

Written evidence submitted by FiLiA [GRA0803]

Written evidence submitted on behalf of FiLiA

1. In 2015 FiLiA was granted charitable status for the purposes of promoting equality and diversity, promoting human rights, and promoting the arts.

We are a Women-led volunteer organisation. We work to contribute to the liberation of Women by:

- Building Sisterhood and Solidarity (locally, nationally, globally)
- Amplifying the Voices of Women (particularly those less often heard or purposefully silenced)
- Defending Women's Human Rights

Our charitable aims are:

- To promote human rights (as set out in the Universal Declaration of Human Rights and subsequent United Nations conventions and declarations) and in particular women's rights throughout the world.
- The promotion of equality and diversity, in particular equality between women and men, and to eliminate sex discrimination, including by running an annual conference.
- To promote art for the benefit of the public, in particular to promote the art of women, especially socially excluded women, by the provision of an art exhibition at the annual conference, and other collaborations.

2. Executive summary

2.1 Any proposals for reform of the Gender Recognition Act 2004 and its interaction with the Equality Act 2010 do not impact only a small number of people, they affect the whole population of the UK, in particular women and those with other protected characteristics, therefore they must take into account the views of that wider population.

2.2 Terms such as 'trans people', 'gender-fluid' and 'non-binary' have no settled definition and therefore have no place in legislation; law must be written with clear definitions that everyone can understand.

2.3 Sex is binary and immutable, observed at or before birth, and recorded and registered.

2.4 We believe that in the UK people are free to adopt and express any form of 'gender expression', but that does not change one's biological sex.

2.5 We must be clear about who comes within the class of men or women in Section 11 of the Equality Act, otherwise the law is compromised.

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The Government's response to the GRA consultation:

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

3.1 Trying to make a legal process 'kind' is very subjective.

The women we work with tell us that almost all existing procedures to determine 'status' are also lengthy and intrusive, (e.g. disability status for PIP, residency for foreign nationals, citizenship.)

3.2 We recommend the Government should consider user experiences across all existing procedures, but have seen no evidence that the process to acquire a GRC is particularly unkind or not straightforward, in fact we have seen evidence to the contrary:

<https://mforstater.medium.com/long-slow-demeaning-intrusive-and-distressing-or-swift-professional-and-efficient-e100f2fb41f8>

4. 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?

4.1 The fee for obtaining citizenship is well over £1,000, and is comparable in terms of government involvement. Applicants can already apply to pay a much reduced fee than the current fee of £140 and it is comparable to fees for other legal documents such as those for obtaining a passport. (See link in 3.2 above).

4.2 It is also important to retain gatekeeping around the ease with which individuals can obtain a Gender Recognition Certificate. The Certificate confers a legal fiction; that a person is the biological sex which they are not. It must be taken seriously.

4.3 We recommend the fee should be retained.

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

5.1 No. Allowing people to say that they are the sex which they are not, via a legal fiction has significant implications, particularly for the rights of women.

5.2 The Gender Recognition Act ("GRA") was designed for those with dysphoria. It emerged from the case of Christine Goodwin, who took the UK government to the European Court of Human Rights, arguing that the government's failure to recognise her in law as a woman breached Article 8 ECHR. She had suffered discrimination, including being unable to marry her male partner, difficulties caused by an unequal pension age, and detriment caused by her birth certificate showing her as male, which outed her as trans whenever she was compelled to show it. The government maintained that the interference with her private life was proportionate. The Court upheld the complaint, pointing out at §87 that there was no threat of "*overturning the entire system*" given that the number of transsexuals in the UK was estimated at only 2,000 – 5,000, and at §91 that although there would be legal repercussions these were not insuperable "*if confined to the case of fully achieved and post-operative transsexuals.*"

5.3 We are now some distance from *Goodwin*. Applying the Stonewall glossary definitions, the term transgender describes anybody whose innate sense of their own gender does not correlate to the culturally determined expressions associated with their sex at birth. In other words, anybody who does not feel affinity with the gender expectations attached to their sex can be understood as transgender. It is not restricted to those who experience dysphoria and wish to make a complete transition, meaning that those who make no changes would still be entitled to be treated as a member of the opposite sex. It also presumes that everybody does have an innate gender identity. This is extremely problematic, because it presupposes that male people are innately masculine, female people innately feminine, and trans people born one sex but with the innate inner qualities of the other - the exact opposite of a feminist analysis, which is that all people have 'masculine' and 'feminine' traits and should be free to enjoy and express their personality without it being inhibited by these stereotypes.

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5.3 This is extremely different to the purpose envisaged in *Goodwin* which was to address the needs of a small group of those with dysphoria.

5.4 Many lobby groups are pushing for people who hold GRCs to gain access to opposite sex spaces.

5.5 If the GRA process can be kept very tightly focused on the tiny minority of people with severe dysphoria, then better outcomes will be possible for this specific group as well as for women. We feel that the rights of both women and transsexuals are at risk if the context of dysphoria is removed and replaced with a nebulous concept of internal gender identity to which societal buy-in is minimal, scientific consensus uncertain, and legal opinion divided.

5.6 We recommend that requiring a diagnosis of severe 'gender dysphoria' is the only way the GRC process can be justified.

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

6.1 No. The legal fiction that the GRA creates is unmatched in other areas of law and people who wish to take advantage of this legal fiction should be expected to show a long-standing commitment.

6.2 The legal fiction of a GRC has implications for how all of us have to deal with the conflict between reality and the law. We contest that anybody can live "in a gender" without recourse to sexist stereotypes. We do however agree that a period of social transition (not just reflection) is a good indication of the commitment an applicant is making prior to taking medical or legal steps and the least an applicant should be expected to do is to show good faith for this minimum period.

6.3 We recommend the requirement should be retained. Only those with diagnosed severe gender dysphoria and with a clear evidenced commitment to live as the opposite sex should obtain a GRC. It is not something that should ever be undertaken lightly given the long lasting and serious implications for the rest of society. We would also welcome clear guidance on what type of evidence would meet the requirements, so that applicants are sure of what is needed.

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

7.1 Acquired gender cannot simply mean sex stereotypes, such as hair length or clothing; it must relate to the fundamental aspects of being male or female. Women who have obtained GRCs and have then gone on to give birth have already triggered legal disputes, such as wanting to be recorded as a 'father' on their child's birth certificate. We should all have the right to know who our mother is.

7.2 The suggestion that a statutory declaration would genuinely prevent a person from abusing the process does not stand up to scrutiny. For a start, it is impossible to see how someone would live "as a" woman or man and face any penalty for making a false declaration without the law resorting to cliché and stereotype.

7.3 We recommend the statutory declaration must be retained. We also recommend consideration should be given to enable a GRC to be rescinded.

8. 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?

8.1 There is a tendency to centre the concerns of the person transitioning, yet there are other people involved for whom this has a devastating effect (mostly women, partners of late-transitioning males, and their children).

8.2 We recommend the committee listen to the voices of some of these women.
<https://www.transwidowsvoices.org/>

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8.3 FiLiA supports the introduction of no-fault divorce. Couples who do not want to remain married should not be compelled to remain in a relationship. Current divorce laws are the descendant of the principle that marriage was a contract and women chattel. It is time that the state's permission for divorce was removed.

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

9.1 No. There has been a sudden and dramatic increase in the number of people identifying as 'trans' or 'non-binary'. Young people should not be able to commit to permanent changes when they are still exploring their identities. <https://www.transgendertrend.com/surge-referral-rates-girls-tavistock-continues-rise/>

9.2 Neuroscientific research has confirmed that the brain doesn't fully mature until the age of 25. This includes the prefrontal cortex, the part of the brain that affects how we regulate emotions, control impulsive behaviour, assess risk and make long-term plans. This suggests that the age limit for this, and potentially other life-changing activities, should in fact be increased.

There is nothing to stop younger people from presenting or describing themselves as they choose, but to seek a complete revision of a person's history as recorded by the state is a significant step.

9.3 We recommend that the age limit should not be lowered. Increasing numbers of young females are regretting making this life changing decision, which would suggest that many of these young women were not mature enough to make such a serious decision.

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

10.1 With no agreed definition of 'trans' people then this is unanswerable.

10.2 We recommend the Government do not use terms that cannot be legally defined nor have any settled definition with the general public.

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

11.1 We are aware of a growing concern in society about the prevalence of 'gender ideology'.

11.2 Women are very concerned that their single-sex services, spaces, sports, and provisions are being threatened by the belief that biological males can 'self-identify' into them. The dignity, privacy, opportunities, and safety of women and girls are at risk.

11.3 We recommend the Government should commit to undertake a wide-ranging consultation with women over the impact of the GRA and how the concept of a 'legal fiction' particularly affects the sex-based rights of women and those with other protected characteristics, e.g. people of faith.

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

12.1 No. We are opposed to this for all the reasons we have already mentioned in answer to previous questions.

12.2 It proposes to reduce the age of application from 18 to 16, reduce the time 'living as' the opposite sex from 2 years to 6 months, and allow self-identification of 'gender' by just a statutory declaration, therefore allowing a change of birth certificate with no medical or legal gatekeeping whatsoever.

12.3 We recommend the Government consult with women's groups on any reforms to the GRA.

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Wider issues concerning transgender equality and current legislation:

13. Why is the number of people applying for GRCs so low compared to the number of people identifying as transgender?

13.1 'Identifying as transgender' has no meaning in law nor even in common usage as every person you ask will define it differently. The GRA was written to attempt to assuage the severe gender dysphoria of a tiny number of people, not to provide an altered birth certificate to anyone who wants one.

13.2 We recommend the Government do not widen the parameters of who is eligible to apply for a Gender Recognition Certificate.

14. 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.

14.1 Yes. The way the terms gender and sex are used almost interchangeably creates a great deal of confusion. Disentangling the words sex and gender is required to ensure clarity and that both sex and gender reassignment can be maintained as protected characteristics in the Equality Act.

14.2 We recommend the Government conduct a full audit of all departments' policies and procedures and remove the word 'gender' when they are actually referring to 'sex'.

14.3 Legal recognition of 'acquired gender' does not amount to a change of a person's sex, even though obtaining a GRC means someone can change the sex marker on their birth certificate.

14.4 We recommend the GRC panel clearly spell out to applicants that acquiring legal recognition of their gender does not mean they acquire the sex-based rights of the opposite sex.

15. 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?

15.1 No, they are not clear and further guidance is needed. That guidance would be better framed as telling service providers they SHOULD provide single-sex spaces and services.

15.2 The Equality Act must make absolutely clear that single sex spaces are single sex. That is single biological sex, not gender.

15.3 In 2019 the Women and Equalities Select Committee made recommendations on the provision and funding of single-sex services and provisions that have yet to be acted upon. Perhaps the committee could revisit those recommendations (numbers 14 and 15) on the document linked below.

<https://publications.parliament.uk/pa/cm201919/cmselect/cmwomeq/96/9602.htm>

15.4 We recommend that the Government issue clear and unequivocal guidance across the board, with worked examples, advising all interested parties that they should provide single-sex spaces and services and they should also feel free to provide third spaces for both sexes to use if they have evidence that clients/customers/users would value them.

15.5 We also recommend that where both public and private entities have been using incorrect guidance, much of which has been provided by lobby groups with vested interests, that they are made aware that the guidance is incorrect and should be immediately withdrawn.

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

16.1 It is already illegal to discriminate against people with the protected characteristic of gender reassignment and the law protects those people. Again 'trans people' has no definition in law nor a consensus on its meaning.

16.2 We therefore have no recommendations on reform for 'trans people', but as stated at 15.4 above we do recommend new guidance is issued.

17. What issues do trans people have in accessing support services, including health and social care services, domestic violence and sexual violence services?

17.1 Separate and dedicated service provision may be required in order to best meet the specialist and unique needs of this group that cannot be defined. Some people who claim to have an inner gender identity different to their biological sex also claim that their identity is fluid and varies from day to day.

17.2 We recommend that if separate and specialist services are provided there should be a clear way of gatekeeping them for people with a clearly diagnosed and/or identified need.

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

18.1 We would strongly oppose the introduction of a certificate system for gender-fluid and non-binary people. The government should hold the minimum information necessary about citizens. Sex registration at birth remains necessary. For those small number of transsexuals who need to have that registration of sex altered later in life, that is an alteration to an existing piece of information about them. At present, the government does *not* hold information about our gender - whether that is gender-fluid, non-binary, demi-boy, demi-girl, or any of the myriad other options - and that is quite proper. Similarly, other than in the census, the government does not and should not register our religious identity, our ethnic identity, our political identity or other pieces of information about our private lives. Countries which do register citizens in this way tend to be oppressive and we at FiLiA would be extremely concerned about a move towards such a regime.

18.2 People are free to express themselves and identify themselves however they want to. It is not possible for laws to deal with all forms of self-expression that have no fixed definition. It is unreasonable to demand that other people must affirm or agree with forms of self-expression.

18.3 We recommend the Government reaffirms a commitment to freedom of speech and freedom of conscience in this respect.

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