

Women Speak Scotland

www.womenspeakscotland.com
info@womenspeakscotland.com

Peter Hope-Jones
Gender Recognition Unit

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Dear Mr Hope-Jones,

Thank you for meeting with us on Tuesday, 15 February 2022. We appreciated your time. As we indicated, half an hour is a very short slot in which to try to address some complex issues, so we are following up with this letter which asks some of the questions there was not time for you to answer, and points out some of the issues we raised but which there was not time to address in full.

Our Question: It's been reported in the press that the GRA Reform Bill will be introduced to Parliament on 24/02/22. Can you confirm that this is the intention?

You weren't at liberty to answer this question. Nor could you confirm whether the Bill has been lodged with the Presiding Officer prior to its introduction within the next three weeks. While we appreciate that you could not answer the question, it did mean we were less than clear on the purpose of our meeting with you: if the Bill is still in development then the meeting was an opportunity for us to influence its drafting, but if it has already been lodged or will shortly be so, then it is less clear what the purpose is.

Our Question: The proposed ending of the requirement for a medical diagnosis as a condition for obtaining a GRC in effect changes the definition of 'woman' and 'man' in law. This is a major societal shift with social and cultural as well as legal and policy effects for everyone, but it is going ahead with insufficient discussion. Have steps been taken in the drafting of the Bill to limit the scope of the legal, social and cultural changes, for instance by clarifying some of the ambiguities in language present in the current GRA, and spelling out that holding a GRC is a legal fiction, since human beings cannot literally change sex?

You began by contesting the notion that there has been insufficient discussion, pointing out that there have been two consultations. We think this is unconvincing for many reasons. First, the consultations were not well publicised. The first one, in particular, slipped under the radar for most people: the second was publicised by the women's grassroots groups so had wider take-up, but we

know from talking to people in Scottish towns and cities that the vast majority are still unaware of what is being proposed.

Second, the consultations presented the Scottish Government's proposals as minor, administrative changes, and did not sufficiently point out the significant impact of changing the definitions of 'woman' and 'man' in law.

Third, women's groups and individuals pointed out in the consultations many areas of conflicts of rights. We can see little evidence that the Scottish Government has engaged with these. If the Scottish Government ignores the evidence and dismisses the arguments put forward by women concerned about our rights, then the consultations can hardly be considered a conversation.

Fourth, there has been a concerted attempt by advocates of self-ID to smear women's concerns as bigoted, to curtail women's right to speak, and to use tactics of intimidation to prevent women from discussing our concerns. When we try to gather to discuss our rights, our meetings are threatened ahead of time so that we have to hire expensive security, organisers and speakers are traduced on social media, and events are faced by threatening protestors who in some cases have shouted and chanted over women to prevent us hearing each other. As we said, we have all experienced ourselves attempts to disrupt and prevent our meetings: the feminist group WPUK have noted that of the 27 public meetings [they have organised](#), "nearly every one... has been hosted in the face of substantial obstacles including aggressive and intimidating protests, attempts to shut the meeting down and threats of violence, including a bomb threat". Despite your stated belief that there are problems on 'both sides', there is no evidence of women trying to stop advocates of self-ID from meeting to discuss and promote their position. The climate of fear that has been created has silenced many women, including in their places of work and study.

Our follow-up questions:

- How is 'legal sex' defined in the Bill?
- Will the definition provide clarity regarding the difference between sex and gender?
- Will the definitions used in the Bill be consistent with those in the Equality Act?
- What steps will the Scottish Government take to change the tone of the conversation as the Bill makes its way through the parliamentary process, so that women can participate without facing knee-jerk allegations of bigotry, and without facing threats and smears?

Our Question: The original GRA was clear that it addressed the needs of a small group of severely dysphoric people who were already living, as far as possible, as the opposite sex. The current proposals appear to increase in size and scope the population who will be eligible for a GRC, including (for instance) autogynephilic men and 16-17-year-old adolescents. Have steps been taken in drafting the Bill to take account of this increased population, for instance by setting out in detail exactly what provisions a GRC does and does not entitle a holder to access? What risk assessments have been done regarding the admission to women's spaces of people who are visually indistinguishable from men, and regarding the

gradual erosion over time of social and cultural norms regarding the use of women's spaces?

You expressed puzzlement regarding this question, and did not seem to recognise the concern. This is worrying, because many consultation responses pointed out in detail areas of rights conflict associated with the expansion of the population eligible for a GRC, and provided evidence. We explained that the Hansard record of the original Westminster discussions shows that concerns over conflicts of rights were considered insignificant because the numbers applying for a GRC were expected to be so small (around 5,000 across the UK) and the nature of the population – severely dysphoric people – were unlikely to present any risks. You confirmed that the Scottish Government anticipates an increase of over 800% in applications from 30 a year to 250 a year, which is a significant increase.

We were unclear about whether you accepted that a more diverse population would become eligible for a GRC: you re-stated that the proposals remove the need for medical evidence, but did not say whether the Scottish Government believes that the individuals applying will nonetheless be severely dysphoric. You re-iterated that the proposed changes in the present Bill only simplify the process, and change nothing else. We believe that there should be changes and clarifications to take account of the larger and more diverse population that the Scottish Government anticipates will apply for a GRC, and an acknowledgement that increasing the diversity of the population who may be awarded GRCs gives rise to realistic and legitimate fears, the substance of which needs to be discussed and addressed.

Our follow-up questions:

- What is the evidence base for the Scottish Government's belief that the rise in applications will be around 800%?
- What risk assessments have been done, specifically around the effects on women's spaces and provisions, of increasing the number and diversity of the population eligible for a GRC?
- Will those risk assessments be published?
- What risk assessments have been done on extending eligibility for a GRC to 16-17-year-old adolescents?
- Is the Scottish Government going to wait for the findings of the Cass Review to be published before finalising proposals to extend eligibility for a GRC to 16-17-year-old adolescents?
- Will convicted sex offenders be eligible for a GRC?
- Is there a body of work we can access that demonstrates how the Scottish Government has engaged with, addressed and resolved the potential conflicts of rights described by women's groups and individual women in their responses to the second consultation?

Our Question: We asked you to address, as an example, how the conflict of rights would play out in the context of intimate care. One of our members has an elderly mother who wants and needs healthcare from a practitioner of the same sex and has the right to request that. A transgender health or care practitioner with a GRC has the right to privacy regarding their trans history. How will this

conflict of rights be managed in practice? Will the practitioner need to disclose their trans history when applying for employment, irrespective of whether they have a GRC? Will their manager be informed of their actual sex as well as their identified gender, in order to facilitate the accurate management of requests for same-sex care?

You said this was nothing to do with the proposed legislation, and was a matter for health boards. We think it is deeply unsatisfactory for the Scottish Government to legislate in a way that creates or exacerbates a conflict of rights, and then to hand the responsibility for resolving the conflict to local authorities and/or frontline workers. We know from an [FOI request to NHS Lothian](#) that the example in our scenario is one that is already causing difficulties and leading to women self-excluding, and the proposals to increase the size and diversity of the population with a GRC can reasonably be expected to exacerbate the problem.

You also said that the single-sex exceptions will not change as the Equality Act 2010 is reserved legislation. We pointed out that the single-sex exceptions are already becoming unworkable (many examples have been given in the responses to the second consultation), and that the increasing size and diversity of the population with GRCs will foreseeably exacerbate that. You said we are waiting for the EHRC's guidance on the single-sex exceptions which you expect to clarify how the two pieces of legislation – the Equality Act and the Gender Recognition Act – will interact. We think it would be irresponsible for the Scottish Government to legislate while still unclear about how to maintain the single-sex exceptions in practice.

Our follow-up questions:

- Does the Scottish Government intend to wait for the EHRC guidance on single-sex exceptions before finalising the measures in the Bill?
- What steps does the Scottish Government intend to take to address the erosion of the social and cultural norms regarding access to single-sex spaces? (E.g. If self-ID is embedded in law, it can realistically be expected to impact on women's confidence to challenge visibly male people in spaces where women are vulnerable.)
- How does the Scottish Government propose to monitor self-exclusion from services and provisions by women who become reluctant to access them?
- How will the proposed changes in the Bill interact with other relevant policy areas? (E.g. in our example, with the National Care Standards.)
- What measures will be taken by the Scottish Government to ensure that responsibility for managing the conflicts of rights pertaining to single-sex provisions and spaces created or exacerbated by its proposals is not devolved to low-paid frontline workers?

We hope you will be able to address our concerns and questions in full. Thank you once again for your time and we look forward to hearing from you.

Kind regards,

on behalf of Women Speak Scotland