sex-discrimination.** A GRC changes the comparators in a sex-discrimination claim even though in practice there is no material difference between trans people with and without certificates.

The judgment confirmed that all of these concerns were reasonable.

The Equality and Human Rights Commission, in its letter to the Minister on 3rd April 2023, also identified three more issues:

9. **"Trans men" with a GRC do not have protection in relation to pregnancy** under the characteristic of "pregnancy and maternity" or sex.
10. **Positive-action measures** such as "women-only" shortlists and other measures aimed at increasing female participation must include males with a GRC.
11. **Data collection:** "When data are broken down by legal not biological sex, the result may seriously distort or impoverish our understanding of social and medical phenomena."

The twelfth issue is **women's charities**. Not having a clear protected characteristic of sex makes it difficult for single-sex charities (including those concerned with violence against women) to operate effectively. Organisations are in turmoil and are beset by conflict and legal risk which distract them from their role.

Amending the Equality Act 2010

On 6th December 2023 in the House of Commons [the Minister for Women and Equality said](#): “The law is no longer clear. In fact, I would go so far as to say that the law is now a mess because of changing times. We need to provide clarity. We cannot assume that the wording as was intended in 2004 and 2010 still works in 2023, and we are carrying out work to fix that.”

In June there was a [Westminster Hall debate](#) on a petition to amend the Equality Act. It discussed many of the adverse effects which have now been confirmed. The [proposal](#) is to use the power provided by S.23 of the GRA (put in place to deal with unanticipated adverse effects) to remove its effect on the Equality Act.

This would not remove protection from trans people, as they are covered by the protected characteristic of gender reassignment in the Equality Act, whether they have a GRC or not. This does not give the right to use opposite-sex services (this was confirmed in the judgment on 1st November).

It would fix the 12 different adverse effects and maintain a single clear coherent definition of sex in the Equality Act across the public-sector equality duty, positive action, charities, sport, single-sex services, schools and colleges and the general clarity and functioning of discrimination protection at work.

The Istanbul Convention

The [Istanbul Convention on preventing and combating violence against women and domestic violence](#) requires parties to take legislative and other measures specifically to **prohibit discrimination against women**, and to provide **specialist support services to women** who are the victims of sexual and domestic violence.

The current position in law is that the Equality Act does not recognise that women (female people) are a group with particular needs and disadvantages that are different from those of male people who have a GRC. It undermines women’s services, in the public and voluntary sectors.

The UK may now be in breach of its commitments under the Istanbul Convention. The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) are visiting in January 2024.

The campaign of discrimination, hatred and intimidation against gender-critical women

Those who raised concerns about the adverse effects of the GRR Bill have been vindicated. For speaking up to protect women’s rights, gender-critical women have been called “TERFs” and have been subjected to a campaign of harassment, discrimination at work, intimidation, threats and violence. Sex Matters has collected evidence of [50 incidents of violence and intimidation](#).

The campaign of intimidation against the Equality and Human Rights Commission

In April 2021 the EHRC intervened to support the “Forstater” case to secure protection for people with gender-critical beliefs. In January 2022 the EHRC’s chair wrote to the Scottish Cabinet Secretary raising many of the concerns which have now been upheld as reasonable and asking to open up “a careful and respectful discussion of potential changes to the law”. Since then the EHRC has faced [sustained attack from proponents of gender self ID](#), including internal complaints, three attempts to have its “A” status as a National Human Rights Institution removed and a dirty protest outside its offices.

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