

Amending the Equality Act 2010 to protect women's rights

Technical briefing for MPs, 6th September 2024

Sex Matters supporters are visiting their MPs in Parliament, calling on them to stand up for single-sex services and support the call to make the Equality Act clear with a one-line amendment that will make a big difference for women and girls. MPs are hearing from their constituents how confusion and fear about the law on sex and gender identity is affecting them in their community, at school and college and at work.

This briefing sets out the underlying legal issues and a simple legislative solution.

Overview

The Equality Act 2010 was a significant achievement and has cross-party support. It protects against sex discrimination and recognises

that people often need different facilities, services and associations based on sex.

The problem is that it is not clear how the 2004 Gender Recognition Act and the Equality Act interact. If a gender-recognition certificate changes someone's sex for the purposes of the Equality Act, this makes the law difficult to understand and apply, particularly around the provision of single-sex services, spaces and sports. **The result is confusion, and women and transgender people are put at risk and in conflict.**

A simple amendment to remove the effect of Section 9 of the Gender Recognition Act from the Equality Act would solve the problem. This would clarify that for the Equality Act, sex has its natural meaning. Transgender people have protection against unlawful discrimination regardless of whether they have a gender-recognition certificate, under the protected characteristic of gender reassignment.

There is no need to rewrite the Equality Act. The most recent guidance from the Office of the

Parliamentary Counsel suggests that a simple one-line amendment to the Equality Act could be used,¹ or a one-line amendment could be made to the Gender Recognition Act. **This can be done through primary legislation or through secondary legislation using the power provided by Section 23 of the Gender Recognition Act.**

This would make it clear for statutory agencies, service providers and employers that “sex” and “gender reassignment” are **separate protected characteristics**, and that the terms sex, male, female, man and woman in the Equality Act relate to biological sex.

Contents

The law on sex discrimination and single-sex services.....	2
The problem: the definition of sex.....	4
The effect on women’s rights.....	7
One small change could make a big difference	10
Support for clarifying the Equality Act.....	12

¹ HM Government Office of the Parliamentary Counsel (2024). *Drafting guidance*.

The law on sex discrimination and single-sex services

The Equality Act

The Equality Act 2010 was a significant achievement of the last Labour government, and has cross-party support. It puts duties on employers, service providers, schools, colleges, charities and associations in England, Scotland and Wales, and gives protections to employees, service users, pupils, students and members.

The Equality Act protects everyone's rights. It protects the rights of both women and men against sex discrimination and the rights of transgender people against discrimination through the protected characteristic of gender reassignment.

Duty bearers under the Equality Act are required to ensure their policies and practices do not unlawfully discriminate, either directly or indirectly, against people in relation to protected characteristics.

Single-sex services

The Equality Act recognises that people often need different facilities, services and associations based on sex. Reasons include privacy and dignity, medical needs, fairness and safety, positive action to address discrimination, and freedom of association (including organisations of gay men and of lesbians).

Single-sex spaces, services and facilities are commonplace. They include washing and changing facilities in everyday situations such as in schools, colleges, clinics, pubs, leisure centres, workplaces and hospitals. They also include specialist single-sex services such as women's domestic-violence refuges and rape-crisis centres; and counselling, such as alcohol and drug rehabilitation groups, provided separately for men and women.

Normally it would be sex discrimination to have a policy of “no men allowed” or “women only” (or vice versa), so the Equality Act includes a series of **statutory exceptions to allow single-sex**

services and other facilities, and for employment that requires a woman or man.

The problem: the definition of sex



Single-sex services, sports and other facilities are particularly important for women and girls. For many they mean the difference between participating or not participating at all. They matter in particular for girls and younger women, older women,

disabled women, lesbians and women of faith or from particular religious communities. Services targeted at women are particularly important in addressing women's needs as victims and

survivors of male violence, as Sex Matters' research demonstrates.²

The Equality Act 2010 replaced the Sex Discrimination Act 1975. The simplest reading of the intention of Parliament is that it sought to continue to provide clear protection against discrimination on the basis of sex, to allow for single-sex services and employment, and to ensure that the public-sector equality duty works for the benefit of women where they face sex discrimination and barriers to inclusion. All this is undermined when the law is not clear about what a woman is.

In 2004 the Gender Recognition Act was passed. It was brought in to let people with a diagnosis of gender dysphoria change the sex recorded on their birth and death certificates, and in relation to pensions and marriage (following the case of *Goodwin v UK [2002]*). It is not clear how

² Sex Matters (2022). Why single-sex services matter.

the Gender Recognition Act and the Equality Act were meant to interact.³

A key concept in discrimination claims is the comparator: a person who is similar to the claimant but does not share their protected characteristic.

- In a **sex discrimination** case the comparator is a person of the **opposite sex**.
- In a **gender-reassignment discrimination** case the comparator is **a person who is not transgender**.

But if the definition of sex (and opposite sex) is not clear it becomes difficult to protect women against sex discrimination and provide clear single-sex services.

³ Employment Lawyers Association (2020). *Evidence to Women and Equalities Committee on the Gender Recognition Act.*

How the Gender Recognition Act makes the Equality Act difficult to operate

There is a state of confusion and controversy about whether possession of a gender-recognition certificate (GRC) makes a difference to the sex of a person in relation to the Equality Act.

The facts about gender-recognition certificates

When a person gets a GRC their sex is deemed to have changed “for all [legal] purposes” by S.9 of the Gender Recognition Act (GRA). In reality their sex has not changed, and a certificate cannot change the perceptions or human rights of others. A “transman” (with or without a GRC) can get pregnant, and may need contraception and maternity services. A “transwoman” (with or without a GRC) has the strength of a man and can become a father – or a rapist.

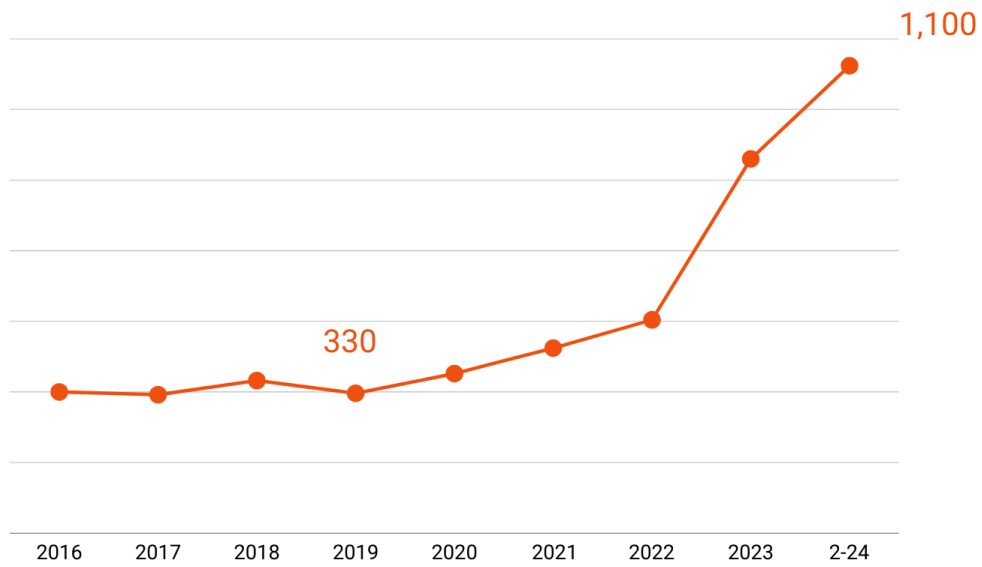
A GRC does not require surgery. To get a GRC a person has to supply evidence of “living in the acquired gender” – such as letters or identity documents that bear a name or a title in the acquired gender. They also have to provide evidence of a medical diagnosis of “gender dysphoria”. They do not need to have had or intend to have surgery. Nowadays there are many transgender people who do not want to have surgery.⁴

The number of people with GRCs is rising rapidly. When the GRA was passed, it was estimated that 5,000 people identifying as transsexuals lived in the UK. Since then 8,464 certificates have been issued, a third of them in the last four years.⁵ In 2022 the process

⁴ Stonewall. [‘The Truth About Trans’](#) (accessed September 2024).

⁵ Ministry of Justice (2024). [Tribunal Statistics Quarterly: January to March 2024](#).

moved online and the cost was reduced to £5.⁶



Data source: HM Courts & Tribunals Service

⁶ Sex Matters (2024). Applying for a Gender Recognition Certificate: the facts.

In the *For Women Scotland [2022]* case concerning the interaction between the GRA 2004 and the Equality Act, the Scottish Court of Session ruled that:

“ ‘Sex’ is not limited to biological or birth sex, but includes those in possession of a GRC obtained in accordance with the 2004 Act.”⁷

The case is being challenged to the Supreme Court, but if the judgment stands or the Equality Act remains ambiguous, it means that for the purpose of the Equality Act:

- “woman” means female people who don’t have a gender-recognition certificate saying “male” (this includes most transmen who don’t have a GRC) plus male people (transwomen) who have a gender-recognition certificate saying “female”
- “man” means male people who don’t have a gender-recognition certificate saying “female”

⁷ *Opinion of Lady Haldane in petition of For Women Scotland P578/22 [2022]*.

(this includes most transwomen who don't have a GRC), plus female people (transmen) who have a certificate saying "male".

In relation to the Equality Act this changes the comparator in a sex-discrimination claim. For 9 out of 10 "transwomen" (without a GRC) the comparator will be another man. For 1 out of 10 it will be a woman (and vice versa for "transmen").

Most transgender people do not have a GRC.

According to the last censuses in England and Wales and Scotland there are about 100,000 people who identify as a "transgender man" or a "transgender woman"⁸ (although there are some concerns about the accuracy of this data).⁹ It suggests that 9 out of 10 transgender people do not

⁸ Office for National Statistics (2023). 'Gender identity', *Data and analysis from Census 2021*, and Scotland's Census (2024). Scotland's Census 2022 - Sexual orientation and trans status or history.

⁹ Michael Biggs (2024). 'Gender Identity in the 2021 Census of England and Wales: How a Flawed Question Created Spurious Data', *Sociology*, 0(0).

have a GRC and so have not changed their legal status.

While the legal status only relates to a few thousand people directly, the conceptual confusion makes the Equality Act very difficult to operate in practice, wherever it comes to sex-based rules and policies.

The effect on women's rights

The previous government highlighted eight adverse effects of this in its statement of reasons for the section 35 order preventing the Scottish government enacting gender self-ID (which would have made it easier to get a GRC in Scotland).¹⁰ These were all upheld as reasonable by the court when this was judicially reviewed:

- 1. Clubs and associations.** Women's associations, including associations of lesbians and for sport, are not allowed to exclude men

¹⁰ UK Government (2023). *Statement of reasons related to the use of section 35 of the Scotland Act 1998.*

who identify as women from membership if those men have a GRC.

2. **The public-sector equality duty.** The legal definition of man and woman 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 to provide services that are single-sex, including if this disadvantages trans people. This leads to chilling effects: disincentivising providers from offering single-sex services and leading to women self-excluding because they are told that they may encounter males (and be called transphobic if they object).

5. **Competitive sports.** The legal effect of a GRC makes it more complex to exclude male people from female sports.
6. **Occupational requirements.** There are legal and operational risks when trying to advertise roles that are female-only, if a person with a GRC applies.
7. **Schools and colleges.** Single-sex schools would have problems maintaining clear admission rules 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 Equality and Human Rights Commission identified three further issues which were set out in a letter to the previous minister for Women and Equality: ¹¹

¹¹ Equality and Human Rights Commission (2023). *Clarifying the definition of 'sex' in the Equality Act.*

9. **“Transmen” with a GRC do not have protection in relation to pregnancy** under the characteristics 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.”

Sex Matters has highlighted a twelfth issue: 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. This has thrown organisations in the women’s sector into turmoil, leaving them riven by conflict and fearing legal risks. The case of Edinburgh Rape Crisis Centre, which lead to an employment tribunal,

illustrates this starkly.¹² All this distracts them from their vital work.¹³



In order for organisations to be able to operate lawfully and treat people fairly and with respect

¹² Joanne Moseley(2024) 'Rape crisis centre deliberately harassed and unfairly dismissed counsellor who voiced gender critical beliefs', *Irwin Mitchell*.

¹³ Sex Matters (2024). Women's services: a sector silenced (summary report).

they need to be able to have **clear policies and rules, and to communicate them.**

For women who may find themselves in an intimate situation – sharing a space, or in healthcare or being searched – with a male person identifying as a woman, the feelings of shock, fear, humiliation and indignity she may feel will not change because of a certificate.

Because the law is so complicated, organisations have become afraid of operating female-only services, sports, spaces and associations. Often with no consultation, many single-sex services have been replaced with “gender-neutral” (mixed-sex) facilities, or services that are “inclusive” of members of the opposite sex, based on self-identified gender.¹⁴

Our booklet *Stand up for single-sex services* sets out some examples of this in practice.¹⁵

¹⁴ Sex Matters (2024). ‘Not a culture war: what’s really at stake’.

¹⁵ Sex Matters (2024). *Stand up for single-sex services*.

The public-sector equality duty

One of the most important places where it matters that the Equality Act is clear that sex means sex is the **public-sector equality duty**.

It is clear that the Equality Act intended for women and men to be recognised as groups with different needs and interests. As Caroline Criado Perez has pointed out in her book *Invisible Women*, a world designed for men as the default disadvantages women.¹⁶

Replacing sex with the idea of self-identified gender has the perverse effect of leading organisations to avoid considering women's specific needs and instead to label clear sex-based language and policies "non-inclusive". If there is no recognition that women suffer from disadvantage because of the shared characteristic of being female, provisions that are meant to support

¹⁶ Caroline Criado Perez (2019). *Invisible Women: Exposing Data Bias in a World Designed for Men*, Chatto & Windus.

women are not defended or advocated for, as there is no language, data or category that can be used.

One small change could make a big difference

A small change to legislation could make a big difference to women and girls.

The interaction between the Gender Recognition Act 2004 and the Equality Act 2010 is causing confusion and putting women and transgender people at risk and in conflict.

Returning law on sex discrimination to a clear definition aligned to biological sex requires a simple amendment to remove the effect of Section 9 of the GRA from the Equality Act, to return sex in that Act to its natural meaning.

This possibility was anticipated by the legislators introducing the GRA. They recognised that the S.9 “for all purposes” clause might not always give the intended effects in other acts. Therefore they put in a safety clause (Section 23) to give government the power to sort out any problems later using

secondary legislation. As the explanatory notes set out:

“This power... is provided due to the entirely novel nature of this legislation. Legislation has made distinctions on the basis of gender [sex] for centuries, and the use of gender-specific terms, though it has reduced, nevertheless continues in some contexts.”¹⁷

A single-line amendment

There is no need to rewrite the Equality Act. The most recent guidance from the Office of the Parliamentary Counsel suggests a simple one-line amendment that could be used:¹⁸

¹⁷ UK Government (2004). *Gender Recognition Act 2004 Explanatory Notes*.

¹⁸ HM Government Office of the Parliamentary Counsel (2024). *Drafting guidance*.

“Section 9(1) of the Gender Recognition Act 2004 is to be disregarded for the purposes of construing this Act.”

Alternatively, an amendment could be made to the Gender Recognition Act:

“The fact that a person’s gender has become the acquired gender under this Act does not affect their sex for the purposes of the Equality Act 2010”

Both amendments would have the same effect. It would mean that for the purposes of the Equality Act a person’s sex would clearly refer to their actual sex, whether they have a gender-recognition certificate or not. **It can be done within primary legislation or through secondary legislation using the power provided by Section 23 of the Gender Recognition Act.**

What would this amendment do?

This amendment would make the law clearer to use for everyone.

- It would make it clear that “sex” and “gender reassignment” are **separate protected** characteristics, and that the terms sex, male, female, man and woman relate to biological sex.

This would resolve the 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 understands.

- It would ensure that the Equality Act is consistent with **human rights** (including Articles 3, 8, 9, 10, 11 and 14) which are undermined if people are not allowed to have single-sex associations, charities, schools, colleges and services, and if women may be forced to share intimate spaces with men and to pretend they are women in this context (and vice versa).
- It would make clear that biological women (and men) are a separate group from transgender people in the public-sector equality duty, allowing both groups to be considered clearly.

Would this harm trans people's rights?

No. Transgender people have the protected characteristic of gender reassignment whether they have a GRC or not. The Equality Act already requires that service providers consider the needs and wishes of transgender people (whether they have a GRC or not). Where sex-based rules create difficulties for people with a transgender identity, service providers may be able to offer a unisex alternative. This amendment would not remove this legal protection.

Nor would it force transgender people to use services they do not want to. The Equality Act does not force individuals to use any particular service. It provides them with means for seeking a remedy if they are treated detrimentally, including being excluded from using services.

Transgender people would also remain protected under the Act against discrimination based on their perceived sex. This means that, if a “transman” (a trans-identifying woman) was treated detrimentally because someone perceived her as male, or a

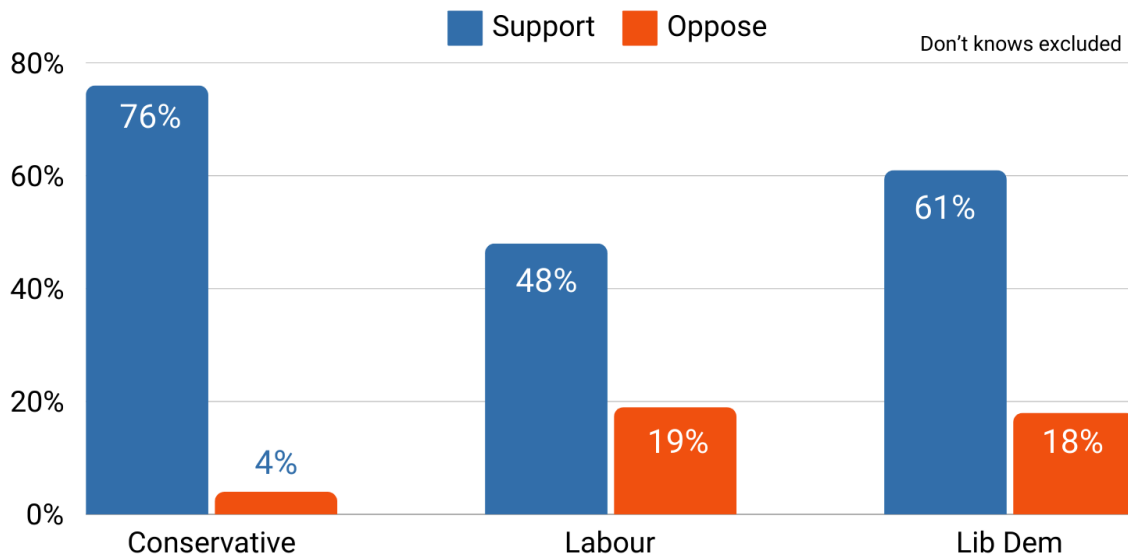
“transwoman” (a trans-identifying man) was treated detrimentally because someone perceived him as female, they could also bring a claim in any situation covered by the Equality Act.

Support for clarifying the Equality Act

Single-sex provision in situations where people are in a state of undress or may be vulnerable is not controversial. There is no widespread demand for public and workplace toilets, changing rooms, hospital wards or prisons to be made mixed-sex. Opinion polls consistently show a large majority in favour of single-sex provision.

There is widespread support for clarifying the Equality Act. Last year a parliamentary petition asking to clarify the Equality Act gained 110,000

signatures.¹⁹ It was one of the top 12 issues raised by women on Mumsnet before the election.²⁰



To what extent, if at all, would you support or oppose clarifying that 'male' and 'female' in the Equality Act means biological sex so as to protect single-sex services and spaces?

Attitudes to clarifying the Equality Act, by previous voting

Sex Matters' polling during the election found that half of those who voted Labour in 2019 support clarifying the Equality Act as did three-quarters of

¹⁹ UK Government and Parliament Petitions (2023). 'Update the Equality Act to make clear the characteristic "sex" is biological sex'.

²⁰ Sex Matters (2024). 'Mumsnet calls for government to make the Equality Act clear'.

those who voted Conservative and a majority of Liberal Democrat voters.

The government's position is that single-sex spaces should be protected. And upholding single-sex exemptions in the Equality Act was a 2024 manifesto commitment. Anneliese Dodds, the Minister for Women and Equalities, has said:

“We need to recognise that **sex and gender are different** – as the Equality Act does. We will make sure that nothing in our modernised gender recognition process would override the single-sex exemptions in the Equality Act.

“Put simply, this means that **there will always be places where it is reasonable for biological women only to have access**. Labour will defend those spaces, providing legal clarity for the providers of single-sex services.”²¹

²¹ Aubrey Allegretti (2023). ‘Labour vows to “modernise, simplify and reform” Gender Recognition Act’, *The Guardian*, 23rd July 2023.

Legislative clarity is needed

There is public and cross-party support for upholding the exceptions in the Equality Act which allow single-sex services. But in order for this to be meaningfully implemented across society in 2024, the confusion introduced by the interaction between the Gender Recognition Act and the Equality Act must be resolved.

Some MPs say they support single-sex services but argue that the law is already working and it is for service providers (and the courts) to decide what is most appropriate.

This amendment would not take away the freedom from service providers to decide whether to offer a single-sex service in a particular situation. **It would take away legal uncertainty and unnecessary complexity so service providers can develop clear policies that treat women and transgender people fairly.**

The interaction between the Equality Act and the GRA creates confusion for service providers and

for transgender people. A service provider trying to develop and explain their policies has no way of knowing whether a transgender person has a GRC, and should not offer a two-tier approach in any case.

Many service providers and public bodies are confused and frightened because the law is so complex and uncertain. They would welcome clarification from Parliament. The Equality and Human Rights Commission has said that the issues should be addressed.²² It concluded “there is no straightforward balance, but we have come to the view that if **‘sex’ is defined as biological sex for the purposes of EqA**, this would bring **greater legal clarity**”.

Parliament cannot rely on the courts to solve the contentious social policy issue. Courts when asked focus on applications of the Equality Act say this is beyond the scope of their deliberations. Following debate on the use of

²² Kishwer Falkner (2023). [Letter to Kemi Badenoch, Minister for Women and Equalities.](#)

sexed language in legislation, the need for clarity of purpose in dealing with the interaction has been recognised. As Lord True and Mark Spencer MP said in a government statement to their respective Houses:

“When drafting a bill it is necessary to take into account the fact that a person may change their legal sex by obtaining a Gender Recognition Certificate... In some cases, this might be the desired result but in others it might not.”²³

The evidence that service providers and employers are too scared and confused to use the single-sex exceptions and instead default to “gender neutral” or ambiguous rules which harm women is undeniable. Parliament needs to take responsibility for clarifying the legislation so that everyone’s rights are protected.

²³ Mark Spencer and Lord True (2022). *Review of legislative drafting*.

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