

# Equality Impact Assessment on the Gender Recognition Reform (Scotland) Bill 2022: Has the Scottish Government undertaken further analysis since 2019?

Murray Blackburn Mackenzie

May 2022

On 2 March 2022 the Scottish Government published the [Gender Recognition Reform \(Scotland\) Bill](#). On introducing the Bill Social Justice Secretary Shona Robison [stated](#): “This Bill does not introduce any new rights for trans people. It is about simplifying and improving the process for a trans person to gain legal recognition, which has been a right for 18 years. Our support for trans rights does not conflict with our continued strong commitment to uphold the rights and protections that women and girls currently have under the 2010 Equality Act. This Bill makes no changes to that Act.”

This paper examines the [Equality Impact Assessment](#) published alongside the Bill, focusing on the protected characteristic of sex.

- To begin with (Section 1) we provide an overview of the EQIA on sex, which is shown alongside the 2019 EQIA (see Annex J [here](#)). This shows the EQIA is barely changed since 2019.
- The remainder of the paper (Sections 2 to 10) sets out relevant commentary, data and evidence that is missing from the EQIA, including evidence on sex-based offending patterns, risks of self-exclusion, and evidence on the negative impact of self-declaration laws in other countries.

## Impact of consultation

Much of this missing evidence was drawn to the attention of the Scottish Government in the 2019 consultation on gender recognition reform and highlighted in the independent [Analysis of Responses to the Public Consultation Exercise](#), but has not been added to the EQIA.

The Scottish Government state ‘Comments made by consultees on the draft Impact Assessments included with both consultations were recorded in two independent analyses’ were ‘taken account of these comments when preparing this EQIA’. **The lack of any meaningful difference between the 2019 and 2022 EQIAs strongly suggests that the Scottish Government has not undertaken any further substantive analysis since then, nor fully explored the concerns raised in the last consultation.**

## Evidence base

As before, the Scottish Government continue to rely on an exceptionally thin evidence base. In relation to the key contested area, that is, the conflict between different rights-holders, the EQIA on sex relies uncritically on secondary assessment and analysis by authors who clearly come from a theoretical perspective strongly disposed to the Scottish Government position. Only three academic papers are cited, two of which draw highly offensive analogies (between single sex spaces and racial segregation, and between the bodies of transwomen and women who have undergone double mastectomies for breast cancer). It is astonishing that the Scottish Government continues to rely on these papers as the only sources of academic evidence to support their position, particularly when its own literature search undertaken for the 2019 consultation, which it chose not to publish, identified other relevant sources (see Part 0).

In contexts where self-declaration policies have already been introduced, the EQIA takes an absence of evidence at face value, to mean evidence of absence. It does not acknowledge that many public bodies, including Police Scotland, do not collect data on biological sex, making it impossible to monitor the impact of such policies. Nor does it acknowledge relevant individual cases that demonstrate the risks of self-declaration. More broadly the Scottish Government appears to be blind to the risks of reform because it does not recognise transwomen as a subset of the male sex class.

## 1. Comparison of 2019 and 2022 EQIAs on sex

To begin, we provide a side-by-side comparison between the 2019 and 2022 EQIAs. Yellow text boxes highlight key areas of missing data or analysis, or other observations. Sources cited by the Scottish Government are highlighted in blue, and changes between 2019 and 2022 marked in bold.

### 2019 EQIA

1. A higher proportion of people legally recognised in the UK in their acquired gender under the 2004 Act are trans women (male to female) than trans men.
2. However, the proportion of trans men (female to male) being legally recognised under the GRA has increased over time.
3. In 2005/06, 1,181 full GRCs were granted (there was pent up demand for legal gender recognition in the early period after the GRP was established). 912 (77%) of these were to trans women and 269 (23%) to trans men.
4. In 2008/09, 241 full GRCs were granted. 191 (79%) were to trans women and 50 (21%) to trans men.
5. In 2018/19, 323 full GRCs were granted. 198 (61%) were to trans women and 125 (39%) to trans men.
6. The position in the UK similarly reflects the apparent position in other countries that there are more trans women than trans men.
7. In Ireland, of the 517 people who have been recognised between September 2015 and August 2019, 233 (41%) were trans men (recorded as female at birth).

Source: *Tribunals and Gender Recognition Statistics (Ministry of Justice)*

Source: *Information provided by the Government of Ireland*

MBM: The number of GRCs issued in the UK has doubled since the UK Government lowered the fee from £140 to £5. This is not discussed. See 3) Missing data: Impact on the number and profile of applicants

MBM: Para. 6 is the only specific reference to another countries. See: 10) Missing evidence: Impact of self-declaration in other countries

MBM: This is a repeat of para. 11 in the 2019 EQIA. The analysis assumes it is possible to distinguish between 'non-trans men falsely claiming a trans identity' for malign intent, and others. Self-declaration, by definition, precludes any such distinction.

### 2022 EQIA

1. A higher proportion of people legally recognised in the UK in their acquired gender under the 2004 Act are trans women (man to woman) than trans men.
2. The proportion of trans men (woman to man) being legally recognised under the GRA has increased over time.
3. In 2005/06, 1,181 full GRCs were granted (there was pent up demand for legal gender recognition in the early period after the GRP was established). Of these, **911** (77%) were granted to trans women and **268** (23%) to trans men.
4. **The numbers of GRCs granted began to plateau in 2007/08, during which there were 391 full GRCs granted. Of these, 299 (76%) were granted to trans women and 92 (24%) to trans men.**
5. **The latest available data shows that, in 2020/21, 427 full GRCs were granted. Of these, 256 (60%) were to trans women and 171 (40%) to trans men.**

Source: *Tribunals and Gender Recognition Statistics (Ministry of Justice)*

6. The position in the UK similarly reflects the apparent position in other countries that there are more trans women than trans men.

Source: *See the evidence from 19 countries set out in Meier S.C., Labuski C.M. (2013) The Demographics of the Transgender Population...*

7. In Ireland, of the 517 people who have been recognised between September 2015 and August 2019, 233 (41%) were trans men (recorded as female at birth).

Source: *Information provided by the Government of Ireland*

#### Data gaps identified and steps taken:

The SG has not identified any evidence supporting a link between women-only spaces being inclusive of transgender women, and non-trans men falsely claiming a trans identity to access these spaces and committing sexual violence. Other sources identified reiterated that there is a lack of any evidence to support this claim.

Scotland's Census 2022 will include a voluntary question asking whether individuals consider themselves to be trans or have a trans history. This data will allow for up-to-date estimation of the proportion of the Scottish population who identify as trans. Data on sex will also gathered in the Census 2022, which could allow for disaggregation of trans status by sex (subject to sufficient sample sizes to enable robust analysis).

MBM: The comments on data are not relevant in this context. Scotland's 2022 census did not collect data on the protected characteristic of sex, and the SG guidance for data collection by public bodies advises against doing so on a routine basis.

MBM: This type of review will not be possible, due to a lack of data on sex of birth.

The SG established the Sex and Gender in Data Working Group which met between 2019 and 2021. The working group published its guidance for public bodies on the collection of data on sex, gender identity and trans status in September 2021.

In line with good practice the SG will keep this EQIA under review, and will consider any emerging evidence, both positive and negative in relation to this characteristic.

8. A number of respondents to the previous consultation raised concerns about the implications of legal gender recognition for women.

*Source: Consultation responses.*

Concerns included:

- access to women's safe spaces;
- risk of abuse;
- perceived erosion of the rights of women;
- women's sports;
- intimate medical care;
- the accuracy of statistical information in areas such as crime recording or equality monitoring;
- freedom of speech.

On these points, Chapter 5 of the consultation, and this EQIA (later on) outline exceptions in the Equality Act 2010 which can be used in specified circumstances, when it is proportionate and to achieve a legitimate aim, to exclude trans people from single sex services and to exclude trans women from sporting competitions for women. There are also exceptions which can be used in relation to occupational requirements.

These exceptions will remain in place after reform of the Gender Recognition Act 2004.

On data, the SG has established a working group on sex and gender in data.

On freedom of speech, the SG is fully committed to this and there are provisions in the European Convention on Human Rights to protect freedom of speech.

8. A number of respondents to the **2017 and 2019** consultations raised concerns about the implications of legal gender recognition **on the safety and wellbeing of women and girls. Some responses referred to their own experiences or media reports.**

*Sources: Review of the Gender Recognition Act 2004: consultation analysis – And Gender Recognition Reform (Scotland) Bill: consultation analysis.*

Concerns included:

- access to women's safe spaces;
- risk of abuse;
- a perceived erosion of the rights of women;
- women's sports,
- intimate medical care;
- the accuracy of statistical information in areas such as crime recording or equality monitoring;
- freedom of speech.

On these points, Chapter 5 of the consultation, and this EQIA (later on) outline exceptions in the Equality Act 2010 which can be used in specified circumstances, when it is proportionate and to achieve a legitimate aim, to exclude trans people from single sex services and to exclude trans women from sporting competitions for women. There are also exceptions which can be used in relation to occupational requirements.

These exceptions will remain in place after reform of the Gender Recognition Act 2004.

On freedom of speech, the SG is fully committed to this and there are provisions in the European Convention on Human Rights to protect freedom of speech.

For para. 8 and 9 see missing evidence on: 4) Impact on the Single-sex exceptions; 5) Impact on social conventions; 6) Self-exclusion from single-sex services; 7) Single-sex provision and fear of speaking out; and 8) Impact on female prisoners

Despite its clear relevance in this context, the EQIA is silent on *Forstater v CGD Europe*, in which the Employment Appeal Tribunal ruled that 'gender critical' beliefs (broadly, a belief that sex is binary and immutable and that a person cannot change their sex) are 'worthy of respect in a democratic society'.

9. There is a lack of any evidence around the actual experienced impacts of trans inclusion in services.

Much of the literature identified does not justify a blanket exclusion of trans women from services or spaces (they themselves are a vulnerable group), but rather highlights the need for individual assessments and tailoring the service for each individual's needs, where they are also likely to encompass a wide variety of things unrelated to an individual's sex or gender identity.

Source: Gottschalk, L., 2009. *Transgendering women's space: A feminist analysis of perspectives from Australian women's services*. *Women's Studies International Forum*, 32(3): 167-178.

9. There is a lack of any evidence around the actual experienced impacts of trans inclusion in services.

Much of the literature identified does not justify a blanket exclusion of trans women from services or spaces (they themselves are a vulnerable group), but rather highlights the need for individual assessments and tailoring the service for each individual's needs, where they are also likely to encompass a wide variety of things unrelated to an individual's sex or gender identity.

**Some respondents to the 2019 consultation disputed the Scottish Government's findings in relation to the available evidence, and the conclusions drawn.**

Source: Gottschalk, L., 2009. *Transgendering women's space: A feminist analysis of perspectives from Australian women's services*. *Women's Studies International Forum*, 32(3): 167-178.

MBM: Gottschalk argues *for* retaining single sex spaces, and concludes that "Trans inclusion then is one of the greatest threats faced by women". That the paper draws the opposite conclusion to the Scottish Government was noted in our response to the 2019 consultation, and in the independent analysis of consultation responses (2021: para. 7.28). It is not clear why this paper is still included in the 2022 EQIA.

10. The SG has not identified any evidence supporting the claim that trans women are more likely than non-trans women to sexually assault other women in women-only spaces. Much of the literature reiterates this lack of any evidence, legal, medical or otherwise, to support this characterisation of trans women as 'deviant' or predatory.

In addition to concerns about the inclusion of trans women in women-only spaces and services, some respondents expressed concerns that predatory men posing as trans women would seek to gain access to women only spaces and services for malicious reasons.

Source: Dunne, P., 2017. *(Trans)forming single gender services and communal accommodations*. *Social and Legal Studies*, 26(5).

Eckes, S., 2017. *The restroom and locker room wars: Where to pee or not to pee*. *Journal of LGBT Youth*, 14(3): 247-265.

11. The SG has not identified any evidence supporting a link between women-only spaces being inclusive of transgender women, and nontrans men falsely claiming a trans identity to access these spaces and commit sexual violence. Other sources identified reiterated that there is a lack of any evidence to support this claim.

Source: Dunne 2017 and Eckes 2017

10. The Scottish Government has not identified any evidence at this time supporting the claim that trans women are more likely than non-trans women to sexually assault other women in women only spaces. Much of the literature reiterates this lack of any evidence, legal, medical or otherwise, to support this characterisation of trans women as 'deviant' or predatory.

In addition to concerns about the inclusion of trans women in women-only spaces and services, some respondents expressed concerns that predatory men posing as trans women would seek to gain access to women only spaces and services for malicious reasons.

Source: Dunne, P., 2017. *(Trans)forming single gender services and communal accommodations*. *Social and Legal Studies*, 26(5).

Eckes, S., 2017. *The restroom and locker room wars: Where to pee or not to pee*. *Journal of LGBT Youth*, 14(3): 247-265.

MBM: Para. 10 is misleading. The key concern relates to the risks associated with males as a sex-class, no matter how they identify. Males have much higher levels of violent and sexual offending, including against women. However, the EQIA effectively concludes that this does not apply to a particular subset of males simply because they describe themselves as having a particular identity.

The narrow focus on incidents of sexual violence against women also excludes relevant evidence of impacts on women's privacy, dignity, and feelings of safety, and potential harms against children.



MBM: Dunne compares bodies of men who claim a transgender identity to other 'non-normative' people, including women after breast removal surgery, in making the case for service provision based on gender identity rather than sex.

*'Under the 2010 Act, cisgender women cannot demand that an intersex woman, who identifies with her assigned female gender, be excluded from women-only changing rooms. It would be unthinkable that general discomfort could prevent a cisgender woman from using segregated showering facilities after she had a double mastectomy. In reality, UK law tolerates a considerable amount of bodily diversity when cisgender and intersex persons use single-gender spaces. Why are trans persons treated differently?' (Dunne, 2017: 545)*

The then Cabinet Secretary told the Parliament on 8 January 2020 that the comments made by Dunne were "not something that the Government would support", and that reference was "included because of a reference within the work to show that there is no increased risk of women being attacked in single-sex spaces by trans women."

We could not find any substantive empirical evidence cited in the paper to support this claim. The article states 'In reality, there is no peer-reviewed scholarship which proves, or even suggests, that trans individuals, as a class, pose a threat of sexual violence to cisgender populations', however this is referenced with an assertion made in the online magazine 'Slate' (Yoshino, 2006). Further, as noted above, the key concern relates to the risks associated with males as a sex-class, no matter how they identify.

Eckes (2017) compares concerns about self-identification policies to fears over "white girls being forced to take their showers with negro girls" in 1950s America.

Both papers have received critical media attention. See:

The Sun (8 January 2020) SNP ministers enrage breast cancer patients after using expert who made 'offensive' remarks about mastectomies. See: <https://www.thescottishsun.co.uk/news/5149172/snp-breast-cancer-patients-id-row-mastectomies/>

The Telegraph (7 March 2022) SNP likens concern over trans reforms to racist segregationists. See: <https://www.telegraph.co.uk/news/2022/03/07/snp-likens-concern-trans-reforms-racist-segregationists/>

The EQIA separately assesses the data and evidence gathered against the requirements in the Public Sector Equality Duty. This simply repeats the preceding points and observations, with an additional note in relation to sport. **The assessment for 2022 is almost identical to 2019**, other than some minor reorganising of the text and a new commitment to keep the EQIA under review, although as noted above, given that the Scottish Government discourages public bodies from collecting data on sex at birth, it is not clear how this can be done. The only changes to wording from 2019 are shown in bold.

### **'Assessing the impacts and identifying opportunities to promote equality [2022 EQIA]**

Having considered the data and evidence you have gathered, this section requires you to consider the potential impacts – negative and positive – that your policy might have on each of the protected characteristics. It is important to remember the duty is also a positive one – that we must explore whether the policy offers the opportunity to promote equality and/or foster good relations'

#### **Sex. Do you think that the policy impacts on men and women in different ways?**

Sex	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination				<p>A number of respondents to the consultations raised concerns about the implications of legal gender recognition for women.</p> <p>Concerns included: access to women's safe spaces; risk of abuse; women's sports; • intimate medical care the accuracy of statistical information in areas such as crime recording or equality monitoring; freedom of speech.</p> <p>The Scottish Government is of the view that there is lack of evidence that including trans women in women-only services and spaces has negative impacts. <b>In line with good practice the Scottish Government will keep this EQIA under review, and will consider any emerging evidence, both</b></p>

				<p><b>positive and negative in relation to this characteristic.</b></p> <p>The 2010 Act has a number of specified exceptions to the general provisions on non-discrimination. Some of these exceptions are directly relevant when considering the position of women in relation to gender recognition. Organisations and service providers can, when appropriate, make use of the exceptions in the 2010 Act to exclude trans people. However, the exceptions have to be used in a proportionate way, and to achieve a legitimate aim.</p> <p>On sport, section 195 of the 2010 Act contains provision allowing, in certain specified circumstances, restrictions on trans people participating in sport to be imposed if necessary to uphold fair competition or the safety of competitors.</p> <p>On single sex services, the 2010 Act allows women only services and allows services to exclude trans women in certain specified circumstances when it is proportionate and in pursuit of a legitimate aim. Paragraph 28 of schedule 3 the 2010 Act sets out the exception which relates to trans persons, and provides:</p> <p>[Quote from Equality Act 2010]</p> <p>This provision would, for example, allow the operator of a domestic abuse refuge designed for women only to exclude a trans woman from the service if the operator judges that this is a proportionate means of achieving a legitimate aim. This is likely to involve carrying out a risk assessment to balance the needs of all parties: the trans person; other users of the service and staff.</p> <p>On data, the Scottish Government has established a working group on sex and gender in data.</p> <p>On freedom of speech, the Scottish Government is fully committed to this and there are provisions in the European Convention on Human Rights to protect freedom of speech.</p> <p>Given the various provisions in this area, we have ticked the “none” box.</p>
Advancing equality of opportunity			x	The policy has the potential to raise awareness, challenge stigma and increase transgender inclusion.
Promoting good relations between men and women			x	The policy has the potential to raise awareness, challenge stigma and increase transgender inclusion

## 2. Literature review: Framing the evidence

- 2.1. A literature review was undertaken by officials for the 2019 consultation. This has been released under Freedom of Information.<sup>1</sup> It considered ‘evidence on legitimate basis on which trans women might need to be excluded from some women-only services, locations, or provisions, or on which their presence might put non trans women at a disadvantage’. This identified two relevant data sources from the House of Commons Women and Equalities Committee report on transgender equality (Ref. B44347). However neither is cited in the EQIA. These are:
- 2.2. A submission from Women Analysing Policy on Women:

‘There are situations such as women-only domestic and sexual violence services where vulnerable women surviving in crisis find it very difficult to feel safe. Some of these women may feel unable to access services provided by or offered jointly to all women including transwomen; this produces a clash with the rights of transwomen to be treated exactly the same as other women. In such cases when the safety, wellbeing and recovery of women are reliant upon their ability to access services the law has created exemptions to allow for women only services that do not include some transwomen, in some circumstances.’
- 2.3. And a submission by the Prison Reform Trust:

‘Some organisations working with female prisoners, such as those providing support for women who have experienced domestic violence or sexual assault may decide not to provide services to transwomen as long as the decision is legitimate and proportionate. We support the current position.’
- 2.4. The review also stated that the Fair Play for Women (FPFW) website ‘may be particularly relevant’. None of the FPFW published resources were quoted in the final EQIA or listed in the references.<sup>2</sup>
- 2.5. Officials used a narrow set of search terms in its literature search, and did not include references to terms such as ‘offending’, ‘safety’ or ‘privacy’.
- 2.6. A decision was taken not to publish the literature review, as the evidence located did not answer the question as to whether there is a legitimate basis on which transwomen might be excluded from female single-sex spaces. Internal minuting observed that some comments from one source heavily relied on in the draft EQIA “are really policy arguments rather than evidence”.

## 3. Missing data: Impact on the number and profile of applicants

- 3.1. The impact of reform will depend to a large extent on the number of GRCs issued, and the profile of applicants. This is not discussed in the EQIA. That a large proportion of the EQIA focuses on existing GRC holders suggests that the Scottish Government believes that applicants will be drawn from the same population. Given the fundamental change in eligibility criteria, this is implausible.
- 3.2. In the 2017 consultation the Scottish Government estimated there would be ‘in the range of 250 to 400 applications per year’ ([2017: 3.9.8](#)). It then lowered this to an upper limit of 250 applications in the 2019 consultation (2019: 3.8.12). More recently the Cabinet Secretary referred to between 250 and 300 applications. It is not clear why these estimates have changed, nor do they appear plausible, as stated above.
- 3.3. Since the application fee was lowered from £140 to £5 in 2021, the number of GRC applications in the UK under the *existing* system has doubled (the Scottish Government is

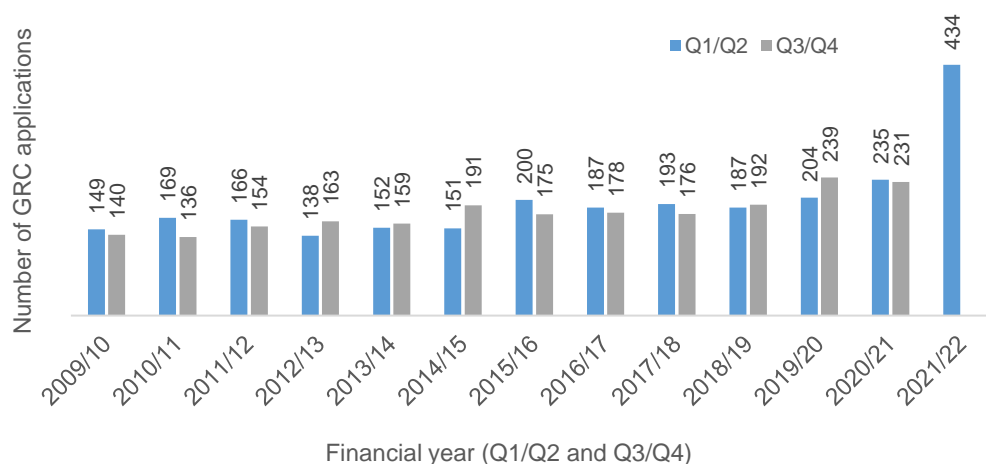
---

<sup>1</sup> Scottish Government [Freedom of Information response](#) 21 August 2019

<sup>2</sup> Fair Play for Women (13 March 2020) [Why did evidence of women’s concerns get missed off the Scottish Government’s impact assessment for the Gender Recognition Reform Bill?](#)

proposing to remove the fee entirely). This sharp increase (shown in Figure 1 below) is most likely due to the reduced cost, but this is not discussed in the EQIA. Also relevant here is that Scottish GRCs will be open to any person aged sixteen years or over with a Scottish birth certificate, irrespective of residence, and to those 'ordinarily resident' in Scotland, which is not defined.

Figure 1. Number of GRC applications received by financial quarter (q1/2 and q3/4) 2009/10 to 2021/2022



Source: Tribunal Statistics Quarterly: July to September 2021 ([Main Tables: Table GRP1](#))

#### 4. Missing analysis: Impact on the use of the law allowing single-sex arrangements

- 4.1. The EQIA relies on existing provisions in the Equality Act 2010 to allay concerns about the impact on single-sex services and spaces, arguing that these can be used to in certain circumstances to exclude anyone of the opposite sex however they identify and whether or not they have a GRC.
- 4.2. Because the Equality Act allows GRC holders to be excluded alongside non-GRC holders, the Scottish Government wrongly implies this must mean that a GRC makes no difference to rights of access, ignoring that the threshold for excluding GRC holders may be higher than for non-GRC holders. As we have argued [elsewhere](#), the legal effects of a GRC are unsettled, subject to varying interpretations, and the Scottish Government's own position on this is inconsistent.
- 4.3. Further, unarguably, acquiring a GRC gives an individual strongly enhanced privacy rights in relation to their sex. In December 2018 NHS Lothian [stated](#) it could not guarantee a female healthcare practitioner or carer for someone who requests one due to the privacy provided by Section 22 of the Gender Recognition Act preventing it from disclosing whether a staff member was recorded as female because of holding a GRC.
- 4.4. In the 2019 consultation paper the Scottish Government indicated that this sort of interpretation was over-cautious and committed to considering further exceptions to Section 22, providing guidance on its use, and outlining the government's approach on the introduction of any Bill (2019: 34). It has not done so. Indeed, it appears the Scottish Government instead wish to extend the scope of the existing provisions, for a period of over 2 years for applicants, irrespective of whether a GRC is issued, and to people asserting a change of legal gender overseas, irrespective of supporting evidence.
- 4.5. Given that criminal penalties for disclosure of information already encourage cautious interpretation, the expansion of privacy protections is likely to exacerbate this effect.



- 4.6. Limitations perceived by service providers due to the privacy protections are coupled with a practical issue. Once a person has changed their birth certificate, an organisation has no documentary basis for distinguishing between those who were and were not born female, and who it records as women.
- 4.7. Some public authorities and private organisations have already put in place policies based on self-declaration. These include the Scottish Prison Service, health authorities and some violence against women services<sup>3</sup>. These policies appear often to have been underpinned by a belief that it is already not possible to have a fully single sex service or space, and any persons covered by the characteristic of gender reassignment should be included by default, and only excluded from such a space or service based on a case by case assessment. The Ministerial introduction to the 2019 consultation stated:

‘I recognise that some organisations have changed policies which are not required in law. And I know that they have done so in a well-intentioned attempt to be trans-inclusive. However they may have unintentionally made changes that make women feel uncomfortable and less safe.’ (Shirley-Ann Somerville MSP 2019:3)
- 4.8. Such policies make spaces and services mixed sex in practice. As those running them generally have no objective basis for determining whether a male person is covered by gender reassignment they become not only mixed sex, but mixed sex and open to any male person who declares that they identify as a woman, however little they are perceived to differ from any other male.
- 4.9. Recent new guidance from the EHRC on single sex spaces sets out that it is lawful to have fully single sex provision in certain circumstances. However, in our view, organisations who have already ceased providing this in any way are less likely to revisit their policies, in the light of this guidance, if GRCs are made much more widely available, and there is any doubt about whether the threshold for excluding GRC holders is higher. Organisations who do still use these provisions are more likely to cease to for similar reasons.
- 4.10. There is also evidence public bodies are responding to rising numbers of individuals declaring transgender identities by removing sex-separated provision entirely, whether for reasons of cost or fear of legal challenge. Again, if GRCs are made much more widely available, and there is any doubt about whether the threshold for excluding GRC holders is higher, we believe it will be more difficult to persuade organisations not to adopt or retain these policies.
- 4.11. In relying on the Equality Act provisions to make its case, the Scottish Government argues that decision-making in practice falls to service providers, working within guidance from the Equality and Human Rights Commission (EHRC), thereby adopting a passive role which rejects any responsibility for itself for effects on the operation of the Equality Act in practice.
- 4.12. We therefore find the EQIA complacent about how increasing the size and nature of the GRC holding population is likely to make service providers more reluctant to make use of the Equality Act’s provision for single sex services, the use of which has already been discouraged by various organisations, and note that the Scottish Government accepts no role for itself in encouraging any other outcome.

---

<sup>3</sup> The only evidence the Scottish Government appears to hold about the extent of access by transwomen to women-only services and spaces at present is some general comments by umbrella bodies for providers of services for violence against women and campaigners for self-declaration. See: Scottish Government [Freedom of Information response](#) 3 March 2020.

## 5. Missing analysis: Impact on social conventions

- 5.1. The EQIA provides no analysis on the potential impact on social conventions. In practice, reform endorses the principle that if someone born male wishes to be seen and treated as if they had been born female, that is something that society at large should accept, based only on their personal declaration.
- 5.2. If enacted, as noted above, we anticipate that a larger and more diverse group of people born male will feel more confident seeking access spaces and services designated for women. Compared to now, GRC holders are more likely to be readily recognisable as having been born male, and to have done less to alter their presentation. This group will be covered by the same stringent privacy protections as apply for GRC holders at present. Also, some males who identify as women who do not have a GRC will feel more confident seeking access to women's spaces, based on the principle above.
- 5.3. As a result of these effects, we believe legislators should anticipate a further breaking down of the social conventions under which males would expect to face some challenge on entering women's services and spaces. These conventions are already vulnerable. In 2020 the Glasgow Evening Times reported that two men who did not identify as transgender complained to the management of a large department store, after women objected to their using the changing area designated for bra fitting. They said that they would have found comments they overheard upsetting, had they been transgender. The store reportedly apologised to them (13 March 2020).<sup>4</sup>
- 5.4. Such a shift in conventions would be expected to increase how often women are accurately aware of evidently male-born people being present in spaces reserved for women, with negative implications for their sense of dignity, privacy, and safety. They can also be anticipated to increase in incidents where males feel able to access women's spaces for the purpose of causing physical harm, or to intimidate or humiliate women, act voyeuristically or in ways which make them feel uncomfortable. This may be due to a person abusing the GRC process or the general breakdown in social conventions.
- 5.5. Change of this sort can be predicted to increase in the number of women and girls self-excluding from contexts where they previously felt relatively safe.

## 6. Missing evidence: Self-exclusion from single-sex services

- 6.1. The EQIA makes no reference to the risk of women self-excluding from activities, places or services that no longer operate on a single-sex basis. We are not aware of any attempt by the Scottish Government to systematically gauge such effects, or to capture whether women's discomfort or distress have increased with the introduction of such policies.
- 6.2. A survey by campaign group Women and Girls Scotland,<sup>5</sup> based on a UK-wide self-selected sample of 2,000 women, found substantial support for access to spaces and services where women could be sure they would not encounter anyone born male, regardless of self-declared gender identity, for reasons of safety, privacy, and dignity. The report also identified a risk of self-exclusion by some women from some spaces and services if this could not be guaranteed.
- 6.3. Although the survey is referenced in the independent analysis of consultation responses, alongside further specific examples where women may self-exclude, this issue is not acknowledged in the EQIA. The analysis report states:

‘There was also a concern that evidence from several Women's Organisations about the potential for women's self-exclusion from specialist and mainstream women-only spaces and services, should they include trans women, has been overlooked. While it

---

<sup>4</sup> [Couple's shock over treatment in Glasgow M&S store changing room](#), Glasgow Evening Times 13 March 2020.

<sup>5</sup> Women and Girls in Scotland (3 June 2019) [Female Only Provision: A Women and Girls in Scotland Report](#)

was acknowledged that the type of survey approach used to gather this evidence is not statistically representative, the same point was made with respect to Government consultations.

A number of examples were given of situations where women may self-exclude rather than share a space with a male bodied person. These included:

- Female survivors of male sexual violence who feel forced to self-exclude when a rape crisis service cannot guarantee a female-only therapeutic environment.
- Effects on minority groups – for example Muslim women who do not feel comfortable in certain spaces where biological males are present.
- Self-exclusion from gyms and from lesbian groups.’ (2021: 51)

- 6.4. In a speech in September 2021 the CEO of Edinburgh Rape Crisis stated people were self-excluding from VAW services due to a lack of single-sex provision, which the CEO painted as ‘transphobia’: *‘in Scotland, where you have large groups of survivors, some not using our services because they see us as trans inclusive, and feeling that they may be exposed to an issue that they’re not prepared to deal with, or, you know, like really being misinformed about what trans inclusion means. So we have groups of survivors who may not be using our services in the context of transphobia.’*<sup>6</sup>

## 7. Missing evidence: Single-sex provision and fear of speaking out

- 7.1. A report by Fair Play for Women (2018)<sup>7</sup> found some professionals working in VAW services were afraid to raise their concerns around gender self-declaration policies, and that the voices of VAW survivors had not been given a voice in the Westminster consultation on GRA reform. The report called into question the reliability of evidence from VAW umbrella bodies that supported policies based on self-declaration. The work of FPFW was identified in the literature review undertaken for the 2019 consultation but omitted from both EQIAs.<sup>8</sup>
- 7.2. Recent doctoral research by Dr Shonagh Dillon (2021)<sup>9</sup> found funding conditions for VAW services that required trans-inclusive policies prevented frontline workers from expressing their concerns:

‘The sweep of transgender ideology policy capture meant that participants involved in the provision of services for female victims understood that they risked their funding if they spoke up in objection to transwomen in female-only spaces. Yet 99% of participants who worked on the frontline in domestic abuse organisations felt they had been silenced in the past, or are still being silenced, due to fears relating to the commissioning landscape and losing funding for already cash-stripped services.’

## 8. Missing evidence: Impact on female prisoners and prison staff

- 8.1. The EQIA is silent on the impact on female prisoners and staff, who cannot self-exclude. The impact of placing male prisoners in the female prison estate has been highlighted by former Scottish prison governor Rhona Hotchkiss. Hotchkiss argues that GRA reform will expose female inmates to a higher risk of physical or sexual assault and undermine their privacy. In a BBC interview, she stated that in her experience, it is ‘always an issue to have trans women in with female prisoners’ and that ‘the very fact of the presence of a male-bodied person in among vulnerable women causes them distress and consternation’. This is noted in the independent analysis of consultation responses, but not included in the EQIA (2021: para. 7.14).

---

<sup>6</sup> [Building Intersectional Inclusion in Rape Crisis Services](#). 14 September 2021

<sup>7</sup> Fair Play for Women (2018) [Supporting Women in Domestic and Sexual Violence Services. Giving a voice to silenced women: evidence from professionals and survivors](#)

<sup>8</sup> Fair Play for Women (13 March 2020) [Why did evidence of women’s concerns get missed off the Scottish Government’s impact assessment for the Gender Recognition Reform Bill?](#)

<sup>9</sup> [‘TERF/Bigot/Transphobe’ – ‘We found the witch, burn her!’](#) (Dillon, 2021) PhD Thesis

- 8.2. In April 2018 the President of the Prison Governors Association told a Commons committee about the impact of placing male prisoners in the female prison estate: 'I have seen women very scared in the situation of somebody who has a male body but identifies as a woman coming into a female prison or potentially coming into a female prison.'
- 8.3. Research undertaken by a former Scottish Prison Service (SPS) employee revealed multiple concerns raised by female prisoners (Maycock, 2021).<sup>10</sup> These include:
- The placement of biological males in the female estate in principle
  - The placement of biological males with full male genitalia in the female estate
  - Confusion as to whether those with full male genitalia retained full sexual function
  - Differences in size and strength between male and female prisoners, and female vulnerability
  - Housing biological males with female victims of child abuse
  - "The fear that transitioning from male to female might enable men who pose a threat to women to move to the female estate was discussed by a number of participants"
  - Scepticism about prisoners' motives for requesting placement in the female estate, including a desire to avoid the male estate, and opportunities for sexual access
  - Inappropriate overly-sexualised conversation
  - The appearance of trans prisoners, for example, presenting with a full beard.
  - Concerns raised by family members concerns about daughters/sisters being housed with male prisoners
- 8.4. Unpublished research by Maycock has documented concerns from prison officers required to search prisoners of the opposite sex: '*The majority view among female officers was that it was uncomfortable to search trans women, although they would be happy to do so if they had been operated on and had female genitalia*'.<sup>11</sup> This observation is also relevant to Police Scotland, which has similarly introduced custody search policies based on self-declared gender identity.
- 8.5. In England and Wales, Ministry of Justice policy grants prisoners with GRCs stronger rights of transfer. The current SPS policy treats a GRC as irrelevant to a prisoner's treatment and rights. However we have been advised by the SPS that in practice there has not been any experience of dealing with a situation where a GRC holder wished to transfer, but the SPS assessed them as not suitable to do so.
- 8.6. Creating a much larger number of GRC holders of itself increases the potential for such a situation arising in Scotland. It appears that prisoners serving sentences can apply for a GRC. Under the simplified process proposed by the Scottish Government, it will become much easier for prisoners to access a GRC. A test case involving a prisoner granted a GRC after going into custody, and refused a move into women's prison accommodation, appears a reasonable possibility. It is not clear on what basis Ministers are assuming such a case would fail. Nor is it clear what discussions have taken place between the Government and SPS to consider this possibility.

---

<sup>10</sup> '[She Was Just Like A Lassie' Analysing The Views of Cis-Women In Custody About Their Experiences of Living With Transgender Women In The Scottish Prison Estate](#) (Maycock, 2021 British Journal of Criminology)

<sup>11</sup> Times (9 January 2022) [Female prison staff 'uneasy' about intimate searches of trans inmates](#).

## 9. Missing evidence: Sex-based patterns of offending

- 9.1. The EQIA states that there is no evidence to support higher criminality rates among trans-identified males than among women. It does not acknowledge that in the UK no data exist which would enable this to be tested because Police Scotland (and other police forces) conflate sex and gender when recording crime. The only exception is in relation to hate crime, where transgender identity is captured as a separate value. The Scottish Government has previously rejected individual cases as relevant to its analysis. In 2020 when then SNP MSP Joan McAlpine asked “*whether ministers are aware of the conviction of Katie Dolatowski<sup>12</sup> and Karen White<sup>13</sup> and their relevance to the 2019 consultation, Cabinet Secretary Shirley-Anne Somerville responded that “It would not be appropriate for the Scottish Government to comment on individual case”.*<sup>14</sup>
- 9.2. There is however a body of relevant research, albeit not included in the EQIA. The most relevant study is by Dhejne et al. (2011)<sup>15</sup> on post-transition offending patterns. This is a Swedish cohort study that followed the whole identifiable population of individuals who had undergone both surgical and legal sex reassignment<sup>16</sup> between 1973 and 2003 (324 in total) and compared them to a control group drawn from the remaining population, matched on several relevant characteristics.
- 9.3. Dhejne et al compared the likelihood of a person having one or more criminal convictions in general, and convictions for violent crime<sup>17</sup> after transition.<sup>18</sup> It concluded: ‘*male-to-females ... retained a male pattern regarding criminality. The same was true regarding violent crime.*’
- 9.4. The Scottish Government is aware of this study but has chosen to regard it as irrelevant, apparently based on comments made by the lead author in an interview.<sup>19</sup> These comments cannot be reconciled with the published data and were over-taken by comments by the same author in a later online exchange<sup>20</sup>. They provide no basis on which to reject the published findings. We noted this study in our response to the 2019 consultation and discussed it with government officials in early 2020. The omission of the study was noted in the independent analysis of consultation responses ([2021: para. 7.30](#)) and it remains unreferenced in the 2022 EQIA.
- 9.5. For an overview of the study, including Dhjene’s later interview comments, see [here](#).
- 9.6. We have not found any academic rebuttal of these findings, or equivalent study that shows different results. The paper remains a highly relevant, methodologically robust, peer-reviewed, large scale comparative source on post-transition offending rates.

### TRANSGENDER PRISON POPULATION DATA

- 9.7. Prison population data lend further support to Dhejne et al’s (2011) finding that rates of serious offending are better predicted by sex at birth than gender identity.
- 9.8. The ratio of men to women in the Scottish prison estate is around 20:1. If imprisonment rates in the transgender population followed gender identity, rather than sex, a similar ratio would be expected of transmen to transwomen. However, transwomen substantially outnumber

---

<sup>12</sup> Courier (1 February 2019) [Mum of supermarket toilet sex assault victim warns freed attacker could strike again](#)

<sup>13</sup> BBC (11 October 2018) [Trans inmate jailed for Wakefield prison sex offences](#)

<sup>14</sup> [Question S5W-26954](#) Joan McAlpine. Lodged: 16/01/2020

<sup>15</sup> Dhejne C, Lichtenstein P, Boman M, Johansson ALV, Långström N, Landén M (2011) [Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden](#). PLoS ONE 6(2): e16885.

<sup>16</sup> This is a more tightly defined transgender population, compared to a population based solely on self-declaration.

<sup>17</sup> Defined as “homicide and attempted homicide, aggravated assault and assault, robbery, threatening behaviour, harassment, arson, or any sexual offense”.

<sup>18</sup> The researchers reported that levels of violent crime are comparable in Sweden to other EU nations.

<sup>19</sup> See: Scottish Government [Freedom of Information response](#) 26 March 2020, and [discussion of the paper with Scottish Government officials](#), 9 March 2020.

<sup>20</sup> Dhejne (2017) Q&A on [Reddit](#).



transmen: as of 20 January 2022 there were 12 transgender people in SPS custody: 9 transwomen and 3 transmen.<sup>21</sup>

- 9.9. Similarly, the 2021 Offender Equalities Annual Report by report by HM Prison and Probation Service (England and Wales) recorded 197 transgender prisoners, of whom 158 reported their legal sex as male, and 39 as female (around 80% and 20% respectively). A further ten prisoners were known to have a Gender Recognition Certificate.
- 9.10. Some potential specific vulnerabilities in this group may affect overall offending and imprisonment rates. Even so, these figures offer no support for the assumption that transwomen have a lower offending rate than the general male population, far less offending rates resembling those of the female population.

## EXISTING ACCOUNTS OF BAD FAITH ACTORS

- 9.11. Notwithstanding the unverifiable ‘false claim’ caveat, there is evidence of people who have claimed a transgender identity accessing or attempting single-sex spaces, or to facilitate access to vulnerable populations.
- 9.12. An evaluation by Saunders and Bass (2011)<sup>22</sup> of the characteristics of 54 individuals in Oxfordshire seeking gender reassignment surgery (70% male, 30% female) reported that “*paedophilia was a rare but concerning finding*” and that among this small group (n=2, 4%), gender reassignment surgery was viewed as a means by which to increase their intimate contact with children, which they viewed to be more socially acceptable in a female role’. Note here that Section 22 of the Gender Recognition Act confers enhanced privacy rights that protect the sharing of information about a person’s past identity.
- 9.13. In 2019 a ten-year-old girl was physically assaulted by Katie Dolatowski, a seventeen-year-old male with a transgender identity, in a supermarket toilet in Kirkcaldy.<sup>23</sup> In a previous incident, Dolatowski had followed a twelve-year-old girl into public toilets at a different supermarket, and attempted to film her urinating. The accused received a community sentence and tagging order at Kirkcaldy Sherriff court. A subsequent press report stated that Fife Council placed the offender in a women-only hostel.<sup>24</sup> When we raised this case with Scottish Government officials, despite media reports of court proceedings, it was asserted that it ‘might not be true’. This type of wilful blindness looks naïve.
- 9.14. Interviews with female prisoners in the Scottish estate (Maycock, 2021)<sup>25</sup> documented scepticism about prisoners’ motives for requesting placement in the female estate, including a desire to avoid the male estate, and opportunities for sexual access.
- 9.15. Written evidence submitted by Dr Michael Biggs to the Women and Equalities Committee (2020)<sup>26</sup> provides further examples of prisoners in England and Wales with histories of violent sexual offending who secured a move to the female prison estate. Further case studies collated by the Keep Prisons Single Sex campaign group are detailed [here](#).
- 9.16. Written evidence submitted by British Association of Gender Identity Specialists to the UK Government Transgender Equality Inquiry’ (2015)<sup>27</sup> discusses the different incentives for why male prisoners may claim transgender status:

‘It has been rather naïvely suggested that nobody would seek to pretend transsexual status in prison if this were not actually the case. There are, to those of us who actually

---

<sup>21</sup> Date taken from a series of parliamentary answers in January 2020, analysed [here](#).

<sup>22</sup> Saunders, K. and Bass, C. (2011) [Gender reassignment: 5 years of referrals in Oxfordshire](#). The Psychiatrist 35: 325-327

<sup>23</sup> [Mum of supermarket toilet sex assault victim warns freed attacker could strike again](#) Courier, 1 February 2019

<sup>24</sup> [Warning after transgender sex offender placed in women’s hostel](#) Courier, 26 February 2019

<sup>25</sup> [‘She Was Just Like A Lassie’ Analysing The Views of Cis-Women In Custody About Their Experiences of Living With Transgender Women In The Scottish Prison Estate](#) Maycock, 2021 British Journal of Criminology

<sup>26</sup> [Women and Equalities Committee: Reform of the Gender Recognition Act](#) Dr Michael Biggs, November 2020

<sup>27</sup> [Written evidence](#) submitted to the Women and Equalities Committee’s Transgender Equality Inquiry. British Association of Gender Identity Specialists, 2015

interview the prisoners, in fact very many reasons why people might pretend this. These vary from the opportunity to have trips out of prison through to a desire for a transfer to the female estate (to the same prison as a co-defendant) through to the idea that a parole board will perceive somebody who is female as being less dangerous through to a [false] belief that hormone treatment will actually render one less dangerous through to wanting a special or protected status within the prison system and even (in one very well evidenced case that a highly concerned Prison Governor brought particularly to my attention) a plethora of prison intelligence information suggesting that the driving force was a desire to make subsequent sexual offending very much easier, females being generally perceived as low risk in this regard.'

- 9.17. Written evidence submitted by British Psychological Society to the Transgender Equality Inquiry<sup>28</sup> states 'psychologists working with forensic patients are aware of a number of cases where men convicted of sex crimes have falsely claimed to be transgender females for a number of reasons'. These include:
- As a means of demonstrating reduced risk and so gaining parole;
  - As a means of explaining their sex offending aside from sexual gratification (e.g. wanting to 'examine' young females);
  - Or as a means of separating their sex offending self (male) from their future self (female).
  - In rare cases it has been thought that the person is seeking better access to females and young children through presenting in an apparently female way.
- 9.18. Osbourne and Lawrence (2016)<sup>29</sup> found the prevalence of male-to-female (MtF) transsexualism declared among prison inmates in the US appeared significantly higher than the estimated prevalence among the general population in Western countries. Estimates among male inmates ranged from around 1 in 350 to 1 in 500, compared to estimates of between 1 in 10,000 and 1 in 12,000 in the general population. This is likely to be tied to complex factors specific to the prison system and the offending population.
- 9.19. There have been a number of cases (averaging between 1 and 2 a month) reported in the media within the UK over the year of male individuals claiming a transgender identity who have been convicted of offences that are exceptionally rare in the female population. The criminal justice system and the media already take a self-declaration approach to such cases. As such, there is no way to distinguish between identity claims made opportunistically and others. Policy-making should not ignore the existence of these cases.

## OFFENDING IN MIXED SEX FACILITIES

- 9.20. In 2018 the Sunday Times<sup>30</sup> reported almost 90% of reported sexual assaults, harassment and voyeurism in swimming pool and sports-centre changing rooms occur in unisex facilities. The investigation found that out of 134 complaints, 120 took place in unisex facilities.
- 9.21. This evidence indicates that making spaces where women undress easier for males in general to access increases the risks to women. Facilities that are badged as single sex but allow for access based on self-declaration become more easily accessible to men without the need for changes to their appearance.

<sup>28</sup> [Written evidence submitted by British Psychological Society to the Transgender Equality Inquiry](#) (2015)

<sup>29</sup> Osbourne, C. and Lawrence, A. (2016) [Male Prison Inmates with Gender Dysphoria: When Is Sex Reassignment Surgery Appropriate?](#) *Arch Sex Behav* 45: 1649–1663

<sup>30</sup> Sunday Times (2 September 2018) [Unisex changing rooms put women in danger](#)

## 10. Missing evidence: Impact of self-declaration in other countries

- 10.1. The Scottish Government frequently cites the introduction of self-declaration in other countries as part of the rationale for reform. However, the EQIA fails to include any evidence from other jurisdictions to support this.
- 10.2. The expansion of gender self-declaration laws in Europe is relatively recent, albeit rapid. Following the introduction of self-declaration in Denmark in 2014, a further seven European countries passed versions of such laws. In its submission to the 2017 Scottish Government consultation on GRA reform, the Faculty of Advocates stated *“changes to the regime in Ireland were only made in 2015. We are also conscious that self-identification laws in the other jurisdictions referred to are all relatively new and their operation in practice may not yet be easily assessed.”*<sup>31</sup>
- 10.3. Problems in other jurisdictions are now emerging, which in both Denmark and Ireland have been attributed to legislative processes that failed to fully unpack and address the underlying conflict between rights based on gender identity, and rights based on sex.
- 10.4. In Canada, the impact of legal self-identification is well documented, principally in relation to the court cases brought about by a transwoman under the British Columbia Human Rights Code, who was refused a Brazilian wax services by female beauticians.<sup>32</sup>
- 10.5. In another Canadian case, two residents in a homeless shelter for women raised their concerns about sharing sleeping accommodation with transwomen who remained clearly identifiably male.<sup>33</sup> In a statement to the media, the organisation running the shelter stated that *“It is against the law to discriminate against transgender individuals. NOW Canada and other shelters in Kelowna welcome people without regard to age, race, religion and gender identity.”* The organisation also noted that its shelters did not have enough space to allow transgender clients to have their own room.
- 10.6. In Denmark, a transwoman who had made no physical changes to appearance attempted to use female changing rooms at a local swimming pool, prompting a group of women to complain about her presence. This gained national media attention, with discussion focusing on the legal rights of access conferred by self-identification.<sup>34</sup>
- 10.7. There is concern in Norway that the government did not assess potential impacts prior to enacting self-declaration legislation, and more attention is needed to evaluate the impact, especially on vulnerable women. Halvorsen (University of Oslo) observes that legislators failed to fully consider the possible problems and conflicts arising from the legislation. Critiquing the lack of guidelines on how the law should be applied in potential areas of conflict, Halvorsen states: ‘in cases where both parties feel that their personal integrity is being violated, it would have been appropriate if such issues had been reflected in the preparatory work’.<sup>35</sup>
- 10.8. A substantial number of reports are emerging from parts of the US and Canada of individuals with records of violent and sexual crime seeking successfully to be placed in women’s prisons using gender self-declaration systems, and causing harm to women inmates. In January 2021, the Californian ‘Transgender Respect, Agency and Dignity Act’ took effect, allowing prisoners to be accommodated based on self-declared gender identity.<sup>36</sup> In November 2021, the LA Times reported that 291 inmates housed at male facilities had requested to be moved to female facilities. The law is now subject to a lawsuit.

---

<sup>31</sup> Faculty of Advocates (28 February 2018) [Response from the Faculty of Advocates to the Review of the Gender Recognition Act 2004](#).

<sup>32</sup> Telegraph (23 October 2019) [Canadian transgender woman loses case against beauticians who refused Brazilian wax](#)

<sup>33</sup> Global News (9 March 2017) [Concerns over transgender client at Okanagan shelter](#)

<sup>34</sup> TV2 (6 May 2015) [Ibi-Pippi after gender change: That's why I don't want to look like a woman](#)

<sup>35</sup> Halvorsen, M. (2019) [About the law on change of legal gender](#). Law and Justice vol. 57: 457-473

<sup>36</sup> [Governor Newsom signs Senate Bill 132 to respect gender identity during incarceration](#). 29 September 2020.

- 10.9. Ireland, most often quoted by the Scottish Government, appears to have undertaken no prior impact assessment for women, and put in place no systematic monitoring or evaluation systems. A prison placement case which appears to have been unanticipated has arisen in Ireland, involving a high-risk prisoner, which has been subject to substantial media coverage over the past two years.<sup>37</sup> In late 2019, the Chair of the Criminal Law Committee of the Irish Law Society stated: 'I don't think the legislation envisaged the ability of transgender people to be able to self-declare; and it didn't foresee the problems it would cause if a transgender, self-declared person was held in a mixed prison'.<sup>38</sup>
- 10.10. Overseas evidence suggests there is a clear risk that the impact of GRA reform on vulnerable women may be most sharply felt in the Scottish prison estate. As such, the Scottish Government needs to familiarise itself with such cases, to be absolutely satisfied that its proposals will not leave prison authorities with cases where it feels it cannot refuse a transfer, despite the outcome of its usual risk assessment.

---

<sup>37</sup> Irish Times (9 May 2022) [Woman who threatened to torture and kill her mother found guilty in Limerick](#).

<sup>38</sup> Law Society Gazette Ireland (18 Oct 2019) [Male-bodied transgender inmate housed with women](#)