



FAIR PLAY FOR WOMEN

Sometimes discrimination based on Sex and Gender Reassignment can be lawful in situations when it's a **proportional means to provide a legitimate aim**. Policies based on Equality Law must be evidence-based and fairly balance the needs of all groups affected. This does not mean treating everyone the same. Sometimes treating people differently is the least discriminatory outcome overall.

There are four legal exemptions in the Equality Act 2010 for organisations to use to lawfully restrict activities to biological females only:

- 1) Communal accommodation
- 2) Competitive sport
- 3) Single-sex services
- 4) Occupational roles.

These exemptions are not widely known or used. One of the most important applications is when women have been victims of male physical, psychological or sexual abuse. The Equality Act even uses this as an example in its explanatory notes. "A counsellor working with victims of rape might have to be a woman and not a transsexual person, even if she has a Gender Recognition Certificate, in order to avoid causing them further distress".

The Gender Recognition Act 2004

This law sets out the legal requirements a transgender person must meet to get a Gender Recognition Certificate (GRC) and to change their birth certificate to the opposite of their birth or biological sex. This requires a medical diagnosis of gender dysphoria and two years living in role as the preferred gender. Only 4500 GRCs have been granted in the UK since 2004 and this is thought to represent only 1% of the trans community estimated to be in the region of half a million. The UK government wants to reform the act to make the process a matter of self declaration only to allow anyone to quickly and easily change their legal sex. A UK wide consultation process is planned. A [Scottish consultation](#) by the Scottish government is already underway.

GUIDE TO A WOMAN'S LEGAL RIGHT TO SEEK REFUGE IN A SPACE 'FOR WOMEN AND RUN BY WOMEN'

What does the law say?

There is clear and unequivocal legal provision for services that support female victims of male abuse to maintain a biological female-only space.

No special permission is required to use these laws. It is simply up to the organisation to know and apply them. Most people know men can be excluded from women-only spaces but there is less awareness of the exemptions that make it legal to exclude transgender people when it's necessary to do so.

Schedule 3 Part 7 Section 28: This allows the legal exclusion of males AND transgender people born male from accessing the service or safe-space. *"Discrimination law is not contravened based on Gender reassignment when provision of a service is for persons of one sex"*

Schedule 9 Part 1 Section 1: This allows the legal exclusion of males AND transgender people born male from being employed as staff when there is *"an occupational requirement to not be a transsexual person"*

Who does it include?

The Equality Act states *"A person has the protected characteristic of Gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process for the purpose of reassigning the persons sex by changing physiological or other attributes of sex." "A person with this characteristic is termed a transsexual person"* Part 2 Chapter 1 Section 7.

This definition covers anyone who self-declares themselves as transgender. No need to have undergone any surgical changes (transgender males will almost certainly still have a penis), no need to be on any hormonal medication, no need to have even seen a doctor, no need to even wear women's clothes or shave off a beard. Basically, this includes anyone born male who says they feel like they are a women.

Reform of the GRA2004 will not affect the use of single-sex exemptions

These exemptions also apply even if a transgender male has been granted a Gender Recognition Certificate (GRC) and a female birth certificate. They can be excluded because they have undergone gender reassignment irrespective of their legal sex status. This means that even if the proposed GRA reform goes ahead and the process of legal gender recognition is changed to one of self-identification it will not change the application of the single-sex exemptions. The UK government has confirmed that GRA reform WILL NOT include changes to the single-sex exemptions set out under the Equality Act.

Why must single-sex exemptions continue to be protected and used?

When a woman and her children seek refuge from male violence they want a female-only space for reasons of both physical and psychological safety. Despite identifying as female, a transgender male was born male and is very likely to be perceived as male, either consciously or unconsciously by women seeking refuge. Someone's internal sense of their own gender identity, the clothes they wear or even their legally acquired female birth certificate cannot change this human instinct. Humans have evolved for good reason to be sensitive to biological sex and for women in crisis this is likely to be heightened even further. Not being allowed, or too scared, to mention they perceive a trans member of staff as male will cause further mental distress to these vulnerable women and her children. In this situation the balance between the needs and feelings of a woman seeking refuge must be prioritised before the needs and feelings of a transgender male seeking employment.

Women's feelings matter. Biological sex matters. The law agrees.

How do Women's Aid apply these regulations?

Women's Aid has announced it is to review its policy on the recruitment of transgender males as staff. They currently allow 'self-identifying transwomen' (transgender males) to access their service on a case-by-case basis. However, they have a female-only staff recruitment policy. This means that in addition to biological women, transgender males who have legally changed their birth certificate to female may also apply. This is a PARTIAL USE of the legal exemptions. It is not a legal requirement. Since the number of transgender males with a GRC is very small it has had little impact to date.

However, if the GRA reforms become law it means any male will be able to sign a statutory declaration and become female in the eyes of the law, with no conditions or obligations. They will also become eligible under current Women's Aid staffing policy to work in a women-only refuge. To maintain the philosophy of a service 'for women by women' the current policy review will need to use the lawful exemptions fully and exclude all transgender males (with or without a GRC) if self-declaration of legal sex becomes law