

# Women's Rights and the Equality Network

Murray Blackburn Mackenzie

November 2022

This briefing summarises the longer piece available [here](#).

## Women, sex and certainty

---

**Many, probably most, women want to be certain at particular times that a person performing a physically intimate procedure on them or providing any other service or sharing any space where questions of privacy, dignity, or safety arise will be the same sex as they are.** MSPs need to think hard about the practical situations at stake here.

Not all women will care, or care equally, or in the same situations, about sex and certainty. But many will, at least sometimes, for themselves or for a vulnerable relative or friend. And no woman can give consent for any other here. We hope all MSPs will read [this letter from the HEAL Survivors](#) group, which sets out why corroding certainty on what 'single sex' means can be devastating to women seeking help to deal with trauma after sexual abuse.

## What rights do the Equality Network/Scottish Trans think women should have?

---

The Equality Network (which includes Scottish Trans) is the lead body in Scotland advocating for policy and legal changes in relation to gender recognition. It is majority-funded by the Scottish Government, with well-established networks in government and parliament.

Too little attention has been paid to what rights the Equality Network/Scottish Trans (EN/ST) think *women* should be allowed to have and how proposals contained in the current Gender Recognition Reform (Scotland) Bill fits into its wider ambitions. **Yet its view on exactly how far women should be allowed to care about other people's sex in certain situations is crucial to understanding its ambitions in promoting reform of the GRA.**

There are key contradictions between the lines the EN/STA has used during the Bill process to reassure MSPs that they can disregard women's concerns about the impact of the current Bill on single sex services, and what it says and does in other contexts. For example:

- It highlights 'exceptions' in the Equality Act by way of reassurance. But in 2015-16 it **lobbied Westminster to repeal the exceptions, also describing these as "wrong and unfair" to the Scottish Parliament.** It still interprets the exceptions as applicable only in highly restricted ways, including suggesting women should have to disclose sensitive personal history to obtain single sex care.
- It claims a GRC is irrelevant under the Equality Act; but **last week argued to a court that a GRC changes someone's sex under the Act.** In 2017 it privately argued to government that one purpose of obtaining a GRC was to ease access to single sex services and that it expected wider effects in law and policy from GRA reform.
- It does not acknowledge any parts of the Equality Act where the exceptions do *not* apply, such as those covering positive anti-discrimination measures, **even though the current court case has been triggered by one such example.**

The logic of the position taken by the EN/STA in 2015-16, plus its current position in court, would be the loss of any lawful way to exclude *anyone* male from *any* single sex service or role who had acquired a female GRC. If GRCs were then available by self-declaration, the implied position would be that GRCs grant unchallengeable access to women's spaces, and roles, for any male person able to make the necessary declaration plausibly.

*Even with the exceptions still law*, if a GRC changes someone's sex under the Equality Act, issuing many more GRCs will create new pressures that chip away at the use of the

exceptions *in practice* and a female GRC would still give absolute access to any anti-discrimination measures for women.

As the EN/STA is fully committed to the belief that 'trans women are women', it is a logical ambition for it that providers and employers have no ability, or else hardly use whatever ability they have, to distinguish between women as a biological sex and holders of a female GRC, and that anyone identifying as a woman should be able to obtain a GRC.

Adopting this thinking would mean almost no service or space badged as **single sex** would be that, albeit there would be a side order of linguistic fudging to disguise or deny the situation. The supposedly single-sex service would in fact be mixed-sex, or female service provider male, very possibly evidently so. It would cement a trend that NHS Greater Glasgow and Clyde showed this week is already well underway.

### Questions for the Equality Network/Scottish Trans (and others)

---

So that MSPs fully understand the ambitions and implications for *women's* rights that underpin lobbying for the current Bill, it is now urgent that MSPs (and journalists) ask the EN/ST to respond directly on these questions about what they think the law *should* allow:

**Regarding a person who will be performing a physically intimate procedure on her, or providing any other service or sharing any space where questions of privacy, dignity or safety arise:**

1. Should a woman *ever* be allowed *certainty* that such a person will be the same sex? Has the EN/ST abandoned its lobbying position on the Equality Act exceptions in 2015-16 and, if so, when was that and where is it recorded?
2. If so, should such certainty be relatively *ordinary* or relatively *rare*?
3. How difficult should it be to achieve such certainty; for example, should it require personal *negotiation*?
4. Should it require a woman to *share personal information*, possibly revealing intimate personal history?

These are not just questions for the EN/ST. Ministers, other lobby groups, and supporters of the Bill, including those funded by the Scottish Government as women's organisations, and the SHRC, should be asked if they believe women should be able to manage their boundaries round people of the opposite sex, for reasons of dignity, privacy, safety (including the sense of safety), with certainty and clarity and without complexity.

### Protecting women's rights more effectively in the Bill

---

Acting on reassurances from the EN/STA and others, MSPs are at risk of accelerating the process of sex being chipped away as a usable, functional boundary for services on the ground. As drafted, and if the current court case favours the Scottish Government and EN/ST, the Bill stands a good chance of achieving in practice what the EN/ST failed to achieve at Westminster in 2015: the exceptions will become a dead letter.

**The amendment which so far comes closest avoiding that situation is Foyso Choudhury MSP's (no 104).** The EHRC in its recent [briefing](#) to MSPs recommended something very like this. Without such an amendment, MSPs will be legislating for a large increase in GRCs "in a manner that is legally blind", in the words of Aidan O'Neill KC, Counsel for For Women Scotland, in court last week.

The Duncan-Grancy/Scottish Government-approved amendment on the Equality Act (no. 37) is by contrast, as discussed [here](#), a fig leaf for the disregard of women's ability to know about, and say 'no' to people of the opposite sex, at times when that really matters to them. As Mr O'Neill said last Thursday, "*Women can expect, rightly can expect, more.*"