

**Woman's Place UK evidence to the Women and Equalities Select Committee Inquiry
into Reform of the GRA**

November 2020

1 About us

- 1.1 Woman's Place UK (WPUK) is a grassroots feminist campaign which was formed by a group of women in the labour and trade union movement to uphold women's sex-based rights under the Equality Act 2010. All of our campaigning has been clear that we want everyone to be able to live free from harassment or discrimination. Over the past three years, WPUK has held 27 public meetings around the UK, including a one-day conference in London in February 2020 attended by almost 1,000 women. We appreciate the opportunity to provide evidence to the Women and Equalities Select Committee inquiry into reform of the Gender Recognition Act.
- 1.2 We broadly welcome the Government's proposals in response to the consultation on the Gender Recognition Act 2004. We feel these proposals strike a balance between improving the process for obtaining a Gender Recognition Certificate (GRC) for trans people and restating the importance of women's sex-based rights.

2 Provisions in the Equality Act for single sex and separate-sex spaces

- 2.1 Our experience, in campaigning for women's rights, is that the provisions permitting lawful discrimination on the basis of sex (that is the biological sex that is observed and recorded at birth) are poorly understood. We are frequently contacted by supporters with examples of the Equality Act exemptions being misinterpreted and misrepresented by local authorities and service providers. Some of these examples have also been widely reported in the media. For instance, where retailers have converted women only changing or toilet facilities into unisex facilities, or where admission to single sex services is by self-identification.¹
- 2.2 The single sex exemptions set out in the Equality Act 2010 have often been misrepresented by organisations lobbying to remove these exemptions from the Equality Act, such as Stonewall, Gendered Intelligence, and the Scottish Trans Alliance.²

¹<https://www.thetimes.co.uk/article/ladies-or-mens-use-whichever-fitting-room-you-feel-comfy-in-says-m-s-czpvxhppk>
and <https://www.dailymail.co.uk/news/article-6894599/When-man-called-Mark-locked-threatening-kill-mother-child.html>

- 2.3 Many public and private bodies now advertise that they operate on the basis of 'self-identified sex' (i.e. open to both sexes, on the basis of self-defined gender identity rather than sex). This approach removes the rights of women and girls to privacy, dignity and safety in single sex spaces, services, sports and communal accommodation (for example in hospitals and hostels) and undermines the objectives of initiatives such as all women shortlists or women's awards and development programmes.
- 2.4 This is supported by the findings of a previous inquiry of this committee into Enforcement of the Equality Act (2019) which, having examined the evidence, found that "*the law is clear but frequently misunderstood and unenforced*" (in relation to commissioning services) and that "*the ability of organisations to use Equality Act exceptions that allow service providers to choose if and how to provide single-sex services, where worries about the legal definition of 'sex' and its relationship to the protected characteristic of gender reassignment under the Equality Act appear to be acting as a barrier.*"
- 2.5 WPUK welcomed the Women and Equality Select Committee's recommendations in relation to the enforcement of the Equality Act. In particular, we welcomed recommendation 14 which called for the GEO to "*issue a clear statement of the law on single-sex services to all Departments, including the requirement under the public sector equality duty for commissioners of services to actively consider commissioning specialist and single-sex services to meet particular needs*". (Recommendation 14, Paragraph 168)³
- 2.6 We also welcomed the government's response to the committee's recommendations which concurred that clarity is needed on the question of single sex services and committed to publishing guidance to provide this. We note that the government committed in 2019 to "develop and publish best practice guidance for commissioners and service providers on their legal obligations under the Equality Act 2010, including how and when to commission specialist and single sex services to meet particular needs". We note that this guidance has yet to be published and we would urge the government to expedite publication as the current lack of clarity is leading to decision making by commissioners which places inappropriate obligations or constraints on service providers.⁴

² <https://womansplaceuk.org/references-to-removal-of-exemptions/>

³ https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/1470/147010.htm#_idTextAnchor06

⁴ <https://www.gov.scot/binaries/content/documents/govscot/publications/foi-eir-release/2019/07/foi-19-01511/documents/foi-19-01511-information-released-a/foi-19-01511-information-released-a/govscot%3Adocument/FOI-19-01511%2BInformation%2Breleased%2B%2528a%2529.pdf>
<https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/1470/1470.pdf?fbclid=IwAR2CkQ4P7LHt>

- 2.7 In the same Women and Equalities Select Committee publication, the committee stated that non-statutory guidance was insufficient to bring clarity to such a contentious area of law. WPUK agrees with the Committee's recommendation that the EHRC should develop, and the Secretary of State lay before Parliament, a statutory Code of Practice with case studies drawn from violence against women and girls (VAWG) service providers. WPUK supports the Committee's recommendation that *"this Code must set out clearly, with worked examples and guidance, (a) how the Act allows separate services for men and women, or provision of services to only men or only women in certain circumstances, and b) how and under what circumstances it allows those providing such services to choose how and if to provide them to a person who has the protected characteristic of gender reassignment."* (Recommendation 15, Paragraph 190). We were disappointed that the government did not accept this recommendation to introduce statutory guidance⁵.
- 2.8 While we welcome the focus on case studies drawn from VAWG services, we would also urge the Committee to recognise the importance of single sex exemptions in other sensitive areas of provision such as prisons, NHS services and single sex wards.
- 2.9 Furthermore, the position that guidance must be rooted in statute and case law is supported by the Chair of the EHRC who confirmed this in her pre-appointment session with the Women and Equalities Select Committee and the Joint Committee on Human Rights on 11 November 2020⁶.
- 2.10 It remains WPUK's position that the Equality and Human Rights Commission (EHRC) should provide guidance to service providers, commissioners and employers which accurately reflects the law and provides clear examples. The same principle should apply to guidance to courts, other public authorities and the media.

3 Challenges in the way the Gender Recognition Act 2004 and the Equality Act 2010 interact

- 3.1 As outlined above, the Equality Act exemptions are poorly understood by local authorities, commissioners of services, service providers, and the wider public. In

[2oSrjw-juHA_n8V2_gdREC2qNV8egb9HRpCodweFiTITQ8s](#) p. 48.

⁵ <https://publications.parliament.uk/pa/cm201919/cmselect/cmwomeq/96/9602.htm>

⁶ [Parliamentlive.tv - Women and Equalities Committee](#)

particular, the phrase in GRA 2004 9 (1) 'for all purposes' (in relation to acquired gender) may be quoted without reference to the significant qualification in 9 (3) which refers to provisions that limit the meaning of that phrase.⁷

- 3.2 Given this history, and to restore the balance, we recommend the Gender Recognition Act should explicitly state that legal sex, established by means of the Gender Recognition Certificate process, differs from sex registered at birth on the basis of observed biology, in relation to provisions grounded in the protected characteristic of sex. This relationship between acquired gender and provisions grounded in sex should also be made clear in the Statutory Declaration to avoid ambiguity and conflict in accordance with the Equality Act's requirement to foster good relations between groups.
- 3.3 It is a weakness of the GRA 2004 that the term 'gender' is not defined and is conflated with sex. Clarification of the definition of gender in the Gender Recognition Act is therefore imperative to avoid confusion and potential conflict of rights.
- 3.4 As a matter of urgency, the Government must make clear:
- (1) Whether it believes possession of a GRC strengthens an individual's right of access to spaces, services and protections reserved for members of the opposite sex.
 - (2) Whether the single sex exemptions can be operationalised at the level of a service.
 - (3) What assessment it has made of the potential impact of its proposed reforms to the GRA on the ability of women to take sex discrimination cases.⁸
- 3.5 The Government is now expressing two contradictory views on the operationalisation of the single sex exemptions:

On one hand, the Ministry of Justice's transgender prisoner policy states that "transgender women prisoners with GRCs must be treated in the same way as biological women for all purposes. Transgender women with GRCs must be placed in the women's estate unless there are exceptional circumstances."⁹

⁷https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/786910/t455-eng.pdf

⁸<https://mbmpolicy.files.wordpress.com/2020/02/impact-of-gender-recognition-on-sex-based-rights.-r-bull-11-feb-2020.pdf>

⁹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/863610/transgender-pf.pdf

This is at odds with the statement made by Minister for Women Liz Truss on 22 September, where she said that the Equality Act 2010 “*allows service providers to restrict access to single sex spaces on the basis of biological sex if there is a clear justification*”.

- 3.6 This suggests that a service provider offering ‘single sex space’ for women can choose to exclude all males.
- 3.7 The failure of Government and the EHRC to make clear statements about the parameters of existing anti-discrimination law is responsible for much of the current misunderstanding of what the law does and does not permit.

4 The statutory declaration

- 4.1 WPUK believes it should be possible for a GRC to be revoked, either where there is evidence that the certificate has been acquired for improper purposes or where a person chooses to detransition. This should allow for the rescinding of a Gender Recognition Certificate and the reinstatement of an original birth certificate. The process by which this could take place would need to be made clear and easily accessible.

5 Spousal consent

- 5.1 In our response to the 2018 consultation on reform of the Gender Recognition Act, we noted that the current provisions are very important and provide a degree of protection to the spouse of a person applying for a GRC.¹⁰ There are widespread social expectations placed on wives and female partners to abnegate their own feelings and wishes in favour of the self-actualisation of a husband undergoing the process of gender reassignment, which women may experience as coercive.¹¹
- 5.2 Up to the financial year 2013-14, interim GRCs accounted for four per cent of application disposals. Since the enactment of the Marriage (Same Sex Couples) Act in 2014, the number of interim GRCs has halved to two per cent. Married applicants who have gained consent from their spouse for continuation of the marriage following the acquisition of a Gender Recognition Certificate constitute eleven per cent of those granted full GRCs.¹²

¹⁰<https://womansplaceuk.org/wpuk-submission-uk-government-gra-consultation/#question7>

¹¹ <https://www.transwidowsvoices.org/our-voices>

- 5.3 WPUK is not aware of any evidence that the requirement for spousal consent to continue a marriage represents any practical obstacle to granting of a GRC. Rather it prevents applicants who wish to coerce or deceive a spouse (usually female) into continuing a marriage that they would prefer to end by divorce or annulment from doing so.
- 5.4 It is incorrect to call the requirement for spousal consent a “veto”, as made clear by Stephen Whittle OBE, Specialist Advisor to the Transgender Equality Inquiry of this committee:¹³
- 5.5 WPUK would therefore recommend that the current requirement for spousal consent remains in place. Annulment is an important route for women where divorce is not an acceptable option and must remain a provision of the Matrimonial Causes Act 1973. Independent, non-judgmental, non-directive emotional support and legal advice must be available for the spouse or partner of someone who identifies as transgender. Such support should also be available for the children of the family.

6 Age threshold for application for Gender Recognition

- 6.1 Both the UN Convention on the Rights of the Child and the Children Act 1989 define a child as someone under the age of eighteen. WPUK is concerned by the growing number of young people suffering from gender dysphoria, in particular the huge increase in young women being referred to specialist gender identity services.
- 6.2 Younger applicants for GRC (29 years of age and under) now account for 41 per cent of all applicants, compared to 12 per cent just a decade ago.¹⁴ Concerns have been raised that the causes of this increase have been inadequately investigated and this is a subject of an ongoing NHS England inquiry.¹⁵

¹² <https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-april-to-june-2020>

¹³ “These provisions are not an attack on the civil liberties or Human Rights of Trans people. They are there to protect the rights of the spouses of trans people. They do not give spouses any right of veto over a person’s application for a Gender Recognition certificate, rather they are designed to ensure that spouses are protected from unscrupulous actions by a spouse who is applying for a Gender Recognition certificate. ...women have long been a socially and legally disadvantaged group, especially within marriage. The very least we can do is support their right to know when they are married and what sort of marriage they are in. If they find that change to be unacceptable to them, then the very least the law should do is give them the facility to insist the marriage is ended whether by divorce or by annulment.” <https://whittlings.blogspot.com/2014/04/every-person-has-rights.html> Accessed 18 November 2020

¹⁴ <https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-april-to-june-2020>

¹⁵ https://www.england.nhs.uk/wp-content/uploads/2020/09/GIDS_independent_review_ToR.pdf

- 6.3 Given the requirement to live in the acquired gender for at least two years prior to application, Gender Recognition Certificates can already be granted to those who commenced the process as children. WPUK is concerned that reducing the age threshold to below the age of eighteen would increase pressure for earlier medicalisation of childhood gender nonconformity. We would like to see appropriate support from suitably trained professionals for young people with gender dysphoria as they move into adulthood.¹⁶

7 Impact of proposed changes on those applying for a Gender Recognition Certificate, and on trans people more generally

- 7.1 The committee has asked for evidence on reasons for the perceived discrepancy between the number of people who have been granted GRCs and the estimated number of people who are thought to identify as transgender. In advance of the passing of the Gender Recognition Act, both the UK Government's Report of the Interdepartmental Working Group on Transsexual People and the European Court of Human Rights (ECtHR) specified that the group with which they were concerned were those with a medical condition of gender dysphoria:

*"People with gender dysphoria or gender identity disorder live with a conviction that their physical anatomy is incompatible with their true gender role. They have an overwhelming desire to live and function in the opposite biological sex. Some people become aware of their transsexualism as children while others discover their feelings later in life. Once experienced these feelings are unlikely to disappear."*¹⁷

- 7.2 The size of this group was estimated as being between 2,000-5,000, with advocacy group Press for Change providing figures at the higher end¹⁸, and these relatively small numbers were incorporated into the ECtHR judgment against the UK Government when finding that there were "*no significant factors of public interest to weigh against the interest of this individual applicant.*"¹⁹ In moving the Bill through parliament the representatives of the government also stated that this was the demographic cohort that the legislation was designed to benefit.²⁰ Submissions by transsexual individuals who had pioneered the legislation by taking the UK government to the ECtHR and to the

¹⁶https://link.springer.com/epdf/10.1007/s10508-020-01844-2?sharing_token=u9PPA7NCRfIRAzUe_DsThPe4RwlQNchNBiy7wbcMAY5yrvzT8Pj6i1J_x87rmXaWg4j-55JY-L-KLtfOIDIh7u_JPeRY-rBK13gCkIXmoaCWPBgAOIs1EOEQzrF9rPTgYMwRzB5FkyKTCwuDlc-6PpcyrFBWf2231IgiB5Nqmpo%3D

¹⁷ <http://docs.scie-socialcareonline.org.uk/fulltext/wgtrans.pdf>

¹⁸ *ibid.*

¹⁹ <https://www.bailii.org/eu/cases/ECHR/2002/588.html>

²⁰ https://api.parliament.uk/historic-hansard/lords/2004/jan/29/gender-recognition-bill-hl#S5LV0656P0_20040129_HOL_228

European Court of Justice warned against too vague or wide a demographic being covered by the act.²¹

- 7.3 The term “transgender” has a much broader application. The leading LGBT+ charity, Stonewall, defines “trans” as:

“An umbrella term to describe people whose gender is not the same as, or does not sit comfortably with, the sex they were assigned at birth. Trans people may describe themselves using one or more of a wide variety of terms, including (but not limited to) transgender, transsexual, gender-queer (GQ), gender-fluid, non-binary, gender-variant, crossdresser, genderless, agender, nongender, third gender, bi-gender, trans man, trans woman, trans masculine, trans feminine and neutrois.”²²

- 7.4 This definition set out by Stonewall describes a different and much larger demographic than the one for which the GRA was intended.
- 7.5 The proposed changes would make the process of applying for a Gender Recognition Certificate easier for the cohort of individuals whose needs the Gender Recognition process was originally designed to meet. But it is likely to disappoint a wider cohort of people who identify as transgender and do not meet the criteria for a Gender Recognition Certificate.
- 7.6 If the government wishes to extend the provision to wider categories, then the burden of proof is on the government to make a positive argument rooted in human rights. Self-determination of sex is not a human right, any more than is self-determination of age.

8 Issues faced by trans people in accessing support services, including health and social care services, domestic violence and sexual violence services

- 8.1 We believe this is a question which is primarily directed at trans service users and it is right that the government and policy makers should listen to the voices of trans people when considering barriers to accessing services.
- 8.2 WPUK would like to see greater government investment in specialist services for all those who need them, including trans people. In order to understand the needs of any

²¹ Goodwin <https://publications.parliament.uk/pa/jt200203/jtselect/jtrights/188/188we31.htm> and Sheffield <https://publications.parliament.uk/pa/jt200203/jtselect/jtrights/188/188we31.htm>

²² <https://www.stonewall.org.uk/help-advice/faqs-and-glossary/glossary-terms#t>

population, it is vital that the government not only listens to marginalised groups but also gathers adequate data.

- 8.3 Given how poorly defined, heterogeneous, and varied the demographic in question is, it is not surprising that there is a paucity of reliable data on the difficulties that trans people have in accessing services. The few attempts to gather data on the trans population have been beset by significant methodological flaws.²³ In this context it is vital that robust datasets are used in order to be able to identify disadvantages for all groups with protected characteristics.²⁴

9 The Scottish Government's proposed Bill

- 9.1 The Scottish Government's Gender Recognition Reform Bill proposes a system of self-declaration for changing an individual's legal sex. WPUK has been critical of the proposals set out by the Scottish Government and responded to the 2019 consultation²⁵.

- 9.2 These proposals would de facto create a policy of "self ID", which the UK government has just rejected in the face of considerable public opposition. As far as we have been able to establish, no consideration has been given to the potential cross-border effects of reforming the GRA in one part of the UK but not elsewhere. Policy analysts MurrayBlackburnMackenzie state that "*As drafted, the [Scottish Government] proposals appear to leave open the possibility that people wishing to obtain a GRC by self-declaration could qualify for one by moving to Scotland for a relatively short period, and certainly that a person who came to Scotland to attend university, or for temporary employment, before returning to another part of the UK, would meet the residency test.*"²⁶

10 Equality Act protections for trans, non-binary, and gender fluid people

- 10.1 WPUK believes the Equality Act 2010 offers adequate protection to trans people. The definition of gender reassignment is sufficiently wide so as to protect people who are at the very first stage of proposing to undergo gender reassignment, as well as those going through the process, and those who have undergone the process.

²³<https://womenanalysingpolicyonwomen.wordpress.com/2017/06/06/house-of-commons-women-and-equalities-committee-transgender-inquiry-a-critique/>

²⁴ <https://www.tandfonline.com/doi/abs/10.1080/13645579.2020.1768346?journalCode=tsrm20>

²⁵ <https://womansplaceuk.org/wpuk-submission-to-scottish-government-consultation-on-gra-reform/> and <https://womansplaceuk.org/response-to-scottish-review-of-the-gra/>

²⁶ <https://murrayblackburnmackenzie.org/2020/02/09/scottish-gra-reform-proposals-uk-wide-effects/>

10.2 As it stands, the Equality Act 2010 protects people who make only partial changes to their 'characteristics of sex'. It also protects people who make changes to non-physical characteristics of sex (which we take to be 'gender' – that is stereotypes based on sex) as well as physical characteristics of sex. Furthermore, the Equality Act 2010 also provides protection from discrimination for people perceived to have the protected characteristic of gender reassignment, as well as those associated with someone having the protected characteristic of gender reassignment.

10.3 The law has recently successfully been used in a workplace harassment case to protect someone who identifies as non-binary which would suggest the Act provides adequate protection despite there being no legal definitions of the terms non-binary or gender fluid.²⁷

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²⁷https://assets.publishing.service.gov.uk/media/5f68b2ebe90e077f5ac3bb5a/Ms_R_Taylor_V_Jaguar_Land_Rover_Ltd_-_1304471_2018_-_judgment.pdf