

Shona Robison
Cabinet Secretary, Social Justice,
Housing and Local Government

From: Baroness Kishwer Falkner,
Chairwoman

By email only

Our ref: 885Robison

5 April 2022

Dear Cabinet Secretary,

Thank you for your further letter of 21 February on reform of the Gender Recognition Act 2004. I reiterate our commitment to protecting trans people from discrimination and harassment, and to contributing to a respectful, constructive debate on these important issues.

As you know, the Equality and Human Rights Commission is an independent public body with a remit to regulate a legal framework that protects nine overlapping protected characteristics. In England and Wales, and in relation to reserved matters in Scotland, we also have a mandate to protect human rights. In fulfilling our statutory remit, we have a duty to consider how the rights of one person or group might be affected by those of others, as is sometimes the case.

I also reiterate that we draw on evidence in making these decisions. You are right that some of the evidence that supports our view that more consideration is needed before changes are made to the Act has been the same for some years. We would like to see this evidence base improve.

But you will also recognise that the wider debate on sex- and gender-based rights has recently evolved, not least as key concepts have been tested in court, with judgments that can seem contradictory – including in recent litigation in Scotland on the census and on women’s representation on boards. Other

recent evidence has come from expert medical organisations, from public polling and research, including in Scotland, from HM Courts and Tribunal Services work on the process for changing legal sex, and from academic analysis of the responses to the UK Government's consultation on reform of the Act.

In addition, we drew on the views of the more than 850 individuals and organisations that responded to the consultation on our 2022-25 strategy. We published an analysis of these responses on 29 March, including the feedback we received on issues of sex and gender.

Our Board has drawn on all of this, and the advice and insight of our statutory Scotland and Wales Committees, in reaching our decisions. It is imperative that we continue to assess and refine our positions in complex areas, such as those related to sex and gender-based rights, even if this involves modifying our previous stance.

I can also advise you that yesterday, 4 April, we published guidance for providers of separate or single-sex services on the relevant exceptions in the Equality Act 2010 relating to sex and gender reassignment. The guidance has been developed as a practical and accessible resource to help service providers in a range of settings, such as hospitality and retail, to make lawful decisions about services they offer to women and men separately by explaining the permitted sex and gender reassignment exceptions in the Act.

We have also considered the [interim review](#) of gender identity services for children and young people by Dr Hilary Cass, which recommended that

fundamental reforms were needed in how the services are provided. This includes by engaging with the UK Government on its plans. I would welcome any update from you and your officials in due course on your progress in implementing the Scottish Government's strategic action framework 2022-24 for the improvement of such services.

I recognise that the Equality and Human Rights Commission has taken a different view from your government on some of these issues. But I do not consider that this calls into question our principles, nor our commitment to protect and promote equality and human rights for all in line with our longstanding statutory duties. Nor does this inhibit our desire to work productively with you, and other stakeholders across Scotland, on our many shared goals to make Britain fairer.

I hope that the process of parliamentary scrutiny of the Gender Recognition Bill will help to provide greater clarity on the points raised in our correspondence, and I look forward to continuing to work with you on this and in many other areas.

Yours sincerely,



Baroness Kishwer Falkner

Chairwoman

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