



23 March 2022

Dear Peter

Thank you for meeting with WDI last month. You told us that the Gender Recognition Reform (Scotland) Bill was due to be published a few days later so it was not possible to make any further changes at that stage, but that it would be subject to the normal parliamentary processes where amendments will be possible. (Both the Bill and the EQIAs have since been published.)

We explained that Women's Declaration International is based on CEDAW and we work to promote its principles and against the way women's sex-based rights are being eroded by changing the definition of 'woman' to include gender or gender identity. Our declaration has been signed by people in 157 countries and is additionally supported by 420 women's rights organisations from across the world. We hold weekly international webinars with speakers from across the globe, which are attended by 200-600 women from every continent, and subsequently viewed thousands of times online.

We are making a submission to the periodic UNHCR review of progress on CEDAW about the position of women in Scotland and the rest of the UK. The UK – and therefore Scotland – is a signatory to the Convention.

At the time you offered to share your notes of the meeting with us, but we have not received them.

We note that the Bill has now been published and are extremely disappointed that Scot Gov has not taken into account any of the key points that have been made by women's groups over the last 2 years. This does not give us much hope that our concerns, and those of women and other women's organisations will be taken seriously in the coming months. In particular, the proposed removal of the need for a medical diagnosis of gender dysphoria is not balanced with any proposals as to how women's sex-based rights and the maintenance of single-sex spaces will be assured.

We asked what the Scottish Government has done to ensure that the Bill is consistent with your international commitments, especially in relation to CEDAW. We offered to work with you to help ensure that this Bill does not undermine CEDAW, and asked if it would be possible to see any documents you have showing how this has been triangulated.

You answered that the Bill does not change the definition of woman which remains as defined in the Equality Act. You said you cannot comment in detail as you are not involved in work re CEDAW and that other colleagues in Scot Gov are the lead for that. You undertook to share a copy of the EQIA and other equality impact assessments when they are published, although you have not done so.

Our comments We believe it is at best naïve to suggest the Bill will not have an impact on the definition of women. The Bill will allow literally any male to self-declare himself a woman should he so choose, and this will make it increasingly difficult to maintain women's single sex spaces and services. Especially as it is possible in law that those men with a GRC are entitled in some circumstances to be treated as though they are women.

The published EQIA insulting dismisses the concerns women's organisations have raised, often wrongly claiming that there is no evidence for them.

We asked what evidence the Scottish Government uses to demonstrate how it is working towards eliminating all forms of discrimination against women, and what you have done to ensure that the necessary data will not be compromised in light of its decision to allow people to self-declare their sex on the census returns. How will you be able to provide sex-disaggregated data?

You answered that the Bill does not make any change to the process of data collection. You explained that bodies have their own arrangements for collecting data and policies for dealing with it. You said Police Scotland already records prisoners' gender on the basis of how they present, rather than seeking evidence. You said you were unable to answer the question in any detail as it is not your policy area, and that the GRR Bill doesn't make reference to data collection. You undertook to ask your appropriate colleagues to come back to us with information about the implications of the judgement for data protection.

Our comments We have so far not heard anything from your colleagues. The fact that public sector organisations such as SPS are already allowing, de facto, self-id raises the issue of why this Bill is necessary at all. However, if the Bill is passed in its present form, we would like to know what monitoring you will undertake to discover, for example, how many men who have self-declared themselves women are availing themselves of what were previously single sex women's services and spaces. And also to monitor how many men who have *not* so declared are taking advantage of the situation to claim access to women's resources.

We asked if you appreciate that changing the criteria for who can get a gender recognition certificate - without the need for a diagnosis of gender dysphoria and with no other vetting, rationale or safeguarding checks - substantially changes the range of men who will be able to obtain a GRC.

You answered that the Bill does no more than make the process of obtaining a GRC simpler. You said a GRC is not a new concept. Other than a requirement to 'live in the acquired gender' for 3 months, the only check you were able to provide was that it would be an offence to make a false declaration. You said you expect the number of people applying for a GRC will rise from c30 pa to c250 pa. but recognise that not all transpeople want or need a GRC.

Our comment We note there is no definition of 'living in the acquired gender' so it is impossible to say if this has been done or not. A 833% rise in the number of GRCs issues per year will have very substantial implications for women and women's services. The Scottish Government seems unable – or is doggedly refusing - to recognise this, which means no mitigating actions will be taken. We asked what provisions there would be for detransitioners. You did not address this and we note that the Bill as published does not have any provision for them. This is a serious concern since it will criminalise people who are encouraged into self-declaration and subsequently realise they have made a mistake.

We asked for the Scot Gov's definitions of 'sex', 'gender' and 'trans'. We pointed out that CEDAW defines gender as a form of sex role stereotyping and says that nations must break these down. We asked how Scot Gov has triangulated the Bill with its CEDAW commitments and the definitions it provides.

You answered that you were unable to provide this and that no definitions are provided in the Bill. You mentioned that the Gender Recognition Act uses both 'sex' and 'gender'.

Our comments It is somewhat surprising the Gender Reform Unit is unable to provide a definition of the basic concepts that it is legislating for. It seems to us that this is likely to lead to a great deal of ongoing confusion – and quite possibly legal challenge. It appears that Scot Gov is putting into place a law that doesn't define gender but where this looks very much like sexual stereotypes, despite the fact that Scot Gov has made a commitment under international law to break down those stereotypes.

We asked what research Scot Gov has done into the impact of self-ID in countries where it has already been introduced. We know from speaking to colleagues that this has had a significant impact. Even here in Scotland we know that allowing men to access women's spaces leads for example, to significant numbers of women – often the most vulnerable – self-excluding from women's services. We said there didn't appear to be any acknowledgment of this by the Scottish Government or that it is taking any steps to mitigate those effects. On the contrary women's concerns are generally dismissed with the claim that this Bill won't make any difference. We asked if you understand that the proposed Bill will only give more weight to the current move against single sex resources which is based only on policy and not law.

You answered that the Equality Act provides some exemptions which allow the exclusion of all men from women's services, regardless of their gender identity. You said Scot Gov thinks everyone should be able to access the services they need, and said that service operators should set their policies within the legal context. You also said that you had heard similar arguments about the message the legislation will send and its possible cultural impact on societal norms.

You said your team doesn't deal with funding, but that you will respond to us in a letter.

Our comment We have not seen anything but lip service from the Scottish Government regarding its claimed commitment to the single sex exemptions in the Equality Act. There is no evidence of it taking any action to enforce, encourage or maintain such spaces – in fact its insistence that funded services are 'trans inclusive' works against such an aim. To expect service providers to be able to set these policies without strong guidance from Scot Gov, especially when they fear this will lead to them being defunded and/or becoming the subject of aggressive targeting. In our view, the Scottish Government must make a strong, clear statement that it acknowledges the need for single sex spaces and services and will provide funding for them.

We have not received any further information from you about Scot Gov provision and funding requirements.

Finally we reiterated our concerns that the Bill does a great deal more than simplify the GRC process, since it greatly expands the group of people who will be eligible to receive one. We pointed out that the Bill does not explain how one can 'live in the acquired gender' so there will be no way of knowing if someone has met the requirements. You said you would respond in writing, but haven't yet done so.

We also explained that we have a very strong international reach and have thousands of views for each of our weekly webinars. At present we are having to report that Scotland is one of the least helpful countries for women's sex-based rights. We have access to a huge body of knowledge and a great many international experts in this field. We would very much like to work with you and your colleagues to unpack some of the unanswered questions we raised, and to engage with you to help ensure that the Scottish Government does not introduce legislation which undermines the rights of women under international law.

Can I again thank you for your time last month and look forward to your written responses. We also promised to send you a copy of the Women's Declaration, which I now attach. Please feel free to contact us about any of the issues we have raised, or others relating to women's rights.

Best wishes

Sally Wainwright

WDI Scotland.