

**Q1 Will the Government's proposed changes meet its aim of making the process "kinder and more straight forward"?**

Before starting I would like to make it clear that the problem with this consultation is that it asks the wrong questions and consequently makes it difficult for trans people to answer. As a result of the way the form is constructed and as a result of the way the questions are asked, and which questions are asked I believe that this will deter trans people from responding, simply because you have not asked the right questions. Trans people want statutory declaration of gender, the same system that is like the one introduced in Ireland, and many other countries around the world and which was originally proposed by Theresa May's government or some other form of self-determination, just like cisgender people have. Obviously the current reforms are better than nothing but they are still highly problematic. The main issues being:-

1. Pathologisation; despite the WHO depathologising Gender Incongruence in the upcoming ICD-11 the (slightly) changed GRC system still requires input from the medical profession. This runs counter to current medical best practice globally
2. Delay, cost, lack of transparency and an over-bureaucratic system.
3. The fact that it makes trans people have to jump through hoops that cis people do not, in other words however this system is reformed it will always discriminate against trans people in relation to cis people.
4. Centralisation and security; a centralised register of trans people in the UK, held in a filing cabinet or on a computer in Whitehall will always be a target for the political extreme right, blackmailers and transphobes.
5. It still symbolically situates trans people as inherently problematic when the problem is transphobia and cultural cisgenderism in the systems and media culture of this country.

Ultimately what you are asking with these questions is for trans people to agree to continue to be discriminated against, just a little bit less than we have been in the recent past. Negotiating to be less discriminated against rather than negotiating to not be discriminated against completely is the issue here. Would you expect any other minority group to agree to talk about continuing to be discriminated against – just a little bit less than now – or would you expect them to want to talk about wanting zero discrimination entirely? This is why, I suspect, you obtain will fewer responses from trans people than you might expect. Life for trans people should not have to include systems like this at all, it is inherently discriminatory and something that cis people do not need to go through. Cis people, \*as cis people\* do not have to be subject to these kinds of "checks and balances", controls, red tape and humiliating and stressful systems that pathologise, restrict and problematise them. The same should be true for trans people, that is why the least intrusive system for gender transition should be akin to the statutory declaration system that exists in countries like Ireland.

So I doubt that you will get many responses to this consultation from trans people, simply because you are asking the wrong questions, tinkering with the GRC system is not part of trans people's agenda, it is not something trans people are interested in discussing. Trans people want a system that is non-discriminatory and this is important not merely on a practical level, as I have indicated above but on a symbolic level in that it validates trans people as full citizens with equal rights and status as cisgender people. Anything less is

simply not what trans people are interested in discussing. Until trans people are treated equitably in comparison with cis people there will still be a problem. We need to be given the same level of trust, the same level of self-determination and the same level of bodily autonomy as cis people.

But to answer your question:

Marginally kinder, no less straightforward. These changes are not real changes, they are tinkering at the edges and largely constitute a “faux change”. They are nothing like what trans people are asking for, which is statutory declaration of gender/self-determination. They are still medicalised, restrictive in terms of “real life experience”, dangerously centralised and over-bureaucratic. They will not significantly increase take-up.

**Q2 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 current system should not remain in existence and should be replaced with the statutory declaration system currently operating in many other jurisdictions including Ireland. Doing this would remove all costs other than the £5 solicitor’s fee, which they will often waive anyway.

**Q3 Should the requirement for a diagnosis of gender dysphoria be removed?**

Of course it should. Gender dysphoria is now regarded by the WHO (in the ICD-11 due to be published on 1st January 2022) as no longer a pathology, in other words it should be regarded no differently from, for example, being pregnant. Retaining any element of medicalisation/pathologisation consequently runs completely opposite to current global medical best practice and functioning. It is even possible that doctors will refuse to engage with providing the kind of documentation the GRC system wants, because to do so would be unethical. In effect to continue with this system at all would be transphobic.

Trans people should have, as closely as possible, the same rights as cisgender people. We should have the right to live our lives without this kind of intrusive measure. To do otherwise is discriminatory. That is why the right to statutory self-declaration of gender through a solicitor is the most equitable solution, while retaining the provisions in the Equality Act to prevent discrimination and intrusive harassment.

**Q4 Should there be changes to the requirement for individuals to have lived in their acquired gender for at least two years?**

Of course not. In all of the jurisdictions where statutory declaration of gender is in operation there is no such requirement, and where there is, it is a post-declaration requirement to wait for a period. However any such requirement is inherently discriminatory. Trans people should not be treated any differently from cisgender people, the more requirements that are imposed on us, the more discriminatory the system is.

Do cis people have to wait two years to have their genders affirmed? If the answer is no, then this requirement is discriminatory. Why should there be a lower level of trust applied to trans people than cis people? The issue of trust is key here.

The following jurisdictions, as far as I am able to ascertain (and probably others also) permit trans people to change their gender by self-declaration, usually a statutory declaration in front of a solicitor;

*Countries:* Argentina, Belgium, Bolivia, Chile, Costa Rica, Denmark, Iceland, Ireland, Israel, Malta, Norway, Pakistan, Portugal, Taiwan, Uruguay. *States/provinces:* California, Mexico

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City, New York, New Jersey, Nevada, Oregon, Victoria (Australia), some provinces in Canada.

I understand that Finland, which has a woman Prime Minister; is likely to join this list shortly.

Anti-trans groups in the UK have made a great deal out of the suggestion that statutory self-declaration of gender might threaten cisgender women's rights or result in more violence against cisgender women as a consequence. The evidence from these jurisdictions shows that this is simply not true. There has been no increase in attacks on cisgender women or erosion of women's rights. The UK media, most elements of which have anti-trans editorial policies, would have widely reported it if there had been. Anti-trans groups also claim that cisgender men would use statutory declaration of gender for nefarious purposes, yet there is no evidence of this occurring. In any case punishing or denying rights to one group of people for \*possible\* crimes that might be committed by a completely different group would set a disturbing human rights precedent and would be inherently discriminatory.

Additionally there is evidence from a peer-reviewed academic study; Hasenbush et al (2018) which found, from an empirical study in Massachusetts, that permitting trans people to use the toilets that match their gender identity and expression did not result in any increase in assaults on cisgender women. So the objections to moving to a statutory declaration system are both unfounded and contradicted by the evidence.

Hasenbush, A; Flores, A & Herman, J (2018) Gender identity Nondiscrimination Laws in Public Accommodations: a Review of Evidence Regarding Safety and Privacy in Public Restrooms, Locker Rooms and Changing Rooms *Journal of Sexuality and Social Policy* 16 70-83

### **Q5 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?**

I'm not sure what rights need to be protected. If the partner wishes to obtain a divorce or separation because of someone's change of gender they have that option open to them still. But to effectively have a right of veto, which they do right now, is immoral, since it is often used as a means of coercively obtaining more concessions than they would otherwise be entitled to in a divorce settlement. It therefore amounts to material discrimination against trans people in relation to cis people.

### **Q6 Should the age limit at which people can apply for a Gender Recognition Certificate (GRC) be lowered?**

Definitely, if the flawed GRC system is to be retained. Everyone over 16 and everyone under that age with Gillick Competence should be allowed to change their gender through a statutory declaration. The idea that somehow children are being coerced into being trans is a falsehood spread by the media. You will doubtless find people suggesting this using the term "ROGD" as if it constitutes a genuine diagnosis. It does not (WPATH 2018). Restar (2019) and Ashley (2018) have demonstrated significant problems with this paper, as has my own peer-reviewed research (Kennedy 2020) which demonstrates that trans and non-binary children are, in fact, active agents in the creation of their own lives, and Gill-Peterson (2018) has produced documentary evidence that trans children exist in history and are nothing new.

World Professional Association for Transgender Health (WPATH) (2018) *WPATH POSITION ON "Rapid-Onset Gender Dysphoria (ROGD)"*.

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Restar, A. (2019) Methodological Critique of Littman's (2018) Parental-Respondents Accounts of "Rapid-Onset Gender Dysphoria" *Clinical Child Psychology and Psychiatry* 24.2

Ashley, F. (2018) Rapid-Onset Gender Dysphoria: A Parental Epidemic? *Impact Ethics* 21 Sept 2018

Kennedy, N (2020b) Deferral: The Sociology of Young Trans People's Epiphanies and Coming Out *Journal of LGBT Youth*

Gill-Peterson, J. (2018) *Histories of the Transgender Child* University of Minnesota Press Minneapolis

### **Q7 What impact will these proposed changes have on those people applying for a Gender Recognition Certificate, and on trans people more generally?**

It appears that it will make it easier and cheaper but not significantly so. The system needs to be scrapped and a system like statutory declaration used instead, one where the information about who is and is not trans is distributed rather than centralised.

### **Q8 What else should the Government have included in its proposals, if anything?**

The government should have included a change to the entire system to go to a statutory declaration system like the one that works very well in Ireland and many other jurisdictions. The government should also introduce greater protections against transphobia, along the lines of legislation introduced in Norway and Switzerland.

### **Q9 Does the Scottish Government's proposed Bill offer a more suitable alternative to reforming the Gender Recognition Act 2004?**

The proposals to reform the Gender Recognition Act in Scotland are much more in line with what trans people have been asking for. Statutory self-declaration of gender with no requirement for panels or medical evidence. The three months pre-declaration time limit and post-declaration are not required, most of the other countries where statutory self-declaration of gender has been introduced do not have this provision. It constitutes an element of discrimination against trans people since cis people do not have to go through this. The age limit for statutory self-declaration of gender should be reduced to 16 and that of Gillick Competence before 16.

### **Q10 Why is the number of people applying for GRCs so low compared to the number of people identifying as transgender?**

Because there is a great danger in having one's name on a list on a computer, or in a filing cabinet in Whitehall. The centralisation of such information represents a clear danger to all on that list in particular given the number of leaks of official material from Whitehall in recent years, the increasing capabilities of hackers to obtain information and the rise of the far right. Having such a centralised list would put anyone on that list in danger. Also because it is too expensive, pathologising and humiliating.

### **Q11 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.**

No, these are separate pieces of legislation. The Equality Act should not be reopened, it deals with separate issues. The anti-trans campaigners will try and argue otherwise of course but they are wrong. The Equality Act needs to protect trans people. We need to be

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protected so that we can live our lives free from discrimination. The GRA is in effect officially coded discrimination against trans people, it should not exist in its current form, it needs to change so that it embodies full equality for trans people, as in so many other countries in the world.

### **Q12 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?**

They are very clear and represent a reasonable compromise, ie one that needs to be applied only in specific circumstances and with a legitimate aim. Anything that constitutes a blanket ban on trans people anywhere or that does not have a clear and legitimate aim would obviously be discriminatory, this needs to remain as it is, there are no actual problems (as opposed to imagined/faux problems) with it.

### **Q13 Does the Equality Act adequately protect trans people? If not, what reforms, if any, are needed?**

The Equality Act does not protect trans people from media disinformation campaigns and the disinformation spread by the anti-trans campaign groups. Given the huge rise in reported violence against trans people in recent years trans people need to have some additional protection through a specific law against transphobia such as exists in Switzerland and Norway. However I would not recommend reopening the Equality Act, I would recommend that this is instituted as a separate piece of legislation.

Groups of transphobes are attempting to have the Equality Act changed in order to introduce transphobic legislation that would, for example, prevent trans people from using the toilets that match their gender identity and presentation, which would, in effect make living any kind of normal life – including socialising, travelling, attending sports events and working - impossible for us. These groups dishonestly talk about a “conflict” between trans equality and women’s rights, yet, as I have shown in Q6 they have produced no evidence to support these claims, while there exists evidence to the contrary. Their aims are to effectively make trans people’s lives dangerous, illegal and impossible in the UK. Trans equality in Argentina, Belgium, Bolivia, Chile, Costa Rica, Denmark, Iceland, Ireland, Israel, Malta, Norway, Pakistan, Portugal, Taiwan, Uruguay, California, Mexico City, New York, New Jersey, Nevada, Oregon, Victoria (Australia), some provinces in Canada and numerous other jurisdictions has demonstrated that these claims are completely unfounded.

### **Q14 What issues do trans people have in accessing support services, including health and social care services, domestic violence and sexual violence services?**

The current media disinformation campaign makes it hard to engage with some services, and consequently that needs to be addressed. Some individuals, from university staff to small business owners still appear to believe the disinformation spread about us by the media, this needs to be addressed. By and large support services are fully in support of trans equality and have no problem with us using their services. Of course anti-trans campaigners want to prevent us from accessing these because they want to make life hard for trans people.

### **Q15 Are legal reforms needed to better support the rights of gender-fluid and non-binary people? If so, how?**

Definitely, in every respect.

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