

Written evidence submitted by Dr Sophie Allen [GRA0791]

RE: Consultation on the proposed amendments to the Gender Recognition Act

I am submitting this evidence in light of my role as a professional philosopher with a primary area of expertise in classification and property theory; that is, philosophy concerned with questions about what makes people or things the kinds of people or things that they are, and the use of those kinds in science, social science, law and ordinary life. I have already submitted evidence about the coherence of self-identification to the previous enquiry on reform of the Gender Recognition Act in 2018 so I will confine myself to answering the questions posed by the current consultation in this evidence. (It is not clear why the issues in this consultation need revisiting so soon after the publication of the report of the comprehensive public consultation in 2018. The questions seem very similar.)

- Will the Government's proposed changes meet its aim of making the process "kinder and more straight forward"?

Yes. The changes are also proportionate given concerns that making the process *very* easy may have adverse effects:

1) Making the process too easy may cause harm because people may obtain a GRC without having considered the matter carefully and may later regret doing so (and so have to change back to their original gender if that is allowed). For instance, the desistance rate among children who claim to be transgender is very high (above 90%). This will cause applicants additional distress. See the review by James Cantor: <http://www.sexologytoday.org/2018/10/american-academy-of-pediatrics-policy.html>

2) Allowing self-identification as a gender is legally questionable since there is no reason to think that self-identification as a kind makes one a member of that kind: if person A identifies as a woman and person B identifies as a woman, there is no reason to think that A and B are identifying as the same thing because they may have a different understanding of what a woman is. So far, a coherent definition of 'woman' and 'man' has not been provided which makes self-identified gender equivalent to gender (and thus guarantees that a self-identified woman is a woman). For more details, please see my argument here: <https://medium.com/@s.r.allen/if-transwomen-are-women-what-is-a-woman-d36121bdd926>

3) Making the process too easy can also cause harm to applicants because other mental difficulties or conditions may go undiagnosed if the GRC process does not involve a medical component. The elimination of differential diagnoses is an important step in ensuring the well-being of applicants and to ensure that their discomfort with their gender is not due to something else.

4) Allowing very few (or no) constraints on a GRC except for a legal declaration may lead to spurious gender changes of convenience to gain access to women-only spaces (for instance, in sporting competitions, the prison population, scholarships, women-only shortlists etc.). Even if we presume that this will be a very small number of cases, the harm caused in each case may be great and should be avoided. Allowing self-identification as the criterion for a GRC thereby creates conflicts with the sex-based protection from discrimination provided by the Equality Act 2010.

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- Should a fee for obtaining a Gender Recognition Certificate be removed or retained? Are there other financial burdens on applicants that could be removed or retained?

The fee is not prohibitive since it is, in any case, means tested.

- Should the requirement for a diagnosis of gender dysphoria be removed?

No. As noted above, if the basis of a GRC is not gender dysphoria, then it would have to be based on self-identification as a particular gender. This is inadequate because self-identifying as a particular gender is neither a necessary nor a sufficient condition for being that gender. Furthermore, self-identification presents legal challenges because there is no reason to think that two people self-identifying as a woman (for instance) are identifying as the same thing. There is no way to check this, either for the people involved or for third parties. A diagnosis of gender dysphoria guarantees some uniformity across cases and makes for a legally coherent category. It would be possible to protect gender identity or gender presentation *as well as* sex in the Equality Act, to prevent discrimination against transgender people.

- Should there be changes to the requirement for individuals to have lived in their acquired gender for at least two years?

No. There is a need for applicants to have seriously considered their transition before applying for a GRC (although one might wonder what 'living in one's acquired gender' actually means, especially if we reject a stereotypical account of gender).

- What is your view of the statutory declaration and should any changes have been made to it?

No. For reasons given above, changing the statutory declaration to one involving self-identification would be legally unwise.

- Does the spousal consent provision in the Act need reforming? If so, how? If it needs reforming or removal, is anything else needed to protect any rights of the spouse or civil partner?
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The spousal consent provision should stay given the enormous change to a marriage or partnership which a change in gender of a partner is likely to bring. It does not hinder the transition of an individual but does protect their spouse in the event of transition.

- Should the age limit at which people can apply for a Gender Recognition Certificate (GRC) be lowered?

No. As noted above, the percentage of children and teenagers who desist (that is, claim to be transgender and then whose dysphoria disappears without treatment) is very high at over 90%.

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There is no harm in applicants waiting for a GRC until they are old enough to have a better idea of the implications of this and have passed puberty.

- What impact will these proposed changes have on those people applying for a Gender Recognition Certificate, and on trans people more generally?

It makes the process easier.

- What else should the Government have included in its proposals, if anything?

Nothing.

- Does the Scottish Government's proposed Bill offer a more suitable alternative to reforming the Gender Recognition Act 2004?

No.

Wider issues concerning transgender equality and current legislation:

- Are there challenges in the way the Gender Recognition Act 2004 and the Equality Act 2010 interact? For example, in terms of the different language and terminology used across both pieces of legislation.

Yes. The widespread conflation of the terms 'sex' and 'gender' is making it very difficult to maintain the sex-based protection of the Equality Act 2010.

- Are the provisions in the Equality Act for the provision of single-sex and separate-sex spaces and facilities in some circumstances clear and useable for service providers and service users? If not, is reform or further guidance needed?

No. It is becoming increasingly difficult for single sex spaces to be maintained given the widespread conflation of 'sex' and 'gender'. It is even difficult to conduct accurate research on the extent to which this is a problem because a lot of data collection asks for 'gender' when it means 'sex' or vice versa. Information about both is required.

Nevertheless, it is not clear to a lot of services and service users that single- and separate-sex spaces can legally be justified and so there are several areas (such as prisons, sport, changing rooms, girl-guiding and women's refuges) in which female members of society are no longer being adequately protected. Further guidance is needed. Furthermore, if males are allowed to self-identify into such spaces, without any form of physical or medical transition, then males who do enter such spaces cannot be challenged even when their presence causes discomfort, or is an apparent or actual threat. Such spaces have been introduced to protect female people from either harm or unfairness in situations where they are particularly vulnerable and need to be maintained.

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- Does the Equality Act adequately protect trans people? If not, what reforms, if any, are needed

It might be better to protect in virtue of gender identity rather than gender reassignment while *retaining* the protection on the basis of sex.

- Are legal reforms needed to better support the rights of gender-fluid and non-binary people?
If so, how?

Protection from discrimination on the basis of gender identity or gender would provide greater protection in these cases.

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