



Women and Girls in Scotland

GENDER SELF IDENTIFICATION IN SCOTLAND

A Woman and Girls in Scotland Discussion paper

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INTRODUCTION

Women and Girls in Scotland is a grassroots, feminist, women's campaign group, including working class women, LGBT women, survivors of male violence and mothers. We formed to campaign for the sex based rights of women and girls in Scotland, and as part of our research we surveyed 2000 women in order to gauge the ways in which women and girls are impacted/will potentially be impacted by changes to female-only provision.

The changes our survey addressed are a result of the idea it's best practice that self-identification is the principle upon which sex is recognised in law, policy and practice, and upon which people can access single sex provision. This appears to be the Scottish Government's view.

However there has never been any work carried out to look at how policies based on the principle of self-identification are impacting women and girls. Until the impact is understood, it is simply not possible to say that self-identification as a principle represents best practice. This is why we carried out our survey, as well as undertaking surrounding research; work that is the first of its kind, and that will provide evidence of the impact of the principle of self-identification on women and girls, as well as demonstrating that this impact needs to be further assessed.

What this paper covers

In **Part 1 (pages 6-8)** we set out the main feminist positions in the gender debate, and discuss how gender identity ideology has taken hold as a basis for policy. Our view is that feminism should always underpin any debate on sex and gender, and that the diversity of feminist perspectives must always be considered based on merit. We believe that the more we engage in feminist arguments and make these accessible and transparent, the more progress for women and girls becomes possible.

In **Part 2 (pages 9-13)** we describe the conditions under which women are trying to make our voices heard, and what we believe elected representatives should do to help improve the current debate in relation to sex, gender, single sex provision and the government's proposals to reform the Gender Recognition Act (GRA), and the climate women are facing in trying to engage in this debate.

Part 3 (14-24) looks in depth at issues of policy and practice. This section draws on substantial new evidence we have generated through our survey, and through seeking information and clarification from a number of bodies, including the Equalities and Human Rights Commission, the UK Government Equalities Office and the Scottish Government. We present five case studies on the introduction of self-identification principles across different policy areas. These are: funding for women's services; guidance for schools; Scottish Prison Service (SPS) policy; NHS policy; and Scotland's census.

Before we address these issues, we raise the question of class and whose voices have been heard most so far.

Social class and the current debate

Women and Girls in Scotland is concerned that only higher salaried women, working for Scottish Government funded organisations, are influencing policies that impact women and girls. This is undermining both the inclusion and influence of working class perspectives in policy-making.

A form of feminism often called liberal feminism, discussed more below, has increasingly taken hold in official women's organisations in Scotland. As this has happened so too have these organisations

increasingly failed to consider the impact of policy on working class women, or to advocate for the inclusion of working class women and working class perspectives in policy making, as well as increasingly failing to recognise working class women as particularly marginalised. We understand this is due to a number of factors (including a general lack of class analysis within liberal feminism) that lead to narratives that are disinterested in the perspectives of working class women, and initiatives that exclude them.

For example, policies that will disproportionately impact working class women are being advocated for by funded women's organisations without any consultation with those affected by these policies, or indeed any recognition that working class women disproportionately bear any adverse impact of these policies.

Working class women have often been at the sharp end of government policies, and yet are largely absent from the policy making process. A report by the Jimmy Reid Foundation in 2013 reviewed all appointments to public bodies in Scotland and everyone who gave evidence to one of nine Committees in the Scottish Parliament over a five year period. What it showed was an almost total absence of working class voices and views being represented in our legislature. As the report noted, "The people who advise government and parliament in no way reflects the economic position of the Scottish population". In a similar vein, we note that the First Minister's recently formed National Advisory Council on Women and Girls appears to not to have a single working class woman as a council member.

It's time to start listening to the voices of working class women in Scotland. Our group was co-founded by a working class woman, and we are working to bring forward working class perspectives: to highlight where approaches and policies are impacting on working class women and girls, and to identify what needs to be done to include and elevate the voices of working-class women.

We urge the Scottish Government and parliament to fully engage with working class people, particularly women. One way this can be achieved is by proactively engaging with grassroots and minority women's groups. This is not only important from the standpoint of inclusion and the improved policy this leads to, but this also allows for the position of the government and funded organisations to be adequately scrutinised.

PART 1 FEMINISM AND THE GENDER DEBATE

The gender critical perspective

Gender critical feminism, in the simplest of terms, refers to a feminist analysis that rejects the notion that gender, i.e. femininity and masculinity, is any kind of innate essence, and definitive of girlhood/womanhood and boyhood/manhood.

Gender critical feminists reject the idea of a gendered brain (indeed it has long been established that there is no such thing as two distinct brains in terms of brain features, let alone gender), and instead understand that gender is a social system of feminine and masculine roles, imposed on the basis of sex.

These sex roles serve to subjugate women and girls while upholding male privilege, entitlement and dominance; they are inherently sexist and lead not only to discrimination and inequality in regard to women and girls, but also to the climate of sexism, misogyny and male violence that women and girls are subject to.

This understanding of gender permeates feminist scholarship, where the bulk of decades of feminist theory and analysis is resolutely gender critical. Our group therefore rejects any idea that gender critical feminism is an outlier among feminists, and not just in regard to academic feminists either; in the UK, women who are writing foremost works in relation to sex and gender, as well as foremost feminist journalists and bloggers, and those women who are currently winning awards and fellowships for their work in relation to the impact of male violence on women and girls, and those women running our largest feminist conferences - are gender critical women advocating gender critical feminism.

Gender critical feminism, radical feminism and liberal feminism

However what is regarded as liberal feminism – particularly popular in the US and Canada - finds itself in opposition to gender critical feminism by promoting gender identity theory as the basis on which people can be understood as girls/women and boys/men.

Liberal feminism is considered individualistic in nature, usually advancing ideas that say women can be empowered under patriarchy by the choices we make. Beyond the notion of empowering personal choices, liberal feminism advocates for formal equality with men, i.e. equal pay etc.

Radical feminism – the opposing feminist analysis - is a feminism that seeks to dismantle patriarchy, and understands this as a collective, cultural and political project, because radical feminists understand patriarchy as a result of imposed sex roles that create the sex hierarchy described above, that conditions the inequalities women face due to our sex, as well as the sexism and misogyny we face, & the climate of male violence we live under.

So for radical feminists the goal isn't to find ways for women to essentially adapt to patriarchy only with some carved out formal equality, but rather radical feminists wish to dismantle patriarchy altogether, understanding that this is the only way women and girls can be liberated from our subjugation as a sex class.

Radical feminists also understand intersectionality to be rooted in first understanding axes of oppression. For example, it is not possible to understand how oppressions intersect, without first understanding the basis on which people face different forms of oppression.

While radical feminism is gender critical, not all gender critical feminists are radical feminists, but what we wish to note here is that there are two very much opposing feminisms in terms of liberal and radical feminism, and in relation to gender, radical and indeed any gender critical feminist analysis, is very much in opposition to liberal feminism, due to liberal feminism's advocacy of gender identity.

Gender critical feminism and gender identity theory

Gender identity theory is essentially an ideology that says gender is innate, i.e. biologically essential/in the brain, and that if you are female you will normally be innately feminine, and if you are male you will normally be innately masculine, and if you are trans, your gender – i.e. your innate femininity/masculinity – will not correspond with these norms.

One of the most well-known examples of these ideas is the 'gender identity spectrum', used by the UK charity Mermaids in their training where they outline a gender identity spectrum with Barbie at one end, representing femininity, and GI Joe at the other representing masculinity, with variations along the spectrum from femininity to masculinity. Mermaids state on their website that they have 'trained professionals in the NHS, Police Service, Social Services, Schools, CAHMS and the workplace'.

The idea is that people can look at this spectrum and see where they think they land in order to understand their personal gender identity. To be a 'cisgender girl/woman' means that you are female and connect with Barbie/femininity, and to be a 'cisgender boy/man' means that you are male and connect with GI Joe/masculinity – i.e. the concept of 'cisgender' is that being female 'matches' being feminine, and being male 'matches' being masculine. And if you connect with the stereotypes associated with the opposite sex, this means that your sex does not 'match' your gender, and this is why Stonewall, for example, defines 'trans' as 'an umbrella term to describe people whose gender is not the same as, or does not sit comfortably with, the sex they were assigned at birth'.

The problem gender critical feminists have with gender identity ideology is that it upholds the notion that gender is innate and that the feminine gender/sex role defines girlhood/womanhood and the masculine gender/sex role defines boyhood/manhood, and as such, gender identity ideology functions to assert that any girl or woman who is not trans, is, then, completely fine with her gender/sex role/how society treats her, because society is treating her according to what she actually, really is.

Gender critical feminists also take issue with this ideology because it says that gender identity is the only meaningful difference between girls/women and boys/men on the basis of being girls/women and boys/men, and that the exploitation, discrimination, inequality, injustice and oppression that women and girls face is due to being feminine, as opposed to an imposed sex role that subjugates women and girls regardless of how we express ourselves or of our personalities.

Even those who would reject the notion of innate gender/the gendered brain, but still define girlhood/womanhood and boyhood/manhood as based on how a person relates to gender/femininity and masculinity, are thereby upholding patriarchy, because any idea that being female 'matches'/is defined by the feminine gender/sex role, is the very stereotyping that serves to naturalise patriarchy and is exactly what feminists have always fought against.

Gender critical feminists will always challenge such regressive stereotyping because doing so is vital in order to abolish gender/sex roles and dismantle patriarchy and indeed to address the problem of

male violence, and it is also vital that we continue to address how sex is the basis on which women and girls suffer exploitation, discrimination, inequality, injustice and oppression around the world.

Women and girls can't opt out of our social position and what we face under patriarchy by simply expressing ourselves differently or by having any particular personality, and any idea to the contrary sits firmly in the very same logic that says women are raped because of the clothes we wear or how we behave.

Accepting people, rejecting an ideology

While gender critical feminists reject gender identity theory and view the related stereotyping as harmful for women and girls, this is not a rejection of those who uphold that ideology. People have the freedom to self-define as having a gender identity: just as people have the freedom to reject these ideas, including the idea that they themselves have a gender identity. Note also that not all trans people base their identity in terms of gender identity; some recognise gender as a harmful social construct, view sex as a basis for different treatment, and self-define as transwomen and transmen, as opposed to as women and men.

Rejecting gender ideology is not a rejection of trans people, and nor does it mean that trans people cannot be protected from discrimination, or have their needs met, and nor does it make compassion towards trans people, or the recognition of their humanity, any less possible.

Feminism and transinclusivity

Gender critical feminists understand that all females are subjugated by patriarchy, no matter how they identify or relate to their imposed sex role, or express themselves. This means that if a female is masculine-identifying, they are not excluded from gender critical feminism. Masculine-identifying females are however excluded from liberal feminism, because of the gender/feminine-based definitions that liberal feminism subscribes to.

In other words, gender critical feminism is male exclusionary, whereas liberal feminism is exclusionary of masculine identifying females. While Engender have stated that 'globally there is a consensus emerging around trans inclusive feminism', we wish to make clear that there is not a group of feminists who are 'trans inclusive', and a group who are not.

Gender identity as a basis for policy

Gender identity ideology as advocated for by LGBT and liberal feminist organisations underpins the principle of self-identification, as it is this theory which says that the only meaningful difference between girls/women and boys/men is how they relate to gender stereotypes, and thus that a person's gender identity is all that matters in relation to single sex provision and how we define girls/women and boys/men.

Like many other ideas promoted within liberal feminism, gender identity is gaining widespread acceptance among governments, organisations and corporations. However it should be noted that under patriarchy, and indeed capitalism, the most easily and widely accepted ideas are not necessarily the most merited.

So there are different ideologies involved in this debate, and how sex and gender is understood and defined in law, policy and practice has a profound impact on people's lives, and as such open debate is urgently needed, however this is increasingly difficult due to the scale of aggression levelled at women, as discussed next.

PART 2 THE CURRENT CLIMATE FOR WOMEN AND GIRLS AND HOW IT NEEDS TO BE ADDRESSED

The scale of unchallenged aggression towards women

The term ‘terf’ was coined to denote radical feminists as trans exclusionary (despite this not being the case, as outlined above) and has become a pejorative slur towards feminist women who wish to organise as a sex class against the oppression we face as a sex class (although it is often used towards anyone who supports women’s rights).

Our group views the idea that females should be the only oppressed class of people who should not be able to organise around the axis of our oppression (i.e. sex) as inherently misogynist, and we have watched as the term ‘terf’ has increasingly been used to dehumanise feminist women, and to legitimise – and thus facilitate – misogyny and violence against us.

T-shirts and flyers with ‘I punch terfs’, ‘kill the terf’, ‘dead terfs’ have been photographed at Pride marches all over the world. Often the t-shirts are stained in what is meant to be the blood of feminist women, and there are even flyers with pictures of women hanging by the neck.

We are not aware of any challenges to such displays by the organisers, nor have any LGBT organisations condemned them. However when lesbian women marched at Pride events with slogans asserting that lesbians are female homosexuals (same-sex attracted) they were subject to criticism from Pride organisers and LGBT organisations, and faced online abuse and attacks from trans activists.

On social media, particularly on Twitter, trans activists regularly attack lesbian women due to their sexuality. Lesbian women are variously told that their orientation is not a sexuality if it excludes male bodied people, accused of having a fetish, told that their sexual orientation is ‘anti-trans’, and that to be a female homosexual means they are a ‘terf’ (see below). That such homophobia remains unaddressed by LGBT organisations will be addressed more fully in our survey report.

“It’s not a sexuality if you’re only attracted to vaginas”

“If you exclude transwomen, you’re not a lesbian, you’re a vagina fetishist”

“If you call yourself a lesbian but are only cool with girls with vaginas, you are siding with anti-trans rhetoric”

“Look, all I’m sayin is if a lesbian says she only likes vaginas then she’s not a lesbian she’s a terf congrats”.

Trans activists on social media also regularly call for feminist women to be beaten, choked, raped, set on fire, or otherwise killed. Some have stated they wish to carry out these acts.

The following is a selection of mostly tweets to demonstrate what women are typically facing. Many of these tweets were posted by high profile trans activists, some of whom have verified Twitter accounts. Some of these tweets were posted in response to women being physically attacked by trans activists both in the UK and the US, because they are gender critical feminists:

'Terfs get in line and prepare your pathetic, doughy faces for a sweet, sweet pummelling'; 'I hope we can some day achieve a future where all trans people can be safe to be themselves and also where I get to stomp on a terf's head'; 'imagine if 20 people had punched terfs. Imagine if every terf had left bruised and bloodied. Every one would stop organising'; 'Happy International Women's Day! Today I am fighting for gender equality by saying you should also punch terfs in the face'; 'lol did a terf get punched...I have almost no doubt the terf was doing something that warranted it, like terfing'; 'I heard a terf got punched, so it's my duty as commander of Armchair Violence Enthusiast Twitter to say good job, nice work, keep it up'; 'I'd pay to watch someone violently rip her ovaries from her abdomen'; 'nah, no disembowelling. Just punch them till they bruise/burst, or just till all the eggs are ruined'; 'wanna punch every terf in the face till their face bones are broken beyond repair'; 'I'm coming for your throats terfs'; 'I hope all terfs get the shit kicked out of them tbh. Actions have consequences you dumb bitch'; 'terfs can choke on my girl dick'; 'terfs can choke on my enormous dick just die' 'fuck terfs with a broken beer bottle'; 'burn terfs'; 'set all terfs on fire'; 'you know what I can't even be bothered setting the terfs on fire myself go and fucking self immolate you cunts'; 'all terfs deserve to be shot in the head'; 'kill all terfs' 'dead terfs just make the world a safer place'; 'I am gonna kill terfs'; 'I'd kill a terf I don't give a shit'; 'seriously, if it were legal to kill them I would'; 'I would strangle the life out of a terf'; 'I wanna hatefuck a terf'; 'I want to rape a terf to death then chop its body into pieces and leave them for the crows'.

It is not a fringe experience for feminist women on social media to be faced with this, however regardless of how pervasive this is it should not be tolerated at all, yet relevant organisations and politicians largely tolerate this kind of violent misogyny, and many even take the position that to reject gender identity ideology is far worse than the kinds of abuse and threats quoted above, and many also argue that such violent misogyny is a symptom of being marginalised.

We of course reject the idea that violent misogyny is, or could ever be, a symptom of marginalisation, and any idea that women's views on sex and gender can be compared to violent misogyny. We also take the view that tolerance of violent misogyny only serves to entrench it (we would advise MSP's to visit www.terfisaslur.com - a site that has collated examples of the violent misogyny, threats and abuse towards feminist women - in order to see more of the extent of what women are facing).

It should also be noted that a recent report on community cohesion by the All Party Parliamentary Group on Hate Crime at Westminster, recognised that the kind of abuse we have outlined here can be understood as hate speech, noting: "Several of the submissions also included screenshots of social media posts (predominantly Twitter) that contained threats and encouragements of violence towards 'TERFs'. It can easily be argued that this constitutes hate speech under the Criminal Justice Act 2003".

Also recently, during a Human Rights Committee parliamentary session at Westminster, Twitter's Head of UK Government, Public Policy & Philanthropy, Katy Minshall, acknowledged the term 'terf' is a gendered term associated with abuse and threats on the platform. And more recently, the Standards Commission for Scotland found that a former SNP councillor had broken ethical standards by referring to a woman as 'a terf', deeming this to be abusive.

Despite the fact that this term is clearly a gendered slur that contributes to a climate of hate and extreme violent misogyny for women, this term is still widely used, including by some holding

political office; for example in Scotland, the SNP's National Women's and Equalities Convener has referred to feminist women as terfs.

Many of those who acknowledge such terms as gendered slurs, and the abuse and threats women face in this debate, go on to claim this doesn't need addressed, deeming it to be a fringe issue. It is not. Below provides a number of examples from Scotland alone, which demonstrate this:

In response to a transwoman assaulting a 60 year old woman who was attending a feminist meeting to discuss the government's Gender Recognition Act (GRA) proposals (the transwoman was later convicted for assault) Action for Trans Health Edinburgh, a trans organisation, tweeted 'punching terfs is the same as punching Nazi's. Fascism must be smashed with the greatest violence to ensure our collective liberation from it'.

Also, in March this year, one of the headliners scheduled for Trans Pride Scotland's (TPS) 2019 event, tweeted that if anyone came across women putting up flyers from the grassroots feminist group, For Women Scotland (FWS), that they should 'throatpunch them' (we understand this person has since been charged with incitement).

Then TPS published a statement, wherein they stated that while TPS has a policy against violence and harassment at their own events, this comment of incitement had been made in 'self-defence'. And the TPS Twitter account also went on to like a tweet that said 'no-one is wrong for wanting to punch terfs sometimes'.

The transwoman who tweeted that they had written up this statement for TPS, went on to tweet 'No-one is extolling violence against women, terfs aren't all women, stop trying to paint our desperate for equality as a violent movement. It's defence', and also another which read 'Punch Nazi's, threaten terfs, kick fascists, stab racists. Kick the ever living fuck out if anyone who's central political motivations are the dehumanisation and annihilation of an oppressed group. And be proud of it'.

The same person has also tweeted that they signed the TIE campaign letter organised by TIE's Chair, Cllr Rhiannon Spear, on behalf of TPS. It is our understanding that neither the TIE campaign, nor Ms Spear or indeed anyone who co-signed this letter with them, has publicly condemned these comments inciting violence against women. The signatories include women who work in services in Scotland for women who are victims of male violence. Nor has the TIE campaign or any of the signatories condemned the idea that violence is a legitimate tactic against women.

Sisters Uncut in Edinburgh carried out a protest at a feminist meeting arranged by FWS earlier this year, and a national paper interviewed one of the transwomen in the Sisters Uncut group, who had previously called for violence against women on Twitter; one tweet read 'beat them up' in relation to a group of lesbians protesting at London Pride, while another read 'any trans allies at #PrideLondon right now need to step the fuck up and take out the terf trash. Get in their faces. Make them afraid. Debate never works so fuck them up'.

Sisters Uncut also went to court to support the transwoman who punched a woman at a feminist event (the same incident mentioned above), framing this as an issue of 'defence' and the court case as an attack on trans lives.

These are trans organisations, ally organisations and individuals within those organisations that take the view that violence against feminist women is a legitimate political tactic. These are not random fringe voices; these views are held by individuals and organisations very much at the heart of trans activism in Scotland.

And organisations such as the TIE campaign, the Scottish Trans Alliance, the Equality Network and Stonewall have not condemned these tweets, and nor have they condemned the idea the violence against women is a legitimate political tactic, not even when it has come from those they have chosen to stand alongside. And nor has any funded women's organisations.

Dismissing this as a fringe issue and unimportant, or drawing a false comparison between violent misogyny and feminist views on sex and gender in order to claim 'both sides are just as bad as each other', functions to entirely dismiss what women are facing, as well as to dismiss the implications for all women and girls of any kind of validation of violence against women, and of any notion that women's words can be equated to male violence.

All of the above is creating an intolerable climate for women in Scotland right now. If the relevant organisations will not address this, it is even more incumbent on our elected representatives to do so.

We are very grateful for the efforts of Joan McAlpine MSP and Joanna Cherry MP, who have had the courage to address the violent misogyny, abuse and threats that women are facing. The fact that these efforts have resulted in both these women being subjected to misogyny and abuse, as well as in a death threat towards Ms Cherry, only serves to further demonstrate the need for politicians to urgently address this climate, and we would posit that the more who do, the less individual women will be targeted simply for speaking out.

Yet most politicians have failed to even acknowledge the abuse and threats targeted to their colleagues, including those speaking out about online abuse in a wider political context. This sends an appalling message to women in politics, and those considering a career in politics, as well as women in wider Scottish society. It suggests that abuse and threats of violence towards women will be tolerated when there may be a political cost in speaking out. We hope that politicians will now act to encourage a climate where women can engage in political debate without facing violent misogyny, abuse and threats.

The Role For Elected Representatives

We recommend the following actions to be taken in order to tackle this climate:

Firstly, politicians should be mindful of the climate of misogyny that women are subject to generally, and of any debates where this climate is particularly extreme, such as with regard to the gender debate. Politicians should always ensure not to use gendered slurs or inflammatory language, and to instead engage in constructive debate wherever they wish to put forward their point of view.

For example, when Joan McAlpine MSP was recently on the receiving end of abuse for comments regarding sex and gender that simply recognised a difference between the two, Patrick Harvie MSP's response was to say "there are people on both sides of this issue, including Joan, who behave badly" and also referred to "complaints from anti-trans campaigners" in reference to an article covering the abuse Joan had faced, and all while declining to respond to reasonable requests for an explanation as to why he was using this language. Not only should misogynist abuse never be contextualised for the reasons already given above, but any response to the abuse of a female MSP must avoid using language that serves as a dog whistle for even more abuse. Referring to a woman as 'anti-trans'

makes her a target for misogyny, abuse, threats and violence. Acknowledging the climate women are facing in this debate in Scotland is extremely important. Men need to acknowledge it exists and take responsibility for actions which serve to make it worse for women.

Inflammatory rhetoric is also contributing to the distress of female victims of male violence who are currently trying to seek help from women's services in Scotland. Our group has been contacted by women who are currently on waiting lists for these services, and who are absolutely terrified to ask for support on a female-only basis. We know of at least one individual who has stepped back from accessing support because she finds it unbearable that this is deemed transphobic. Note also that this is affecting the least advantaged women, who have no other choice but to rely on free, single sex women's services for support.

Positive action for party leaders

We would like to submit the following to party leaders, along with a formal request for response to what we raise here:

- It is the view of our group that the use of gendered slurs towards women such as that of 'terf', should not be acceptable in Scotland's political parties, and we ask party leaders to confirm they agree with us.
- We ask party leaders to acknowledge the climate women are facing, as outlined here, and to act to address the use of any inflammatory language and rhetoric by politicians and political office holders within their parties, as well as to promote constructive and open debate.
- We hope that party leaders will act to demonstrate to the women of Scotland that there is no place for misogyny, homophobia, abuse, threats and the promotion of violence against women in Scotland under any circumstances.
- We hope that party leaders will reject any idea that women who need female-only services should be abused, coerced or victim blamed as a result of their trauma, and we hope that this view will function as an underlying principle in regard to their approach to policies in relation to female only provision.
- We ask all party leaders to act to ensure that liberal feminism is not the only form of feminism accepted within their party. Gender critical views are a legitimate feminist standpoint and party leaders should do their best to ensure that those who have gender critical views are not subject to hostility or other unfair treatment within their party. If any party wishes to take the position that gender critical feminism is not welcome within their party, then they should say so explicitly. Women deserve honesty about this.

We ask for these actions in the certainty that politicians have the power to vastly improve the gender debate and the climate women are facing in Scotland, as well as to increase tolerance and to remove barriers for women to political participation. And we contend that taking these actions is not in any way harmful to trans people; indeed we wish to make it clear that we are not claiming that trans activists are representative of trans people, and in fact trans people can also be on the receiving end of abuse from trans activists. As such, we would argue that politicians who act to address the issues we have raised here will be acting to help trans people too.

PART 3 POLICY AND PRACTICE

Self-identification as “best practice”?

Self-identification as a principle for the basis for sex recognition and access to single sex spaces is cited as “best practice” by the Scottish Government and others. The GRA proposals are therefore characterised as simply an effort to bring legislation in line with established best practice. However self-identification is not in fact established best practice and the contention that it is, is not evidence based and cannot be, as the impact of self-identification policies on women and girls has not been assessed. There is no evidence that women and girls no longer need single sex provision.

To address this evidence gap, our survey asked women directly how particular changes have impacted, or would impact them. We look forward to sharing this work very soon.

Respecting everyone’s human rights equally

To understand the impact of self-identification policies on women and girls, we think it is important to start with the human rights context, and how the rights of different groups should be respected equally.

The way we understand how human rights relate to different groups of people is rooted in recognising the needs of these different groups in relation to those rights. For example for women and girls, human rights to privacy, dignity and safety means that women and girls should not have to share with the opposite sex in particular circumstances, while for trans people these rights are met by ensuring they do not have to use provision specifically set aside for their natal sex.

In other words, these human rights are meant to allow different groups to access certain forms of provision safely and without distress, on the understanding that without providing for this, the ability of these groups to engage in society would be impacted, as would their wellbeing. These rights are met by not forcing groups to share with or be dealt with alongside certain other groups. They are not dependent on groups being able to share with or be considered alongside particular other groups.

A human rights approach to the debate on single sex provision would therefore be rooted in the recognition that where women and girls need female only provision for the purposes of providing privacy, dignity and safety, such provision cannot include any male people regardless of how they identify, but also that third provisions should be supplied for trans people. Any approach that says that the human rights of women and girls to privacy, dignity and safety should not be met in order to allow another group to access their provisions is not, therefore, a human rights approach, and instead represents a kind of hierarchy, where the one group is prioritised over another.

Gender neutral/unisex spaces often meet the needs of trans people because they do not force trans people to share spaces meant solely for their natal sex. But gender neutral spaces do not meet the sex based needs of women and girls, because these are rooted in needing male-free provision, and not just for reasons of privacy, dignity and safety, but also for reasons of previous trauma and abuse. Again, not only is there no evidence that women and girls no longer need female only provision for these reasons, but the evidence shows that women and girls are far less safe in mixed sex spaces.

This understanding of the separate human rights of women and girls and trans people has largely been missing in this debate. Supporting trans rights and equality is all too often characterised as supporting that trans people should always be treated as the sex they identify as. But this is quite

simply not a human right, and nor is this a right trans people have under the Equality Act 2010 (EA), precisely because this would infringe the rights of others.

Single sex exceptions in the EA allow for trans people to be treated differently to the sex they identify as (including trans people who have legally changed their sex) when this is necessary to meet the needs and rights of other groups. And the EA provides examples of third options for meeting the needs of trans people in such cases where their preclusion can be objectively justified. Although some people dispute that the law allows this, groups such as Stonewall and the Scottish Trans Alliance have specifically campaigned for this part of the EA to be repealed: they recognise it exists.

This provision under the EA is not only in recognition of the human rights of women and girls, but is also in recognition of the fact that if women and girls are not afforded those rights, this impacts on our welfare and on our ability to participate in society, and thus our equality.

Equality Act 2010: common misunderstanding and current practice

However what is currently happening in practice in Scotland is very far from this. The EA exceptions are rarely employed, and this is likely due to widespread confusion about and misrepresentation of equality legislation, as well as pressure not to use the exceptions.

For example, the recent multi-signatory letter published by the TIE campaign claimed that it is a 'settled legal matter' that trans people can access the single sex services that correspond with how they identify, and as outlined above, this is incorrect. But such misrepresentations persist, and often among those who hold positions where a failure to understand the EA can result in serious policy failures in relation to women and girls.

Indeed many who signed this letter and who hold various establishment positions have been incoherent regarding the EA in respect to this debate. For example, many deny that there is a threat to single sex services while at the same time arguing that any use of the exceptions to allow female-only provision is transphobic and functions to roll back progress on trans equality, even though these exceptions are a tool of equality legislation.

Many also claim that blanket policies that preclude trans people from accessing forms of single sex provision are legally prohibited, and again, this is incorrect. In correspondence with our group on this point, the GEO used an example in the explanatory notes to the EA of a group counselling session for female victims of sexual assault that precludes transwomen "because the service provider judged that inclusion would mean the women for whom the service was intended would not attend". The GEO highlighted that preclusion of trans people on a 'case by case basis' refers to the specific set of circumstances under which they are precluded, i.e. 'case by case basis' refers to circumstances, not individuals, and this is how services such as group counselling sessions for female victims of sexual assault can lawfully be provided for natal females only.

The kinds of misrepresentations and incoherent positions regarding the EA that we have outlined here are contributing not only to a great deal of confusion around the EA, but also to a climate where those who would invoke those protections are particularly fearful of doing so, as they will be attacked as being transphobic and/or as 'rolling back trans rights', and by organisations, not just individuals. Indeed it seems unarguable to our group that there has been a deliberate attempt to create such a hostile climate for those who would use the EA exceptions to protect women and girls that they are rarely, if ever used. That this has so far been successful is, in our view, a significant factor in the erosion of the protections of women and girls in Scotland.

However as discussed in the following four case studies, responsibility for the erosion of women and girls' rights also lies with the Scottish Government and other public bodies, who have neglected to ensure that their policies are assessed for the impact on protected stakeholders, despite statutory requirements to do so.

Case Study: Funding for women's services

The Scottish Government changed its funding policy in 2012 in regard to funding women's services, attaching a condition that all government funded women's services must be trans inclusive. While such a policy change clearly has the potential to impact on women's service provision in Scotland, to the point where it might lead to an end to all female-only women's services, the government did not carry out any research, consultation or assessment in regard to the impact of this policy on women and girls before its implementation.

Since sex is a protected characteristic, the impact of this policy on women and girls should have been assessed as part of the government's Public Sector Equality Duty (PSED), however the Scottish Government not only confirmed with us it had not carried out this duty, but they also told us they did not take the view that the government had to assess the impact of this policy change on protected stakeholders, because of the government's broader policy aim of taking a 'gendered approach' to policy, and to advocate for trans inclusion.

The government cannot simply decide not to carry out its EA obligations, under which it is duty bound to assess the impact of government policies on all protected stakeholders. If the government had carried out its duty in respect to this policy, it would have had to take a different approach, which gave weight to ensuring that female-only provision is available to women and girls in Scotland.

Case Study: Guidance for schools

The government also funded guidance for use in Scottish schools that was developed by LGBT Youth Scotland and the Scottish Trans Alliance, Supporting Transgender Young People: Guidance for schools in Scotland, and has publicly stated support for this guidance, even though it has not assessed the guidance in order to gauge any potential infringements on the human rights of children, or any impact on the equality of all protected groups of children. Nor did those who produced the guidance, or any local authority that has promoted the guidance to schools, or indeed schools themselves.

Our group carried out a Children's Rights Impact Assessment (CRIA) in regard to this guidance as no-one else had done so (this can be found on our website). We found that this guidance potentially breaches 11 Articles in the UN Convention on the Rights of the Child (UNCRC). In response to our work, the Children and Young People's Commissioner Scotland (CYPCS) has been clear that a CRIA should have been undertaken in respect to this guidance before its implementation in Scottish schools, and has said that this is the responsibility of the Scottish Government.

Both our group and the CYPCS wrote to the Scottish Government, to ask which actions the government will take to uphold its duty. The Scottish Government recently responded to say that even though this guidance was funded by the government and has the government's support, since the government is not implementing this guidance as policy and that it is "up to individual schools and local authorities how they deliver relevant and engaging learning", the government will not take any actions to address that this guidance potentially breaches 11 Articles of the UNCRC, and thereby has the potential to cause serious harm to children in Scottish schools. Indeed our group is aware that this guidance has already adversely impacted on girls in Scottish schools.

So while the government can act to ensure that this guidance is assessed on the basis of children's rights and equality and that the UNCRC is being upheld in Scottish schools, it has decided that it won't, despite the CYPCS taking the view that this is a government duty and despite Nicola Sturgeon's recent statement that the government will write the UNCRC fully into Scots law by 2021, recognising the urgency of ensuring children are fully protected in Scotland.

We consider this position to be unsustainable. If the government is committed to the UNCRC but is saying that this commitment does not extend beyond policy drawn up by the government itself, then the government must act to ensure that it either commissions independent guidance for Scottish schools that takes a rights based approach that upholds the UNCRC and the EA, ensuring the needs of all groups are considered fully and equally, or write up legislation that ensures the same.

We also consider the government's position in regard to this matter to constitute a failure in respect to Christina McKelvie's Ministerial duties under the Children and Young People Scotland Act 2014 (CYP SA). This Act states: "Ministers must keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements", and, that where appropriate, Ministers should "take any of the steps identified by that consideration". And the government has confirmed with our group that "carrying out of a CRWIA (Children's Rights and Wellbeing Assessment) is...part of our implementation strategy to deliver Scottish Ministers' duties in relation to children's rights under (this section of the CYP SA)". Therefore it is a Ministerial duty to take appropriate steps, including drawing up CRWIA's in relation to policies that impact on children, to ensure the UNCRC is best upheld in Scotland. The Act does not restrict this duty to Scottish Government policies, and the CYPCS has again confirmed with our group that in its view the government should be acting to uphold the UNCRC in all the ways it can, including carrying out CRIA's/CRWIA's in regard to policies in Scottish schools.

As such, we believe the Scottish Government's actions so far constitutes a serious failure to uphold human rights and equality protections, and that its approach is inconsistent with Scottish children's rights legislation.

Case Study: Scottish Prison Service

While the Scottish Prison Service (SPS) carried out an EQIA on its trans policies (introduced in 2014) which include housing trans prisoners in the estate that corresponds with their self-identified sex, they failed to assess the impact of this policy on female prisoners. Our group wrote to the Equality and Human Rights Commission (EHRC) regarding this issue: however the EHRC has refused to take any action, despite acknowledging that the SPS had failed to uphold its equality duties under the PSED.

We also contacted the SPS, and have been very encouraged by the response. SPS management appear to understand the problem, and that they have not properly considered the impact of their trans policies on female prisoners and staff. The SPS have stated they will review their trans policies, and as part of this, speak with female prisoners and staff, as well as with women's groups.

Impact on female prisoners

We also spoke with prison staff in order to better understand the impact of the SPS trans prison policies. We were told that the policy of moving transwomen to the female estate has had an adverse impact on a number of women in prison. (Note that the prison estate consists of areas where prisoners mix and live among each other, and areas where prisoners are kept away from other prisoners, for reasons of safety).

The Commission on Women Offenders 2012 report highlighted that women in prison are themselves often the victim of severe and repeated sexual abuse. In 2008, Kenny MacAskill, then Cabinet Secretary for Justice, said that 78% of women in Cornton Vale prison had been victims of abuse. Frances Crook, CEO of the Howard League for penal reform, has said 'women prisoners are very vulnerable. A lot have abusive men in their lives, who are part of the reason they have ended up in prison'. Therefore it is very clear that women in prison have usually experienced a great deal of trauma as a result of male violence.

Staff were at pains to highlight with us that the issue is not always one of whether a trans person is themselves a danger, but that for many women simply having to share intimate spaces where they are vulnerable with someone who is male, and therefore the same sex that is usually easily able to physically overpower them and rape them and that has subjected them to violence/sexual assault/abuse, is in itself re-traumatising. Andrea Albutt, President of the Prison Governors Association and a woman who has managed women's and men's prisons, has previously said 'I have seen women feeling very threatened by transgender prisoners' presence. To put all men who declare they are women into women's prisons would be very damaging'. It should be noted here that the Gender Identity Research and Education Society says that around 80% of trans people will not seek surgery in their lifetime, and as such, the majority of transwomen are fully male bodied.

Staff have also highlighted particular behaviours that have also had a major impact. For example incidents where transwomen have been aggressive, including punching the wall in front of female prisoners during arguments/moments of stress, has a very different impact on women than if it was another female prisoner behaving aggressively, in that this behaviour is triggering the trauma female prisoners are living with due to male violence when it is coming from a person who is male. We have also been told of incidents of a more sexual nature that women found very uncomfortable and distressing, such as a transwoman often walking through the prison wearing extremely tight leggings and with a very visible erection, and another where a transwoman would very loudly tell their girlfriend on the phone what they wanted to do to her with their penis, making sure that women could hear what they were saying. We were also told of one incident where a transwoman in the female estate threatened to rape female prisoners and female staff, which is of course hugely distressing for those women. There are also shower facilities in women's prisons where the shower doors only go from calf to shoulder, and thus women's bodies are easily visible to others using the facilities. We were told how the inclusion of male bodied people in these facilities is itself uncomfortable and distressing for many women, but that it's particularly distressing in relation to those who have exhibited inappropriate and predatory behaviour.

We were told how the cumulative impact of this policy has been to lead to major setbacks for women in prison, including drug relapses. And this has all happened in a single sex service where, unlike most others, each prisoner moved to the female estate has first been risk assessed in detail by a multi-agency case conference. Access to most forms of female-only provision would not involve such an assessment at all.

It is our view that this, again, is an intolerable and unacceptable situation for women and it could have easily been avoided if women's human rights and equality were considered and upheld in policy making. We are hopeful that the SPS moves forward with a robust review process that takes a human rights and equality based approach to how prisoners are cared for, and that ensures to understand and respond to the needs of female prisoners.

We were also told by prison staff that they would have expected the Scottish Trans Alliance (STA) to be aware of most, if not all of these incidents, as the STA is entitled to be present at the regular case

conferences for trans prisoners and generally is. We are therefore extremely concerned that as recently as last month, the STA was referring to the fact that ‘prisons will still be able to use robust risk assessment to determine where to house a trans prisoner’ by way of arguing that self-identification policies and proposals will not in any way impact on women.

Lastly, we wish to highlight that in 2005, researchers from Glasgow Caledonian University produced a report on social exclusion and imprisonment in Scotland which found that ‘the imprisoned population of Scotland comes disproportionately from the most deprived communities in Scotland’. As such, any impact of self-identification policies in prisons functions to disproportionately impact on working class women.

Failure to adequately assess the GRA proposals

Another area where the Scottish Government has failed to assess the impact of policy is in regard to their GRA proposals. The government did not carry out a full Equality Impact Assessment (EQIA) in relation to women and girls before publishing these proposals, and therefore failed to give women the opportunity to address the assessed potential impact of the GRA proposals in their consultation responses. We consider this to be a very serious failure that serves to undermine the consultation process itself.

The impact on women’s rights of basing access to a GRC on self-identification

The government’s proposals intend to change the basis for acquiring a GRC from having a diagnosis of gender dysphoria, and evidence of a period of lived experience, to simply a witnessed declaration that a person intends to permanently identify as the opposite sex. The removal of any diagnosis in particular means that the number of people who could access a GRC and change their legal sex would be much higher, as many, perhaps most, of those who now identify as trans do not have a diagnosis of dysphoria (the vast majority of trans people do not currently hold a GRC). So the government’s proposals in regard to who can be considered as legally female and male, would mean a change in who can be considered as the opposite sex in law, in the form of a change in the criteria which must be met, as well as potentially vastly increasing the number of those who could have the increased protections and rights that come as a result of holding a GRC.

The Government Equality Office (GEO) and the EHRC have both said that the GRC impacts on how the single sex exceptions can be used. The GEO told our group “The fact that a trans person has legal gender recognition will form part of the service provider’s decision as to whether to provide a different, or even no service, to a trans person”. And the EHRC has stated on its website that “the sex discrimination exceptions in the EA (apply) differently to a trans person with a GRC or without a GRC”, due to the change in legal comparator class to that of the opposite sex. We also contacted the Scottish Government to ask for the government’s view on whether a GRC could potentially impact on how the single sex exceptions in the EA can be applied, and the government responded to say “whether an individual has a GRC will, in our view, be a factor”, and as such they agree with the GEO and the EHRC. Therefore it is clear that the GRC impacts on how the single sex exceptions can be applied in practice, because whether a person holds a GRC will be a consideration in deciding whether or not differential treatment is objectively justified.

However, all three of these bodies declined to set out exactly how they saw this working in practice. So there is agreement that while the single sex exceptions can be applied to trans people with GRC’s, holding a GRC will make a difference in terms of how and when those exceptions can be applied, but none of these bodies – which are responsible for producing, implementing and regulating equality legislation - have been able to say on what basis holding a GRC alters considerations in regard to

whether trans preclusion can be objectively justified. For example, even though the EHRC cites the change in comparator class as the reason why holding a GRC can impact on how the exceptions can be used, they cannot say how this change in comparator class should be considered by a service provider/suchlike. For example, a GRC cannot be considered as meaning trans people should always be treated as the sex they identify as, as it is clear the exceptions still apply to trans people with GRC's, so what difference does it make? No-one can say.

Furthermore, our work has uncovered that even though the single sex exceptions also apply to trans people with GRC's, applying these to people with GRCs in practice is very difficult, as joint protections under the EA and the GRA mean that it is not possible to ascertain if a person holds a GRC. And even if a trans person discloses their status to an employer or other organisation, this information cannot be shared.

Case study: NHS Scotland

Our group contacted the two largest NHS providers in Scotland, NHS Lothian and NHS Greater Glasgow and Clyde, to ask how they can provide female only healthcare under current legislation.

Both NHS providers told us that they do not have policies in place that would prevent transwomen with GRCs from providing agreed female only healthcare, as it is their understanding that the combined protections of the EA and the GRA mean that to preclude transwomen with GRCs from providing female only healthcare would require illegal discrimination and a criminal sharing of information.

NHS Lothian

NHS Lothian advised us that in their view "To exclude (transwomen who are legally female) from carrying out female only care would be a breach of section 22 of the Gender Recognition Act 2004, and a criminal offence. There are also restrictions under the Equality Act 2010 around requiring staff to disclose their gender identity and staff selection on this basis. For these reasons, NHS Lothian does not have any policy to guarantee that a legally female member of staff carrying out female only care as requested by a patient, will be biologically female".

NHS Greater Glasgow and Clyde

NHS Greater Glasgow and Clyde advised us that "there is currently no NHSGGC policy in place that would prevent transwomen who are legally female from providing agreed female only healthcare" and said that in their view this would involve "outing trans members of staff", and they also cited the EA and the GRA as a basis for this position.

This means that, for example, a woman who has been raped, and who has asked for an intimate healthcare procedure to be carried out by a female healthcare practitioner (HCP) and has had this agreed, could still be faced with a male HCP. Furthermore, this would happen without warning. So in these circumstances, not only would she be faced with a male HCP, which could lead to enormous distress and re-traumatisation, but no consent would have been formerly sought either. The health boards' position does not rely on it being impossible for anyone to tell that the HCP is male, just on the board being unable to distinguish officially between staff born female and those who are recorded as female staff but were born male. We hope that it is clear that this is a very serious patient welfare and consent issue, and is unacceptable.

This situation, happening now, shows that once someone has a GRC it is not possible in most circumstances to treat them other than as the sex they identify, even when precluding them from a

role or space would clearly be objectively justified and entirely necessary. The way the law is written is interpreted by major providers to mean it is not possible to have a process in place where a GRC holder's trans status can be legally ascertained or shared.

The need for government clarity

As a result of all the above, it is clear that far from the government being able to assume that self-identification policies constitute best practice, there is already good evidence that such policies can adversely impact women and girls.

The Scottish Government can only understand the impact of existing self-identification policies, and indeed of the government's self-identification proposals in relation to the GRA, if it has assessed the impact of such policies on all affected groups, including women and girls.

The Scottish Government cannot do this until it is itself clear about how the GRC impacts the application of the single sex exceptions in the EA, both in terms of how the GRC impacts considerations in regard to what can be objectively justified, as well as how the GRC can impact on applying the single sex exceptions in practice.

The Scottish Government also needs to give a clear view on how it will take a human rights approach that gives equal respect to women's rights and trans rights, and will also have to come to a view on how to best use the EA to uphold the protections for women and girls.

Furthermore, the government must urgently address persistent failures in carrying out the government's equality and human rights duties, and must start with assessing the impact of existing and planned policies on all protected stakeholders, and this needs to also be carried out retroactively where needed, as the SPS is doing.

The need for further work

It is clear that the government has a great deal more work to carry out in order to understand the impact of their GRA proposals. We hope it is now clear that women and girls are already facing an erosion of our rights and protections, and this is impacting on our welfare and equality. Further, we hope it is clear that the government's GRA proposals could greatly exacerbate this situation due to the GRC currently functioning to weaken EA protections for women and girls (the potential extent of which cannot be made clear until the exact basis on which the GRC impacts on the exceptions is clarified), and also due to the fact that the government's proposals will change who can access a GRC, and potentially vastly increase the numbers of those who can procure a GRC.

The government has to ensure it understands exactly how self-identification policies are already impacting on women and girls in Scotland, and exactly how their GRA proposals will potentially impact on the protections of women and girls, before moving forward with any reform of the GRA.

We would also highlight that a particularly toxic strand of argument in this debate has been to assert that use of the EA protections for women and girls and upholding the human rights of women and girls is effectually a rolling back of trans rights and equality: The persistent and apparently systemic failures in terms of understanding human rights and equalities duties and legislation, and the impact this has had in terms of the erosion of the rights of women and girls in Scotland, is not an act of upholding trans rights and equality, it is an act of neglecting the rights, needs, welfare and equality of women and girls. As such, any and all remedy of this failure does not constitute a rolling back of the rights of any group.

What makes good policy: Women's Organisations' consultation with women

We are concerned about the lack of consultation between Scottish Government funded women's groups, and ordinary women.

Engender state that they have decades of 'gender expertise and analysis' that informs their policy advocacy, and that their evidence base is taken from 'working with women and a wide range of women's groups', and that they 'substantively engage with women through consultation and participatory research processes and through hearing from women using frontline services'. They also state that they offered 'relevant opportunities for engagement' to women regarding issues around 'gender identity and women's equality'.

In November 2017 Engender, Scottish Women's Aid, Close the Gap, Rape Crisis Scotland, Zero Tolerance and Equate Scotland released a joint statement, in support of the government's GRA proposals regarding self-identification. This was released without engaging with the organisations' members, staff, service users (where relevant), or with women more broadly. We know this because women in our group were among those who wrote to these organisations to ask who they had consulted before jointly releasing this statement.

When asked if they would share the evidence-base for their position on self-identification (i.e. details of consultation or research) and if they would discuss this, these organisations, including Engender, refused to do so, saying that they did not have the time. Women contacting these organisations to ask these questions and engage in dialogue on this issue included rape survivors, writing out of concern regarding changes to female-only provision.

The only attempt by any of these organisations to engage with women on GRA reform was a meeting arranged by Engender, after the GRA consultation had closed. However, this was cancelled at short notice, despite the fact that many women had tickets. And despite being asked to reschedule the event, Engender refused to do so, and instead produced a podcast making a case for the GRA proposals, with no opportunity for dialogue.

Our group also contacted Engender to ask if they could share any consultation, research or other evidence to support their position on GRA reform. We were also told that they did not have the time to share this with us.

Views of frontline staff

We spoke with women who deliver frontline services in women's organisations in Scotland, whose national level organisations are included in the letter in support of the GRA.

They describe a culture in which they and service users are either not consulted, or discussions take place in contexts where they do not feel free to speak honestly. They told us that they are very disappointed at the lack of engagement from those running these organisations in regard to changes to services for women who are survivors of male violence which mean they are no longer single sex. And they expressed disappointment at the lack of engagement around GRA reform.

As discussed more fully in our forthcoming report, we believe these organisations cannot speak about how their service users feel, or how the policies they support may be preventing women from accessing their services, because they have not carried out work to properly gauge this.

We know from our own research that women not only need female-only services, but that women have self-excluded from accessing support - and many more would self-exclude from accessing support - if not available on a female-only basis.

Current Scottish Government funding policy means that the women who require, but do not access services that are not female-only, do not become service users because they can't, and therefore their viewpoint can be treated as though it doesn't exist.

What makes good policy: Transparency and avoiding deference

It is clear that all of this is very far from the claim made by organisations like Engender that their policy advocacy is based on 'working with women and a wide range of women's groups' and that they 'substantively engage with women through consultation and participatory research processes and through hearing from women using frontline services'.

This is why our group is urging the Scottish Government and parliament to reject deference in policy making; that is to say that the evidence basis of any policy position should always be sought, and policy should never be rooted only in the views a particular organisation provides without taking care to scrutinise what those views are based on.

We would also highlight that a lack of transparency in policy advocacy organisations, particularly those funded by the government and with ample lobbying opportunity, is never conducive to good policy making. It constitutes a failure to ensure that the basis for their policy advocacy is open to scrutiny by outside groups and bodies, and it also functions to obfuscate who is, and more importantly who is not, being listened to. Even when these organisations are almost completely reliant on Scottish Government funding, they cannot be held about any aspect of their evidence base or consultation processes.

It is also very concerning that the FM's National Advisory Council for Women and Girls is not publishing any feedback from women to their monthly 'spotlight' topics in regard to 'gender equality', meaning that a board of appointed council members are able to choose how to interpret and act on what is put forward to them, and indeed decide which perspectives are considered and how.

The lack of transparency about evidence is particularly concerning given the response of Emma Ritch, Executive Director of Engender, also a council member of the NACWG, to a letter from 14 transsexuals to MSPs on 23rd April 2019, to highlight their concerns regarding the government's GRA proposals. In response, Emma Ritch tweeted: "27% of women agree that "women often lie about being raped" according to the 2014 SSA (and compared with 19% of men). There's a reason we don't deliberately integrate that perspective into criminal justice system design: evidence.". In fact the evidence as to whether the government's proposals constitute good policy or not is still being collected, and the diversity of perspectives of trans people contributes to this process.

We understand that it is not always possible to publish every form of consultation that informs policy advocacy, but we would argue that the principle should be that there is as much transparency, and as little mediation as possible. Which perspectives are we not hearing because people with power and influence have decided that they simply do not matter? How often is 'evidence' offered to the government and parliament that is taken on without any scrutiny?

Additionally, the joint GRA response by Engender, Scottish Women's Aid, Close the Gap, Rape Crisis Scotland, Zero Tolerance and Equate Scotland acknowledged that the Scottish Government had not carried out an EQIA in relation to the impact of their GRA proposals on women and girls. Engender and their 'women's sector colleagues' have said that EQIA's are being carried out 'at too late a stage of policy development on now a number of occasions' and that EQIA's should be published 'ahead of any draft legislation' Despite both these things, these organisations did not ask the government to

carry out an EQIA in the recommendations in their GRA consultation response, and nor did they ask for women to be more broadly consulted in any way.

We hope that MSPs will always ensure to consider the basis for all policy advocacy, irrespective of the source of that advocacy. And we hope the government and parliament will act to dismantle a culture of deference wherever this persists, and that it is recognised that transparent policy advocacy is crucial to good policy making.

Case study: The census

The Scottish census is a perfect example to highlight that when organisations publish the basis for their policy positions, this allows others to scrutinise this position and offer valuable evidence of their own, for consideration by the government and parliament.

For example Engender suggests that collecting data on sex in the census, whether defined by birth or taking account of the effects of having a GRC, would have a “severe chilling effect ... on public bodies’ gathering and analysis of sex-disaggregated data”. However gathering data by sex is essential to having “sex-disaggregated data”. That information is needed to understand how well public bodies are meeting their duties under the EA, under which sex is a protected characteristic.

Invisible Women by Caroline Criado Perez, welcomed not just by women’s organisations but by the First Minister herself, offers extended evidence of why in many contexts the failure to collect data by sex, not gender identity, has failed women and girls, and how this has serious repercussions for the health of female people.

Engender’s position places considerable weight on data not being used to provide evidence directly on pay gaps or to inform domestic violence provision. But this ignores that the census provides the underpinning data for a vast range of research and analysis across public services, providing population baselines, cross-referenced with other characteristics (age, area, ethnicity and many others).

And on health services, it is incorrect to suggest that census data plays no role in health planning, simply because it is not the only input to that. As just one example, the following report used census data to examine health inequality and ethnicity in Scotland. It notes (using “gender” interchangeably with “sex”, but clearing meaning in the second quote below):

“Since the census collected results for the whole population it provides richer information for smaller groups such as ethnic minorities.

“Poor health is caused by a wide range of factors, including biological determinants such as age, sex, hereditary factors, and wider social determinants such as education, social position, income, local environment, and experiences of racism and racial discrimination.

“Since the health of women and men varies considerably within some ethnic groups, this analysis presents results by gender separately to draw out these differences. Gender is a well-established determinant of health outcomes. Many health conditions and risk behaviours, such as physical activity and overweight/obesity, follow different patterns by gender. Mental health problems affect more women than men. Also, gender-based violence is a major public health and equalities issue.”

[Link <https://www.gov.scot/publications/ethnic-groups-poorest-health/pages/2/>]

If Engender’s “primary focus is that the equality and rights of women and girls are protected and strengthened” then we cannot understand why the organisation is arguing that it would have

“chilling” effect on data collection more generally if the census collected data on sex. We understand that in some contexts where it is particularly difficult to maintain anonymity, there may need to be protections for GRC holders and, on occasion, non-GRC holding trans people. This requires intelligent systems and is not a new issue: many people are sensitive about sharing data on particular protected characteristics. This does not mean such data are not collected.

If sex is lost as a variable from the census we anticipate this will be used to press for it to be removed from other sources where it is still gathered: we have been concerned during this process to learn that in many contexts it has already been replaced, not supplemented, by a category conflating sex and gender identity.

There is no reason at all why collecting data on gender identity requires the government or other bodies to stop collecting data on sex. We believe that the only defensible position in terms of ensuring a strong evidence base, is to argue for reliable data on sex to be collected in the census, and for it to be reinstated in other contexts where it has been lost.

And we hope that whatever MSP’s views are with regard to the census, that it is clear that transparency in regard to the arguments and the evidential basis for policy advocacy allows for the kind of scrutiny that ensures a rigorous policy making process.

AFTERWORD

This is an in-depth discussion paper meant to act as a useful resource for MSP’s, providing much needed clarification and information, and we hope that the arguments and evidence we have presented here help improve debate and policy making in Scotland. We particularly wish to begin to draw attention to how certain changes are disproportionately affecting working class women, whose voices have been missing from this debate and from policy making in general.

We are an unfunded group of unpaid women who have worked through illness and taken time away from our families in order to do the work that we do. But we are doing this because women and girls are currently facing an erosion of our rights, and losing provision we need, and this is happening in a climate where women cannot even speak publicly about our sex based needs and rights without facing misogyny, abuse, threats and violence.

We take the view that the issues we have raised here should not be party political, and we hope all politicians will reject any course of action that would utilise these issues for the purposes of political point scoring. We believe that regardless of the views of politicians in relation to specific issues and policies, that if politicians take the actions we recommend here to help improve the climate for women and girls, political debate and the policy making process, this will be of benefit to everyone.



Women and Girls in Scotland



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