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SCOTLAND: Legal challenge over definition of ‘woman’ gets under way

A legal challenge over the definition of the word “woman” has begun at the Court of Session in Edinburgh.

By Kirsty McIntosh

The Courier (07.01.2021) – <https://bit.ly/2JS3dme> – Campaign group For Women Scotland is challenging the Scottish Government over the wording of the Gender Representation on Public Boards Act 2018.

The legislation, which was passed two years ago, aims to increase the number of women in senior positions on public bodies.

Its wording covers trans women who hold a gender recognition certificate, which changes their legal gender from male to female, as well as those who are “living as a woman” and are “proposing to undergo” such a change “for the purpose of becoming female”.

Virtual hearing

However, For Women Scotland say that definition clashes with the UK Government’s Equality Act 2010, which defines a woman as a female of any age.

For Women Scotland’s website says the group’s aim is “To stop the Scottish Government redefining ‘woman’ to include men”.

They believe the Scottish Government has acted outwith its powers, as the matter is reserved to Westminster, and believe MSPs are breaching their responsibilities to equality legislation.

The group was granted a judicial review, to be heard by Lady Wise.

The matter is being heard in a virtual hearing at the Court of Session today and tomorrow.

The hearing will also receive submissions from human rights lawyers Just Right Scotland on behalf of Scottish Trans, which is part of LGBT organisation Equality Network.

The submission includes a 5,000 word document detailing the experience of transwomen living in Scotland.

The Equality network believes that if the challenge is successful it will discriminate against transwomen.

Previous controversy

It comes just weeks after the Scottish Parliament debated an amendment to the Forensic Medical Services Bill.

The Bill aims to improve services for those who have experienced rape or sexual assault by allowing access to a forensic medical examination without the need to report to the police.

Johann Lamont tabled an amendment of just six words – “for the word ‘gender’ substitute ‘sex’” – after stating that the original wording “could be ambiguous in the bill, which has the potential to cause distress to individuals undergoing

forensic medical examination”.

The change allows rape survivors to request that an examination be carried out by an individual of the same sex.

The Scottish Government initially rejected this argument, but ministers backed the amendment on Thursday.

The change in wording was backed by 113 MSPs.

The issue led Scottish Greens MSP Andy Wightman to quit the party after disagreeing with their stance on the issue.

All members of the Scottish Green Party, as well as the Lib Dems, voted against the amendment.

For Women Scotland has a list of the group’s beliefs on its website, including that “sex is immutable and is a protected characteristic”.

They also believe that “women are entitled to privacy, dignity, safety and fairness”.

And “women’s rights should be strengthened”.

Members say they “campaign on a positive, pro-women basis and we call for evidence-based discussion and legislation”.

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