

**Women's Declaration International UK's response to the UK Supreme Court's
decision in *For Women Scotland v the Scottish Ministers*:
A major step forward, but more needs to be done to end sex falsification.**

About Women's Declaration International - UK

Women's Declaration International UK (WDI-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.

Our response to the Supreme Court's judgment

WDI-UK welcomes the Supreme Court's judgment that the definitions of 'woman' and 'sex' in the Equality Act 2010 are based on biology, and that a man with a Gender Recognition Certificate (GRC) under the Gender Recognition Act 2004 (GRA) does not come within the definition of 'woman' for the purposes of the Equality Act. This judgment will enable women's single sex spaces, services, and associations to be maintained without fear of legal challenges. Lesbians will be able to run exclusively lesbian associations without being pressurised to include trans-identifying males who claim to be lesbians.

We thank For Women Scotland and the groups who intervened in the case to support them for all the work they have done to achieve this outcome for women.

This judgment is a major step forward, but we need to go much further in challenging the harms being caused to women and girls by the ideology of gender identity, which allows men to falsify their sex. Sex falsification needs to be ended completely in order to fully restore safeguarding for women, girls, and other vulnerable groups.

Ending sex falsification and restoring safeguarding

WDI-UK is calling on the UK government to restore safeguarding by ending sex falsification in all its forms. This would involve repealing the GRA and removing the concepts of 'gender reassignment' and 'gender identity' from all law, policy, and practice.

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, privacy and dignity 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, 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 the fiction that people can change sex.

The GRA enables individuals who meet certain criteria to obtain a GRC, which allows 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 treated as a man for some, but not all, purposes.

The Equality Act protects those with certain 'protected characteristics' from discrimination, victimisation, 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. A man with the protected characteristic of 'gender reassignment' who does not hold a GRC remains a man in law for all purposes.

The Equality Act also treats sex as a protected characteristic and the Supreme Court has now confirmed that this Act's definition of sex is based on biology.

The need for safeguarding

The Declaration on Women's Sex-Based Rights 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 and children from harm.

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.

Men's violence against women and girls

A central aspect of the power imbalances between men and women is men's violence against women and girls. 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.

The consequences of sex falsification

Law and policy which enable men to falsify their sex undermine the safeguarding of women and girls from male violence. Sex falsification has been 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 have been gaining access to provisions designated as

women only, such as domestic abuse refuges, rape crisis centres, hospital wards, prisons, and public toilets and changing rooms. Male participation in many female sports is putting girls and women at physical risk and forcing them to change and shower in the presence of males who claim to be women. The Supreme Court's decision should help us to reduce these practices, but other aspects of law and policy will continue to validate sex falsification unless they are reformed.

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. 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). This compromises identity verification and thereby creates safeguarding risks.

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, subject to risk assessments. Prison searching policies in [England and Wales](#) and in [Scotland](#) require female prison officers to carry out intimate searches of male prisoners who hold a GRC, unless the men involved agree otherwise. This includes men who are sex offenders. These policies undermine the safety, dignity and privacy of women prisoners and prison officers respectively, and potentially breach their rights under Article 3 of the European Convention on Human Rights, which prohibits inhuman and degrading treatment, and their rights to privacy under Article 8.

In response to the Supreme Court judgment, British Transport Police are [reviewing](#) searching policy which allowed male officers with a GRC to strip search female detainees and required female officers to strip search males with a GRC. While the review takes place their interim position is that officers conducting searches will be the same sex as the detainees they search. It remains to be seen whether prison services will review their placement and searching policies following the judgment. Making all prisons single sex could easily be achieved if there is the political will to do it. However, male prisoners who hold a GRC would have potential claims under Articles 3 and 8 if a policy is introduced that they must only be intimately searched by men. The searching of male prisoners and detainees is an area in which the GRA's provisions may prevent the full protection of women's sex-based rights, despite the Supreme Court's judgment.

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, whether or not they hold a GRC. 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 to 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.

What government needs to do

All 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

Introducing the fiction that people can change their sex in law has brought about enormous confusion about the law's definitions of male and female. *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 this legal fiction. 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.

The removal of the protected characteristic of "gender reassignment" 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 individuals' subjective beliefs, while still providing them with protection under the 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 the application of recruitment and employment practices which take these implications into account.

The ending of *de facto* self-declaration of 'gender identity'

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, we call on the government to issue guidance to ensure that all forms of *de facto* self-declaration of 'gender identity' are brought to an end; that all identity documents should accurately record the sex of the individual concerned, and that all data recording by public bodies should be disaggregated on the basis of sex.

The ending of the social and medical 'transitioning' of children

The Supreme Court's decision will not end the teaching of gender identity ideology in schools or the social 'transitioning' of children. It is not yet clear whether the Cass Review will ultimately bring about the end of the use of puberty blockers to medically 'transition' children. Children cannot give fully informed consent to any form of 'transition'. Legal and policy reform aimed at ending sex falsification must explicitly prohibit the 'transitioning' of children in all its forms.