



30 Bernard Street  
Edinburgh  
EH6 6PR

To: Members of the Equalities and  
Human Rights Committee  
Scottish Parliament  
By email

23rd September 2019

Dear Members of the Equalities and Human Rights Committee,

**Budget 2020-21, the sex protected characteristic, and trans equality**

We are writing as the national trans equality project (Scottish Trans Alliance), and as one of the national LGBTI organisations (Equality Network), in response to points raised in some of the written submissions to the Committee on the Budget 2020-21.

We did not previously submit written evidence, and we endorse the many important points raised in the written evidence of our colleagues at Stonewall Scotland, LGBT Youth, and LGBT Health.

However, we think it is very important that we respond to specific points that were raised in a number of other written submissions, which directly relate to trans equality.

The SPICe summary of written submissions (which the Committee has just made public), includes (second page):

“A large number of submissions state that despite the fact that sex is a protected characteristic under the Equality Act 2010, the Scottish Government and wider public sector develop policy around gender self-identification (also referred to as gender or gender identity). Submissions argue that this ignores women’s sex-based rights and affects availability and access to single-sex services and spaces. It is also argued that this view influences

third-sector funding because organisations are required to support gender self-identification in order to receive it.”

We are very concerned about the implications of these arguments for trans equality.

The fundamental basis of trans equality is the recognition of and respect for trans people’s lived sex. The need to do this, to avoid discrimination, and also for trans people’s own health and wellbeing, has been recognised for decades by those working worldwide in trans health. The right of trans men and women to be accepted and treated as their lived sex has been long established in this country.

For example, a trans man or woman can get a passport and a driving licence in their lived sex, and can update their records at public services and elsewhere, so that they can live their lives with dignity, without their trans history being revealed. It is also possible, by applying for gender recognition, for some trans men and women to get a replacement birth certificate with updated name and sex, for the few purposes where a birth certificate must be provided. But that is currently a complex and costly legal process, and so many trans people do not do it.

The recognition of trans people’s lived sex in no way undermines sex-based protections for other people. Nor does it affect the availability of single-sex spaces for other people.

The protection given by the sex protected characteristic in the Equality Act 2010 does of course protect women from discrimination on grounds of their biological sex. But it also protects trans women from sex discrimination. That protection is separate from, and in addition to, the protection provided to trans people by the gender reassignment protected characteristic. This is because trans women can face discrimination because they are women, and/or discrimination because they are trans (as well, of course, as any other discrimination they may face, for example on grounds of disability or race).

If a trans woman has a gender recognition certificate, she is treated by the Equality Act as a woman. If she does not have a gender recognition certificate, but she is discriminated against or harassed in a misogynistic

way, that is also covered by the Equality Act protected characteristic of sex. It is well established that, under the Equality Act, where a person is perceived to have a protected characteristic, and faces discrimination or harassment as a result, that is covered by the Act's protections, regardless of whether the person actually has the characteristic.

This is as it should be, because when a trans woman lives as, and is known as, a woman, including for example at work, she is vulnerable to misogynistic discrimination or harassment, whether or not she has a gender recognition certificate.

In summary therefore, it is incorrect to state that the sex protected characteristic in the Equality Act only protects on grounds of biological sex. It does provide that protection of course, as it should, but it also protects trans women and men from discrimination or harassment that happens because of their lived sex, whether or not they have a gender recognition certificate.

It is therefore not incompatible with the Equality Act, and in no way undermines the protections that the Act provides non-trans women, to treat trans people in their lived sex.

Nor does such treatment adversely affect women's access to single-sex spaces. Single-sex services in Scotland generally treat trans women as their lived sex. They do that sensitively to the needs of all involved, and it works well. If the Committee wishes to know more about this, we urge you to speak with organisations such as Rape Crisis Scotland or Scottish Women's Aid for example.

Finally, we wish to address the claim that third sector funding arrangements are conditional on organisations' policy positions. We can only speak for ourselves, but we believe that what we say applies to other organisations funded by the Scottish Government Equality Unit. Our policy positions are in no way influenced by our funding. If the Scottish Government at any point suggested that their funding of us was conditional on our adopting a policy position that we did not agree with, we would refuse to accept that condition. If we lost our funding as a result, we would be proud to have done so.



In reality, the Scottish Government have always made clear to us that they welcome our independent voice and our challenges to proposed government policy, based as they are on our wide engagement with diverse LGBT people across Scotland, and on our many years of policy development work.

We hope that this submission is useful, and we would be happy to provide any further information that could assist the Committee.

With best wishes,

James Morton  
Manager  
Scottish Trans Alliance

Tim Hopkins  
Director  
Equality Network