

The Rt Hon Bridget Phillipson MP  
Secretary of State for Education  
Department for Education  
20 Great Smith Street  
Sanctuary Buildings  
LONDON  
SW1P 3BT  
*By email*

23 July 2024

Dear Secretary of State,

**REFORM OF THE GENDER RECOGNITION ACT 2004: LESSONS FROM SCOTLAND**

Congratulations on your appointment as Secretary of State with responsibility for Women and Equalities.

We are an independent policy analysis collective, based in Edinburgh, with extensive experience between us in policy-making, research and communications. Since 2018 we have researched and written about women's sex-based rights and gender self-identification across different areas of public policy in the UK, over which time we have provided written and oral evidence to the Scottish Parliament, and written evidence to UK Parliament select committees and to other UK-wide consultations. Our work has been cited in parliament and has informed parliamentary questions and debate. We have commented extensively in the media and written articles in the national and specialist press.

The Labour Party's manifesto included a commitment to reform the Gender Recognition Act 2004 (GRA). Having followed the Scottish Government's handling of proposals to reform this legislation closely over recent years, we are writing to share our experience.

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## Consultation process

Supporters of the Scottish Government's proposals paint a misleadingly positive picture of its approach to public engagement on GRA reform. More detailed analysis of the Scottish Government's failure to engage and consult in line with standard good practice is available here: [The room where it happens - Murray Blackburn Mackenzie](#)

We would highlight that:

- the only meaningful private discussion by the Scottish Government prior to both of its formal consultations was conducted with supporters of its position, and this continued to be the case throughout the formal consultation periods;
- its consultation papers failed to provide clarity on key issues, including refusing to acknowledge any potential interaction with the Equality Act: see here [Comparing consultations on gender recognition reform and the impact on the operation of the Equality Act: who asked, who listened? - Murray Blackburn Mackenzie](#)
- its final legislative proposals showed no sign of having engaged seriously with responses raising questions about its proposals, again including potential interaction with the Equality Act;
- the equality impact assessments produced were of poor quality, misrepresented some research findings they cited, and ignored relevant research, as detailed here: [Has the Scottish Government undertaken any further analysis on gender recognition reform since 2019? - Murray Blackburn Mackenzie](#)

These faults contributed to the situation where the Outer House of the Court of Session was able to find that the UK Government acted reasonably in deciding that the legislation would have an adverse impact on the operation of the Equality Act 2010, and on other reserved matters.

If there is any possibility that proposed reforms might seek to reduce the rights of spouses and civil partners, we note that the most recent UK parliamentary inquiry declined to allow the *Trans Widows Voices* group to give evidence to them in private, and this group was also not invited to give evidence to the Scottish Parliament. Their written evidence to the most recent Westminster inquiry is available here: [committees.parliament.uk/writtenevidence/16197/pdf/](https://committees.parliament.uk/writtenevidence/16197/pdf/). To the best of our knowledge, they have never been given the chance of a face-to-face conversation with any government or parliament in the UK considering reforms which would affect the rights of spouses or partners. We note that women appear much more likely than men to be affected in this way. We urge that if any proposals are considered that would specifically affect spouses and civil partners, steps are taken to speak to those able to represent the interests of this group about a reduction in their rights,

considering the obstacles they face in speaking publicly and constraints on their resources.

### Issues any consultation should address

We assume any proposals to reform the GRA will be subject to formal consultation. There are questions that a consultation paper needs to address, in order for consultees to be able to give a properly informed response. The Scottish Government's consultations failed to do this. These include:

1. What is the precise legal effect of a person obtaining a gender recognition certificate?
2. Specifically, what are the precise legal implications *for non-GRC holders* of a person holding a GRC, including:
  - spouses, civil partners, and children of people acquiring a GRC
  - users and providers of single-sex services and spaces
  - members and organisers of single-sex associations
  - those organising and participating in sporting activities
  - organisers of and applicants to single-sex shortlists, development programmes, prizes etc.
  - criminal justice bodies (police, courts, prisons, bodies involved in undertaking criminal record checks)
  - the media and private individuals when referring to individual GRC holders
  - those charged with collecting data for any public purpose.

Clarification here needs to include clear explanation of the specific implications of the privacy provisions in section 22 of the GRA in all these settings.

The outcome of *For Women Scotland vs the Scottish Ministers*, due to be heard in the UK Supreme Court on 26 and 27 November, and any planned government response to that, will be relevant.

3. What specific aspects of the current application process are regarded as unreasonable, and the evidence base for that?
4. If the Gender Recognition Panel is being removed from the process, what assessment has been made of the Panel's involvement on who applies for, and who is refused, a GRC?
5. How the group the change is intended to help is defined, including whether the intention is to (a) increase the number of GRC holders and if so on what scale, and/or (b) widen the range of people who will be entitled to have a GRC compared to the current position, and if so, in what ways?

## Publication and analysis of responses

The two consultations undertaken by the Scottish Government, and the further one by the Scottish Parliament on the bill, attracted a large number of responses. The Scottish Government was asked to make responses to its second consultation public, and promised campaign group *Women and Girls Scotland* that it would do so, but then did not. It made public only summary analyses of the responses. The Scottish Government did not publish a formal government response to either of its consultations, limiting its response to selective comments in the second consultation paper and, later, the Policy Memorandum to its bill.

We would urge that any consultation is planned in the expectation that there will be a substantial response, and that in the interests of transparency and trust, where permission has been granted, the responses are published, accompanied by a good quality summary, and a formal government response.

Government plays a key role in shaping the nature of the debate on this issue. When the UK Government comes to consider how to take forward its manifesto commitment here, we very much hope that lessons will be learnt from the experience of Scotland.

Yours,

Lisa Mackenzie

Dr Kath Murray

Dr Lucy Hunter Blackburn