



## RESTORE SAFEGUARDING – END SEX FALSIFICATION

### **Why the UK Government should repeal the Gender Recognition Act 2004 and remove the concepts of 'gender reassignment' and 'gender identity' from all law, policy and practice**

Women's Declaration International UK is calling on the UK Government to restore the safeguarding of women, children and other vulnerable groups by ending sex falsification. This would involve removing the concepts of 'gender reassignment' and 'gender identity' from all law, policy and practice.

Women's Declaration International UK is the UK branch of Women's Declaration International, an organisation which advocates for the sex-based rights of women internationally. Our advocacy is based on the [Declaration on Women's Sex Based Rights](#), which was published in 2019. The Declaration reaffirms that the rights of women and girls which are set out in the United Nations Convention on the Elimination of all Forms of Discrimination against Women (the CEDAW) are sex-based. It is founded on the view that replacing the category of sex with the category of 'gender reassignment' or 'gender identity' in law, policy, and practice discriminates against women, and undermines society's ability to safeguard women, children, and other vulnerable groups from harm.

The Declaration has been signed by 10,174 individuals in the UK, and by 28,642 individuals in other countries. It has also been signed by 541 organisations world-wide which promote women's rights.

Unlike sex, which is biological and cannot be changed, the concept of 'gender' is based on subjective perceptions and has no basis in material reality. The idea incorporated in current law, policy and practice that men can become women, at least for some purposes, is a fiction which undermines the safety of women, children and other vulnerable groups. This idea is supported by the operation of the Gender Recognition Act 2004, the concept of 'gender reassignment' contained in the Equality Act 2010, and by the practice of *de facto* self-declaration of 'gender identity' which is now widespread in the public and private sectors. To fully restore safeguarding, we need to change law and policy to end this fiction.

The Gender Recognition Act 2004 enables individuals who meet certain criteria to obtain a Gender Recognition Certificate (GRC), which enables their 'acquired gender' to be recognised for legal purposes. This means that a man with a GRC will be treated as a woman, and a woman with a GRC will be treated as a man for most, but not all, purposes. The Equality Act 2010 protects those with certain 'protected characteristics' from discrimination and harassment. One of the protected characteristics is 'gender reassignment', which applies to a person who is "proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the



person's sex by changing physiological or other attributes of sex.” The Equality Act’s provisions do not change an individual’s ‘gender’ in law.

This Act also treats sex as a protected characteristic and is regarded by many people as protecting single-sex spaces defined on the basis of biology. However, this has been called into question by the Scottish Government, who have issued guidance stating that a man with a GRC which confers on him the ‘acquired gender’ of female is a woman for the purposes of the Equality Act.

The women’s rights organisation For Women Scotland have challenged the lawfulness of this guidance in the courts in the case of *For Women Scotland v The Scottish Ministers* and are arguing that the definition of woman in the Equality Act is based on biology.

This case was heard on 26<sup>th</sup> and 27<sup>th</sup> November 2024 in the Supreme Court, which must now decide whether the definition of a woman in the Equality Act is based on biology or on a legal fiction. If the Supreme Court chooses the legal fiction, then spaces and services provided for women for safeguarding purposes will have to be open to males who hold a GRC. This will put women, and in some cases children, at risk. It is agreed by all parties to the case that this would also mean that pregnant women with a GRC would be denied maternity and pregnancy protections (in contravention of EU law), and that it would deny lesbian women the right to meet and form associations unless they accept the presence of males with a GRC. This would be discrimination against lesbians.

[Helen Saxby](#) has argued that, in view of the power imbalances between men and women in society as a whole, the Gender Recognition Act inherently discriminates against women.

Crime data indicates that sex is the most significant factor shaping patterns of criminality, particularly in relation to sexual offences. [Ministry of Justice](#) figures published in 2020 showed that 98% of those prosecuted for sexual offences in England and Wales in 2019 were male. The 2021 [Crime Survey for England and Wales](#) (CSEW) showed that between March 2017 and March 2020 the majority of victims who had experienced rape since they were 16 years old reported that the perpetrators were male (98%). Sexual assaults against children show a similar pattern. In a 2019 CSEW study cited in a [review of evidence](#) conducted by the Centre of Expertise on Child Sexual Abuse, 92% of respondents who had been sexually abused in childhood said the abuse had been perpetrated exclusively by males.

Crime data also shows that men who claim to be women often retain male patterns of criminality. Information about the prison population, for example, indicates that the proportion of male prisoners claiming to be women who have been convicted of sexual offences is higher than the proportion of convicted sex offenders in the general male prison population. For example, figures for 2020 presented by the Ministry of Justice in the case of *R (on the application of FDJ v Secretary of State for Justice (2021)* suggested



that 49.7% of trans-identifying prisoners were serving sentences for sexual offences, as compared to less than 20% of male prisoners in the general prison population. Some of these sex offenders were housed in women's prisons.

Law and policy which enables men to falsify their sex is eroding the provision of single-sex spaces and services and putting the safety, dignity and privacy of women, children and vulnerable adults at risk. Men are gaining access to provisions designated as female-only, such as domestic abuse refuges, rape crisis centres, hospital wards, prisons, and public toilets and changing rooms. Male participation in female sports is putting girls and woman at physical risk and forcing them to change and shower in the presence of males who claim to be women.

**Within the criminal justice system**, data recording about suspects and offenders is often based on 'gender identity' rather than sex, which leads to inaccurate criminal justice statistics. The use of the preferred pronouns of suspects and offenders by the police, lawyers, and the courts undermines those giving evidence about their experiences of sexual and physical violence, who are disorientated and distressed when lawyers and judges refer to their male attackers as 'she'. Men are being placed in women's prisons, and prison searching [policy](#) requires female prison officers to intimately search males who hold a GRC unless the male involved agrees otherwise. Some of these men are sex offenders.

In January this year, the National Police Chiefs Council (NPCC) [withdrew guidance](#) which permitted biological males identifying as female to intimately search women, regardless of whether or not the males involved held a GRC.

However, in September, British Transport Police became the latest force to authorise a [policy](#) which enables male officers who hold a GRC to carry out intimate searches of female detainees. This would amount to inhuman and degrading treatment of female detainees, and has been described by women's rights organisations as "[state sanctioned sexual assault](#)". The lawfulness of this policy is currently being challenged by the human rights organisation [Sex Matters](#).

Anyone can change their name and sex marker on documents commonly used to establish identity, such as passports and driving licences. These documents can then be presented for the purposes of criminal records checks by the Disclosure and Barring Service (DBS). The organisation Keep Prisons Single Sex pointed out in its [publication](#) on DBS checks and identity verification that the DBS gives enhanced privacy rights to individuals who change their 'gender' (even without a GRC), which compromises identity verification and thereby creates safeguarding risks.

**Within the national health service**, where recognition of sex is crucial to many aspects of medical diagnosis and treatment, data collection is undermined by recording patients and clinicians on the basis of their claimed 'gender' rather than their sex. Male clinicians are presenting as women in NHS settings; and [NHS guidance](#) on 'same sex' accommodation requires men who claim to be women to be placed in women's wards



and be allowed to use women's toilets and bathing facilities. A Women's Rights Network [report](#) shows that these policies operate in a context of high levels of sexual assault in NHS settings. They put women, children and vulnerable adults, such as those with physical disabilities, learning disabilities and mental ill-health, at risk. The physical and mental health of children and young people who are deemed to be 'transgender' has been put at risk by the use of puberty blockers, which usually lead on the use of cross-sex hormones. This is changing with the implementation of the [Cass Review's](#) recommendations, but the widespread influence of the concept of gender identity within public institutions is still creating safeguarding risks for children and young people.

**Within education**, research by [Lottie Moore](#) has found that many schools are teaching children that it is possible to change sex and have been 'socially transitioning' children without their parents' knowledge. Children are permitted to use the toilets and changing rooms of the other sex, and to share accommodation with children of the other sex on residential trips. This undermines the safety, privacy and dignity of other students. Requiring girls to participate in the fiction that someone they know to be a boy is really a girl encourages them to suppress their natural self-protective responses to the presence of males in what are supposed to be female only spaces, and thereby undermines their ability to keep themselves safe.

### **Restoring safeguarding**

All of these safeguarding failures have come about because of the fiction that people can change sex. To fully restore safeguarding, we are calling for the complete removal of this fiction from law and policy.

This would require the following:

### **The repeal of the Gender Recognition Act 2004**

The Gender Recognition Act created the fiction that individuals can change their sex, at least for some purposes. Introducing this fiction into law has brought about enormous confusion about the law's definitions of male and female. This confusion has now led to a situation in which the Supreme Court is effectively being asked to adjudicate on what a woman is in the case of *For Women Scotland v The Scottish Ministers*.

If the Supreme Court finds in favour of the Scottish Government in this case, there will be no situations in which the safety, privacy and dignity afforded to women and girls by women only spaces and services can be maintained. These spaces and services can be protected if the Supreme Court decides that a GRC does not make a man a woman for the purposes of the Equality Act, but sex-based protections should not depend on judges' decisions about how to apply a legal fiction. Women, children and other vulnerable groups can only be fully protected if this legal fiction is removed by repealing the Act which created it.



## **The removal of the protected characteristic of “gender re-assignment” from the Equality Act 2010**

The Equality Act is designed to protect people with “protected characteristics” from discrimination and harassment. We propose that the protected characteristic of “gender reassignment” be removed from the Act, and that other means are used to protect those who subjectively believe that they are undergoing “gender reassignment”. The legal academic Alessandra Asteriti [argues](#) that they could be protected by being included within the other protected characteristics. Asteriti suggests that those who are, or who are perceived to be, homosexual, could be protected under the characteristic of sexual orientation, that a diagnosis of gender dysphoria could come within the characteristic of disability, and that gender expression or gender belief could come within the protection of religion or belief. Protection on the basis of belief would accurately frame ‘gender reassignment’ and ‘gender identity’ as rooted in an individual’s subjective belief while still providing them with protection under the Equality Act.

Whatever method is used for protecting those who claim a ‘gender identity’ which differs from their sex, careful consideration would need to be given to the ways in which the manifestation of some individuals’ subjective ‘gender identities’ may harm others and undermine safeguarding. Many men who say they identify as women do so for reasons rooted in sexual paraphilias. One of these is autogynephilia, which has been [defined](#) as “a male's propensity to be sexually aroused by the thought of himself as a female. It is the paraphilia that is theorized to underlie transvestism and some forms of male-to-female (MtF) transsexualism”. A man who is acting out his paraphilia in the presence of other people is violating their boundaries and is therefore a safeguarding risk, particularly in relation to children and vulnerable adults. Restoring safeguarding requires an honest examination of the safeguarding implications when an individual presents with autogynephilia or other paraphilias, and of the application of recruitment and employment practices which take these implications into account.

## **The ending of *de facto* self-declaration of ‘gender identity’ in public and private institutions and in identity documents**

Self-declaration of ‘gender identity’ is not aligned with the current law and the Westminster Government has rejected the proposal that it should be introduced into law. However, *de facto* self-declaration of ‘gender identity’ has been operating within most public sector institutions and within much of the private sector in the UK for many years. This has come about in the absence of democratic scrutiny or any established political consensus. Even before *de facto* self-declaration became widespread, individuals were able to change the sex recorded on their identity documents on request.

To restore safeguarding, all forms of *de facto* self-declaration of ‘gender identity’ need to be brought to an end, and all identity documents should accurately record the sex of the individual concerned.



## **Ending the confusion in law about the meaning of 'sex'**

*For Women Scotland v the Scottish Ministers* is only one of the cases in which the courts have had to grapple with the inevitable confusion created by the legal fiction that individuals can change sex. Only Parliament can resolve this confusion and restore safeguarding by repealing the Gender Recognition Act and entirely removing the concepts of 'gender reassignment' and 'gender identity' from law, policy and practice.