

**Response to the Universal Periodic Review of the Government of the United Kingdom on behalf of
LGB Alliance**

LGB Alliance is a charity (1194148) registered in England and Wales. We represent the interests of a rapidly growing number of lesbian, gay and bisexual (LGB) people who have grave concerns about the loss of our rights. We are specifically concerned about moves to replace, in law and elsewhere, the category of "sex" with "gender identity", "gender expression" or "sex characteristics".

Many of the campaigners in LGB Alliance are long-time gay and lesbian activists who fought for the rights of people with a same-sex sexual orientation decades ago. These hard-won rights are now under serious threat. Our response focuses on the current trend in the UK to undermine the legal protections for people whose sexual orientation is towards others of the same sex (gays and lesbians), or towards people of both sexes (bisexuals). In order to ensure protections for any category of people, clear definitions are essential. LGB Alliance bases its response to the UPR, and all its work, on the definition of sexual orientation as based on *sex* (in the sense of biological sex). This is the legal definition in the UK as laid down in the Equality Act 2010.¹

The Equality Act lists nine protected characteristics from harassment and victimisation and from discrimination in areas such as housing, employment and services, education, and public functions. These protected characteristics include *sex* and *gender reassignment*. Gender reassignment is defined in the broadest possible way: it protects from discrimination those who have not taken any steps towards transitioning but have formed an intention to do so. We do not seek to remove or challenge those rights. We are arguing that there are potential conflicts between the rights and interests of people with the protected characteristic of *sex* and those with the protected characteristic of *gender reassignment* that must be considered. It should be noted that the protected characteristic is *gender reassignment*, and not *gender identity*.

In addition, the recent legal ruling in *Forstater* establishes that the belief that there are only two sexes, and that sex is immutable, is a protected belief in the UK alongside other beliefs such as the belief in gender identity.²

The Matrix of Recommendations to the UK from the last UPR (2017) contains the following recommendation from Australia, which advises the UK to:

“Review its Equality Act in relation to gender identity and the rights of intersex persons in the context of rights to health services.” In its Response to the Recommendations, the UK Government “noted” this Recommendation.

The Equality and Human Rights Commission makes a similar point. In its submission to the Third UPR, the EHRC states:

“The EHRC welcomes the UK Government’s commitment to keep the Equality Act 2010 under review in relation to gender identity” and “We encourage Britain’s leading role in shaping the international human rights framework, including its support for the UN’s first Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.”

LGB Alliance wishes to state our strong opposition to both the Australian Recommendation and the above statements by the EHRC. In our view, they would lead the UK Government to violate the rights of people with same-sex sexual orientation. They follow the assumption that currently prevails in international human rights circles that there is no tension between the rights and interests of people with same-sex sexual orientation and those who have a *gender identity*, and thereby deny that this assumption undermines LGB rights.

The confusion that exists around the topic of sex and gender is exemplified by the Australian Recommendation. First, it conflates an *identity (gender identity)* with a *cluster of medical conditions* (intersex, or more correctly, Differences of Sexual Development). These are entirely separate issues. Indeed, many people with DSDs frequently complain about being lumped together with “identity” issues.³ Although we fully recognise the importance of guaranteeing the bodily integrity and autonomy of people with DSDs, this has no bearing on sexual orientation and we shall not discuss this issue in our response.

The Australian Recommendation also apparently advises the UK to incorporate protections of equality on the basis of gender identity into the Equality Act. Under the terms of the Equality Act, this would mean adding *gender identity* to the nine existing protected characteristics, which are as follows: *age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation*. LGB Alliance maintains that this would negate the rights of people with same-sex sexual orientation.

In recent years a confusion has arisen internationally between *sex* (in the sense of biological sex) and self-defined *gender* or *gender identity*. These concepts must be distinguished. The confusion between *sex* and *gender* even permeated the submission of the UK’s Equality and Human Rights Commission (EHRC) to the Third UPR. Having referred to the Equality Act 2010 as “the most comprehensive anti-discrimination legislation in the world,” the EHRC then incorrectly listed the nine “protected characteristics” in the Act: it mistakenly listed *gender* instead of *sex* and *transgender status* instead of *gender reassignment*. These are serious errors and impact not only on the rights of women but also on the rights of LGB people. LGB Alliance pointed this error out to EHRC in 2021 and EHRC has committed to making sure that such fundamental errors will not be repeated in the current submission.

Whatever the situation may be in other countries, in the UK it is clear that both the rights of women and the rights of people with same-sex sexual orientation are based on *sex* – not *gender* or *gender identity*. We believe that *providing the UK Government ensures that the Equality Act is implemented correctly*, it can lead the way towards rectifying an unjust situation that has arisen internationally by

confusing sex and gender, to the detriment of women and LGB people. It is possible and necessary to protect women, LGB people and trans people without discriminating against any of these groups: see the recent statement by Women's Aid on sex-based rights and the importance of providing both single-sex and trans-inclusive services.⁴

The importance of asserting that the rights of women and LGB people are based, and must continue to be based, on sex rather than self-identified "gender" is also emphasised by many grassroots women's and LGB groups in the UK, including Woman's Place UK, SexMatters.org, Fair Play for Women, Lesbian Labour; Gay Men's Network, FiLia, Lesbian Rights Alliance, Liberal Voice for Women etc.⁵

LGB Alliance is well aware that some LGB people now assert that sexual orientation is based on a person's self-defined *gender* or *gender identity*. This assertion on the part of some LGB people, and indeed all LGBTQ+ groups, should not be allowed to negate the rights of those LGB people who reject this redefinition and continue to adhere to the legal definition of sexual orientation in the UK as defined in the Equality Act.

In recent years it has become axiomatic in international human rights circles to assume that there is no tension between rights and interests based on sexual orientation and those based on gender identity. It is thought obvious that both can and must be protected at the same time. Indeed, this is the foundational principle for the appointment of the Independent Expert on Sexual Orientation and Gender Identity (SOGI), who has frequently insisted that no conflict exists between these two sets of interests or rights and has ignored our submissions to the contrary. LGB Alliance maintains that this is based on a grave misunderstanding that is undermining the rights of LGB people, especially lesbians. This is because lesbians experience dual discrimination: as women and as people with same-sex sexual orientation. In addition, the incursions of males identifying as lesbians into lesbian services and spaces is taking place on a far larger scale than vice versa.

It is crucial to understand the background to these developments. In the last decade at least there has been a well-funded global campaign targeting organisations such as the United Nations, governments of member states, the European Union, the Council of Europe, the European Court of Human Rights, and others to promote the idea that everyone has a gender identity, and that this gender identity should take precedence in most or all circumstances over biological sex: that is, male or female. We refer to this belief as "gender identity theory". The promotion of gender identity theory is sometimes – we believe incorrectly – described as a "trans rights campaign".

In 2019 IGLYO issued what has become known as the “Dentons Report” urging gender identity activists to work under the radar and avoid press coverage to get unpopular or “less well understood” legislation on the statute books.⁶

The intellectual foundations of gender identity theory are the writings of academics such as Judith Butler and Paul-Michel Foucault. Fundamental concepts challenge “heteronormativity” and focus on removing boundaries within human interaction. Above all, feelings take precedence over fact. This is the theory that says any male can become a woman simply by saying it is so – and vice versa.

This theory has been absorbed and embraced by human rights organisations worldwide. That is why the United Nations has no agencies left other than CEDAW that still use the definition of woman as adult human female – and CEDAW is under pressure to add biological males who say they are women to that definition.

“since its adoption in 1979, The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), has been lauded for its advancement of women’s rights in international law. However, this treaty must be re-examined and revised to be more inclusive. CEDAW reinforces a strict sex/gender binary of man and woman and excludes the narratives of those who fall outside of this cis-heteronormative worldview.”⁷

This is also the reason why the United Nations has appointed an Independent Expert on Sexual Orientation and Gender Identity, Victor Madrigal-Borloz, despite these being two separate issues and without any appreciation of the fact that the two issues clash on diverse fronts.

LGB Alliance and many other groups around the world wish to stand up against gender identity theory as it threatens the human rights of women, children and LGB people.

Our position is that gender identity theory reinforces outdated gender stereotypes and removes all safeguarding protocols. Most worryingly, it has resulted in a surge of young people who have been told that it is possible to change sex to have experimental medical treatment which can damage them for life. The dangers of this treatment were highlighted recently in the Cass interim report.⁸

The rights of people with same-sex sexual orientation are protected under international law:

ICCPR

The United Nations Human Rights Committee has found that the ICCPR includes to an obligation to prevent discrimination on the basis of sexual orientation. In **Toonen v Australia**, the Human Rights Committee held that the reference to ‘sex’ (ICCPR article 2) and the right to privacy (ICCPR article 17) include sexual orientation.

European Convention on Human Rights

Likewise, in **Mouta v Portugal**, the European Court of Human Rights concluded that on the basis of Article 8 (private and family life) and Article 14 (discrimination) there had been a violation of the Convention on the grounds of **sexual orientation**.

The same reasoning applies to the **Universal Declaration of Human Rights** (article 2 in conjunction with Article 12).

In other words, all these international human rights instruments protect people from discrimination on the grounds of sexual orientation.

As noted above (see note 1), sexual orientation is defined by law in the UK in relation to sex (not gender). We maintain that incorporating “gender identity” as a protected characteristic in the Equality Act would necessarily end the statutory protections of “sexual orientation” and we therefore oppose it.

Example: If a trans person born male who now identifies as a woman – and as a lesbian – maintains that a lesbian (that is, an adult human female who is only attracted to other adult human females) has engaged in discrimination on the basis of gender identity by barring the trans person from a dating site set up exclusively for lesbians, the lesbian would no longer have any recourse under law. The protections accruing to sexual orientation would be null and void. At present, lesbians and gay men do have the statutory right of association by virtue of the protected characteristic of sexual orientation. Forcing lesbians or gay men to admit people of the opposite sex on the basis of gender identity to a dating site or other service set up exclusively for same-sex attracted people erases the statutory right of association of people on the basis of sexual orientation.

It is important to note that the protections accorded by the Equality Act are already being undermined in diverse ways across UK society, even by groups once set up to protect LGB rights.⁹ This stems from the ongoing tendency to replace the clear, objectively verifiable term “sex” (based on the distinction between the two reproductive systems according to whether they are designed to produce large or small gametes) with the non-verifiable, subjective term *gender* or *gender identity*. It should be noted that people with gender dysphoria can apply for a Gender Recognition Certificate that grants legal recognition as their acquired “gender”. However, it is not permissible for a user of a single-sex service or space to ask anyone of the opposite sex entering that space to produce their GRC since this is considered a form of discrimination.

If the UK Government were to follow the Australian Recommendation and the ECHR’s statements, it would be making what are currently violations of law into lawful acts of discrimination.

In sum, we are concerned that the ongoing conflation by LGBTQIA+ organisations, national governments, and national and international NGOs between what may be termed “material reality” and a person’s subjective identity is seriously undermining the rights of people with same-sex sexual orientation.

In Section B, Economic, Social and Cultural Rights, of the UK’s Third UPR – the “National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21* United Kingdom of Great Britain and Northern Ireland, 1- 12 May 2017”, the words *lesbian*, *gay*, and *bisexual* do not appear. The word *gender* appears 18 times – often used where *sex* would be more accurate. The report says nothing about people with same-sex sexual orientation. In contrast, the EHRC did pay attention to the rights of older persons, people with disabilities, children, gypsies and travellers and trade unionists.¹⁰

LGB ALLIANCE RECOMMENDATIONS

1. That the EHRC undertakes a review of the rights of lesbian, gay and bisexual people to include:
 - Definitions of sexual orientation and gender identity in UK law
 - Statement that sexual orientation and gender identity are separate and should not be linked together in policy making
 - Guidance on the protections in the Equality Act 2010 to re-state the need for sex-based rights (using biological sex as the indicator)
 - Guidance confirming that a biological male cannot be a lesbian, and that a biological female cannot be a gay man.

2. LGB Alliance recommends that the UK Government set up a body with the express purpose of making proposals to ensure the robust protections of people with same-sex sexual orientation, taking into consideration any inconsistencies that may exist between legislation or statutory guidance, and present its report to the Government. The aim is to avoid any further erosion of the rights of people on the basis of their sexual orientation.

Notes

¹ Equality Act (2010) definition of LGB sexual orientation:

‘sexual orientation

- (1) Sexual orientation means a person’s sexual orientation towards—
(a) persons of the same sex
(b) persons of the opposite sex, or
(c) persons of either sex”

NB This protected characteristic refers to LGB people. Sexual orientation to persons of the same sex means gay or lesbian, and towards persons of either sex means bisexual (See Equality and Human Rights Commission, <https://www.equalityhumanrights.com/en/advice-and-guidance/sexual-orientation-discrimination#what>)

2

https://assets.publishing.service.gov.uk/media/60c1cce1d3bf7f4bd9814e39/Maya_Forstate_r_v_CGD_Europe_and_others_UKEAT0105_20_JOJ.pdf

3

<https://www.unfe.org/wp-content/uploads/2017/05/UNFE-Intersex.pdf>
<https://www.accordalliance.org/faqs/does-having-a-dsd-make-a-person-transgender/>

4

<https://www.womensaid.org.uk/womens-aid-single-sex-services-statement/>

5

<https://womansplaceuk.org/> ; <https://sex-matters.org/> ; <https://fairplayforwomen.com/> ;
<https://lesbianlabour.com/> ; <https://www.gaymensnetwork.com/> ; <https://www.filia.org.uk/> ;
<https://lesbianalliance.org.uk/> ; <https://liberalvoiceforwomen.org/>

6

https://www.iglyo.com/wp-content/uploads/2019/11/IGLYO_v3-1.pdf

7

<https://www.humanrightspulse.com/mastercontentblog/queering-womens-rights-re-examining-cedaw>

8

Cass-Review-Interim-Report-Final-Web-Accessible.pdf

9

Stonewall CEO Nancy Kelley has described lesbians as “sexual racists” and compared gender-critical beliefs (which are protected under UK law) to antisemitism
<https://www.dailymail.co.uk/news/article-10225111/Stonewall-brands-lesbians-sexual-racists-raising-concerns-sex-transgender-women.html>; <https://www.thejc.com/news/uk/anger-grows-over-stonewall-boss-antisemitism-comment-1.517532>; Lesbians saying they are only attracted to other biological women can find themselves banned from lesbian dating sites; <https://lesbianandgaynews.com/2021/02/lesbian-women-talk-about-meeting-transbians-on-women-only-dating-sites/>; Mridul Wadhwa, a transwoman without a Gender Recognition Certificate, became head of Scotland’s rape crisis centre without revealing trans status, and later stated that “bigoted” rape survivors should be re-educated about transgender rights as part of recovering from their trauma [https://www.thetimes.co.uk/article/rape-crisis-chief-mridul-wadhwa-steps-back-from-bigot-comments-2b9kdv75#](https://www.thetimes.co.uk/article/rape-crisis-chief-mridul-wadhwa-steps-back-from-bigot-comments-2b9kdv75#;); three-quarters of teens referred to gender clinics are girls, and the vast majority of these girls are lesbians. <https://www.cambridge.org/core/journals/bjpsych-bulletin/article/sex-gender-and-gender-identity-a-reevaluation-of-the-evidence/76A3DC54F3BD91E8D631B93397698B1A>

10

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/045/90/PDF/G1704590.pdf?OpenElement>