

Response to Call for evidence regarding the Gender Recognition Act reforms

By Hannah Massie on behalf of TransOxford

November 2020

TransOxford

TransOxford is a support group serving gender incongruent individuals throughout Oxfordshire. Aside from personal and family support and advice, the group represents the transgender community in the wider community linking with media, medical organizations, local government, government services, etc. This submission is on their behalf and answers the questions in logical manner, rather than the illogical way they have been asked. The group has also produced a short fifteen minute documentary about what it means to be gender incongruent, where the GRA fits and why it needs reform. <https://www.genderaware.org/the-invisible-prison> We would strongly urge the committee to view this powerful film as part of this review process.

Will the proposed changes meet its aim of making the process kinder and more straight forward?

No... The announcement was a cynical attempt to put a positive spin on what amounted to nothing.

The application process was always going to go on-line, but is still the same overly bureaucratic process and filling in forms on line or on paper makes absolutely no difference.

The fee is not the primary issue with the legislation and changing this will have little effect, while the cost of the bureaucracy of the process, which hasn't changed, still needs covering. Additionally the government should have been able to state what the fee was going to be, given it had had several years to prepare this.

The announcement related to new clinics has nothing to do with the Gender Recognition Act and was never part of the review process. There are many major issues with the NHS health services provided to gender incongruent folks, including waiting times. The new clinics had already been announced quite some time previously, though they will not address the core issues with the healthcare provision for gender incongruent individuals.

Finally the suggestion that the GRC reforms were not important to the transgender community was not only wrong it was insulting. Our rights are extremely important and the claim otherwise ignores the fight we currently have against those who are denying our existence and want us removed from society on ideological grounds.

What are the issues with the Act that stop people applying?

Since the Gender Recognition Act was introduced only around 6000 people have obtained a GRC out of an estimated total of between 200,000 and 500,000 gender incongruent folks in the UK. The following sets out the reasons why this is and why reform, to make it more relevant to those for whom it is intended, is needed.

- The act was based on beliefs held at the time (c 2000) that it was possible to pretend, choose or be coerced into being transgender¹. It therefore implemented a process to protect against misuse that required the provision of medical reports and other validity confirming documentation and the assessment and approval of these by a secret panel. However

¹ Joint Committee on Human Rights, Draft Gender Recognition Bill, 20 November 2003, HL Paper 188-I & II, HC 1276-I & II

scientific and medical knowledge now recognizes gender incongruence as being a natural heritable biological condition², one that one can never be chosen, faked or be coerced into being, and one that has now been de-pathologized by the WHO³. This demanding process, which has put people off applying, is based on premises that are no longer valid.

- In formulating the act it was acknowledged⁴ that there were some for whom the specific requirements (diagnosis of gender dysphoria and proof of a period of living in role) would not be applicable but whom may still legitimately need to change legal gender status. This remains the case and in fact the numbers for who this now applies has grown as our knowledge and acceptance of the condition has developed. The act as it stands precludes many gender incongruent people from correcting their legal gender.
- When the Act was implemented laws relating to marriage, equality and data protection, etc. were significantly different and the rights that the act conferred were therefore of significant value. However in the intervening years changes in other legislation and rights equalization (e.g. retirement age) now mean the Act confers very little of significant value, other than possibly specific data protection rights. Those that do obtain a GRC do so mainly to correct the gender mistakenly assumed at birth with the correct birth gender. The act, as is, makes excessive application demands for what are very limited benefits.
- A GRC can currently only be applied for after several years of medical intervention and 'living in role'. However to live in role, which is also a necessity of the medical process, one must change identity and gender on all social and official records bar birth certificate, which is achieved very simply via a deed poll and a GP/GDC letter saying the request for gender change is valid. Passport, driving license, company directorships, land registrations, etc. can all be changed so that by the time one gets to be able to apply to change one's birth certificate, several years later, one already has all the documents normally used to prove gender and identity. The bureaucratic and pernicky process to obtain a GRC is, therefore, barely worth it, especially given the limited rights it confers.

What are the wider issues that need to be considered?

There are a number of other additional issues that are pertinent to and should be considered within the review

- There remains considerable misunderstanding and confusion within general society about sex and gender. Sex and Gender are not the same, both are biological heritable attributes⁵ (i.e. genetically defined) that are not binary but exist on bi-modal spectrums. Neither sex nor gender are societal constructs, but the divisions and associated rules we make in these spectrums are. A fifteen minute video giving a comprehensive introduction to gender incongruence, with scientific references is here <https://www.genderaware.org/learning> . Current legislation often confuses the two and incorrectly uses these interchangeably. All of

² Saraswat A, et al. Evidence Supporting the Biologic Nature of Gender Identity. Endocr Pract. 2015 Feb;21(2): 199-204.

³ <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24663&LangID=E>

⁴ Joint Committee on Human Rights, Draft Gender Recognition Bill, 20 November 2003, HL Paper 188-I & II, HC 1276-I & II

⁵ Saraswat A, et al. Evidence Supporting the Biologic Nature of Gender Identity. Endocr Pract. 2015 Feb;21(2): 199-204.

the current anti rhetoric is based on this misunderstanding and confusion. The government needs to take a clear and strong lead in education in society about the differences between and the nature of sex and gender and start to ensure it does not use the terms interchangeably but correctly in context. For example, should a space be single sex or single gender?

- With sex and gender both existing on bi modal spectrums, there are many who are born intersex and many born non binary or gender fluid. These are not afforded recognition because our society supports only a binary division in both sex and gender. This is contrary to many other societies both historical and current, where a greater number of divisions are supported⁶⁷. There is a strong case for officially supporting three divisions in both sex and gender, to enable intersex and non binary/gender fluid individuals to get the correct recognition.
- Contrary to the claims being made by anti reform lobby the Transgender community does not wish for there to be a process that is so open it could be abused. This would be totally counterproductive and any abuse would be seized on by that lobby to call for rights to be rescinded. Instead there needs to be sufficient barriers to stop potentially fraudulent applications, but be simple enough to enable those for whom a GRC is right to obtain one with ease.

How should the Act be reformed?

Following a review some years ago⁸ a process of self-registration was proposed (Not self-identification – everybody self-identifies their gender) and the removal of many of the application requirements including the need for medical assessments and the secret approval panel. Similar processes have been successfully adopted by an ever growing number of countries throughout the world and it is an approach that is supported by numerous bodies such as the World Professional Association for Transgender Health (WPATH)⁹. The consultation that subsequently took place showed overwhelming support for this and subsequent research showed this was reflected within the population at large. As a result the following would be suggested.

- The need for a diagnosis of gender dysphoria should be removed. Not only is the reason for its requirement now known to be invalid (No one would ever apply as a lifestyle choice), not all suffer gender dysphoria, especially to the extent they seek a medical diagnosis, while the requirement is disproportionate to the value the act gives.
- The need for proof of living in role should be removed. Unlike the medical gender reassignment process which rightly requires steps in social transition, the justification for its inclusion in the GRC application is no longer valid. Again no one will apply as a lifestyle

⁶ https://indiancountrytoday.com/archive/two-spirits-one-heart-five-genders-9UH_xnbfVEWQHwKjNn0rQQ

⁷ <https://www.independent.co.uk/news/world/europe/germany-intersex-third-gender-identity-passport-lgbt-rights-a8706696.html>

⁸ <https://publications.parliament.uk/pa/cm201516/cmselect/cmwomeq/390/390.pdf>

⁹

<https://www.wpath.org/media/cms/Documents/Web%20Transfer/Policies/WPATH%20Identity%20Recognition%20Statement%2011.15.17.pdf>

choice, individual transition processes vary enormously, while the requirement is disproportionate to the value the act gives.

- The removal of the requirements for medical reports and proof of living in role would allow the secret review panel to be removed and enable a self registration process to be adopted. This would enable the process to be undertaken when all the other record and document changes are being made via self registration, and would reduce the overheads allowing for an appropriate reduction in costs and fees.
- It is important that there are barriers in place to ensure the validity of applicants and maintaining the sworn affidavit with legal consequences would provide that. Getting an affidavit witnessed only costs £5 but requires organizing and sticking to the conditions.
- The need for spousal consent should be removed. While it is appreciated that marriage is a legal contract between two people, this cannot change a person's gender identity (which is biologically hardwired) and should not stop their ability to affirm their correct gender in law. Most married couples come to an agreement between themselves in these situations. Many divorce but some stay married and in the latter case they should be allowed to amend their marriage contract accordingly if required.
- A process similar to that used for all other documentation (e.g. passport, driving license...) could be adopted as a transition step for, say, a 5 year period in which a GP or GDC clinic letter is required to support the application. This would still enable the change to be made alongside changes to all other identity documentation and records, but would provide an additional barrier to protect against potential abuse. After 5 years if all had gone well this could be removed.
- The proposals by the Scottish Government are along the lines set out above and therefore represents a better proposition.

The following should also be considered within any reform to provide complete legislative support for the entire biological sex and gender spectrums. Obviously the legal implications of these need considering and the mechanisms and rules defining.

- People are always born gender incongruent and some come out at an early age. These often socially transition while in childhood and don't commonly go back. As legal gender is purely a social construct the ability to legally change gender should be extended to those children who socially transition (with Gillick Competence).
- A number of gender incongruent people fall between the bimodal peaks in the biological gender spectrum and are either gender fluid or non binary. A third gender category should exist for these people, as exists in many other countries¹⁰. Equally a number of people are born intersex and it should be possible register as intersex and it should then be able to update this at some point should the individual concerned wish.

Opponents and supporters of suggested reforms

¹⁰ <https://www.enei.org.uk/resources/news/gender-x-passports>

There has been a large and disproportionate amount of rhetoric in the media and elsewhere regarding the proposed reforms. This has been almost entirely following stories put out by groups who deny the existence of gender incongruence and want it eradicated from society on ideological grounds. Research has shown that up to less than 5% of the reporting has included input from gender incongruent individuals or the many that support them.

- The reasons behind this opposition – particular religious and political ideologies – the tactics being employed and the reasons why these cannot and will never succeed are set out in this short article https://www.genderaware.org/post/truth_about_trans_critics
- A lot of the claims against have been based on ignorance, bigotry and deliberate misinformation. The arguments that granting gender incongruent folks rights will affect women’s or religious rights do not stand up to close scrutiny. This short article goes through those arguments and shows why they are incorrect <https://www.genderaware.org/post/answering-the-claims-about-the-the-gender-recognition-act-reforms>
- The Scottish Government review that led to its own proposals of adopting self-registration looked at the opposition arguments and found no basis for them while countries that have adopted a self-registration process have encountered none of the issues that are claimed will arise.
- There has been considerable support from many varied groups. This includes women’s groups¹¹¹², religious leaders from all denominations¹³, LGB groups, businesses¹⁴, Trades Unions¹⁵¹⁶, Medical and scientific groups such as the BMA¹⁷. Despite overwhelming and repeated demonstrations of this support the small anti-trans lobby have been given disproportionate visibility and heed by the Government¹⁸ and media. It is time this was assessed and addressed.
- There are a small group of transgender individuals who incorrectly perceive the current process as giving them a sort of ‘real transgender’ qualification and want that status to be protected. The government needs to make it clear that the GRC is simply about changing legal gender record and is not a transition completed award.
- The opposition to the reforms has deliberately focused on transgender women and women’s rights. It needs to be made clear the act applies to transgender men as much as transgender

¹¹ <https://www.pinknews.co.uk/2019/06/18/after-30-academics-sign-letter-opposing-trans-rights-3600-sign-letter-in-support/>

¹² <https://www.pinknews.co.uk/2020/06/17/liz-truss-gender-recognition-act-reform-cis-women-open-letter-trans-equality/>

¹³ <https://www.churchnewspaper.com/83708/archives>

¹⁴ <https://www.pinknews.co.uk/2020/09/14/gender-recognition-act-boris-johnson-business-letter-stonewall-disney-british-army-marie-curie/>

¹⁵ <https://congress.tuc.org.uk/motion-30-gender-recognition-act-reform-trans-peoples-rights-and-solidarity-across-the-trade-union-movement/#sthash.6OlzbrH5.dpbs>

¹⁶ <https://www.pinknews.co.uk/2020/08/15/gmb-union-letter-liz-truss-equalities-minister-trans-rights-gender-recognition-act-reform-boris-johnson/>

¹⁷ <https://www.bma.org.uk/news-and-opinion/push-for-progress-on-transgender-rights-in-healthcare>

¹⁸ House of Commons Library Briefing Paper 08969 July 2020

women, of whom there are roughly equal numbers, and this is borne in mind during the next review.

Gender Incongruence, the Equalities Act and other legislation

The Equalities Act has been in force for 10 years without issue. There are a few minor points related to this

- The Act identifies potential conflicts between the protected characteristics and provides circumstances where one characteristic can discriminate against another and the degree to which this can be applied. (e.g. male only religious leaders). There needs to be more case law to clarify these.
- The Act includes the protected characteristic of Gender Reassignment and requires no specific situations to claim this. While this is good because it recognizes that gender incongruent individuals will spend time exploring and coming to understand their gender (e.g. cross dress) and may then take different approaches to dealing with their incongruence, the terminology is at odds with the GRA, which uses the sole word gender. While it was suggested in the previous review the term used in the act be changed to gender identity, it should simply be gender. We don't use racial identity or sex characteristics, just race and sex and so it should be with gender.
- The Act rightly separates gender and sex as protected characteristics, but there remains a lot of confusion (as noted earlier) about the difference between the two and the needs of segregation based on these. This is not made easier by the mixing of the terms e.g. gender neutral toilets and single sex toilets. It needs to be made clear that single/separate gender spaces are as valid as single/separate sex spaces and the need for either is based on purpose of the space. There are not many spaces that truly need to be single/separate sex.

The transgender community has been the subject of persistent organized demonization and hate speech over the past few years. There are similarities to the approach the Nazis took with the Jews. As important as free speech is it should be made clear the right to speak freely does not give the right to be heard, for the speech to be considered acceptable, for there to be no consequences or for that speech to be allowed to deliberately cause harm to others. As has happened or is happening in close neighboring countries¹⁹ there needs to be a review of legislation to cover hate speech against LGB and particularly T individuals.

Access to support and health services.

The state of the medical services provided to gender incongruent individuals is truly appalling. Waiting lists for first appointments at specialist clinics are currently between three and four years against a legal requirement of 18 weeks. The pandemic has little to do with this. The medical process is demanding, inconsistent, incomplete and cliquy. It is hardly at the forefront of global medical practice.

Added to this GP's often refuse to treat transgender patients, even when under the supervision of a GDC, while mental health services often misdiagnose and mistreat patients. All of this is down to a fundamental lack of training on and knowledge of the condition, its consequences, diagnosis and

¹⁹ <https://news.trust.org/item/20201110191107-tecjt/>

treatment pathways. Although repeatedly called for by numerous medical bodies²⁰ this is an issue that remains unaddressed. Those who do provide a better more effective approach are closed down

A consequence of this is gender incongruent individuals almost universally suffer mental health issues, a large majority (50% to 90%) self-harm and undertake substance abuse, while up to 40% attempt suicide, often more than once. Many turn to self-medication, purchasing drugs and treatment services from abroad.

The NHS services are in urgent need of reform and increased funding before more lives are irreparably damaged and lost.

²⁰ <https://www.rcgp.org.uk/about-us/news/2019/june/rcgp-calls-for-whole-system-approach-to-improving-nhs-care-for-trans-patients.aspx>