

Submission to Women and Equalities Committee on Reform of the Gender Recognition Act

From: Women's Human Rights Campaign (WHRC) UK

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Who we are:

The Women's Human Rights Campaign is an international organisation based in the UK. It was set up in early 2019 to promote the Declaration on Women's Sex-Based Rights (<https://www.womensdeclaration.com/en/>) which argues that women's hard-won human rights are undermined or overturned by the admission of men who consider that they have a female gender identity to the category of women. These rights that are abrogated by the admission of men include the right to women only sports and the right to single sex spaces such as women's refuges and women's prisons. The WHRC has been signed by 12,704 individuals in 124 countries, and by 281 Organisations.

Introduction

The Declaration argues that including men with a female gender identity in the category women threatens women's human rights. Women's human rights in the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), 1979 are based on sex. Discrimination against women is defined in Article 1 of CEDAW as any 'distinction, exclusion or restriction made on the basis of sex'. The UN understands sex to be 'the physical and biological characteristics that distinguish males and females' (Gender Equality Glossary, UN Women).

Gender is defined by UN agencies as sex stereotypes, i.e. 'the roles, behaviors, activities, and attributes that a given society at a given time considers appropriate for men and women... These attributes, opportunities and relationships are socially constructed and are learned through socialization processes' (Gender Equality Glossary, UN Women). The Convention calls for the 'elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women' (Article 5). We consider that the practice of transgenderism clearly falls under this article because it is based on stereotyped roles for men and women.

In recent decades a confusion has been created as to the meaning of sex and gender. The adoption of sex stereotypes by a person of the sex to which they are

not usually attributed has, under the influence of campaigners for 'transgender rights', come to be seen as an innate condition which entitles a person to be counted as a member of the opposite sex. This has resulted in the introduction into law of the category 'gender' in a way which is profoundly troubling for women's equality.

Men who claim a female 'gender identity' are being enabled to access opportunities, services, spaces and protections set aside for women. This constitutes a form of discrimination against women, and endangers women's fundamental rights to safety, dignity and equality.

This has been a particular problem for lesbians because, as the Declaration states, 'The concept of 'gender identity' is used to challenge individuals' rights to define their sexual orientation on the basis of sex rather than 'gender identity', enabling men who claim a female 'gender identity' to seek to be included in the category of lesbian, which is a category based upon sex'. This undermines the sex-based rights of lesbians, and is a form of discrimination against women.

Executive summary

The WHRC submission focusses on the way in which any legislation which enables men with female gender identities to enter the category of women threatens women's human rights. It argues that the introduction of the concept of 'gender identity' to legislation in any way is in violation of the UK's obligations as a party to the Convention on the Elimination of All Forms of Violence Against Women (CEDAW) on two grounds:

1 'Gender identity' consists of sex stereotypes and CEDAW commits state parties to the elimination of sex stereotypes rather than their incorporation into the law.

2 The introduction of men into the category of women through gender recognition certificates or in any other way threatens women's human rights to dignity, safety and opportunities such as sex segregated sports, facilities and spaces.

The Gender Recognition Act 2004.

The WHRC argues that the GRA should be repealed because:

- It does not define gender. This creates great confusion and leads to the idea that men and women can change sex, especially because a gender recognition certificate, perhaps more accurately described as a 'sex

stereotype certificate', enables a person to change their sex markers on official documents.

- It creates confusion for other important legislation such as the Equality Act 2010 (EA) which, though it is based on sex and not gender, still contains the statement that changing 'gender' amounts to changing 'sex'. The EA includes the category of 'gender reassignment' but, confusingly, it suggests in its definition of 'gender reassignment' the idea that it is possible for a person to 'reassign' their biological sex 'A person has the protected characteristic of gender reassignment if the person is proposing to undergo . . . a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex' (Equality Act 2010, 7 (1)).
- It gives protection in law to 'gender', which, according to the UN consists of socially constructed roles which derive from the subordination of women and consist of harmful sex stereotypes. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) calls upon state governments to work towards eliminating sex stereotypes as a prerequisite for women achieving equality.

The Government's response to the GRA consultation:

Since the position of the WHRC is that the GRA is fatally flawed by giving protection in law to sex stereotypes, it is hard to answer the questions in this section. When the GRA was passed it was treated as if it was of no importance to anyone except a small group of persons who would apply for certificates. In fact, because it allows men to gain certificates saying that they are of the female sex, it had, and continues to have, immense implications for women's human rights. This was not considered at the time. There was no impact statement as to how it would affect women, and women's organisations were not asked for input. It enables members of a group of persons, men, adult human males, which does not constitute a category of persons requiring specific protections to represent themselves as members of a group of persons, women, adult human females which does require specific protection from men.

We argue that the process of receiving a sex stereotype certificate should not be made easier, rather the possibility for men to enter the category of women in this way should not be possible.

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

We do not accept that the problem of 'gender dysphoria' should be treated by encouraging men to believe that they can change gender/sex. Whilst legislation that enables this to happen exists, however, we consider that the requirement for the diagnosis should remain because it limits the numbers of persons who can qualify.

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

This should be retained as a minimum. Many men who cross-dress do so only occasionally and there is then a continuum of their involvement in the practice up to those who decide to do so fulltime. Some of the latter then decide to go back to part-time or change their minds about the whole enterprise. Removing or reducing this requirement is likely to encourage more dilettantes to apply for certificates.

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

Presently the statutory declaration states that 'the trans person' should state 'their intention to live in their acquired gender until death'. Gender consists of sex-stereotyped clothing and appearance and can, of course, be changed at any time. It is unreasonable to expect anyone to go on adhering to sex stereotypes for a lifetime. However, whilst the legislation is on the statute book it seems reasonable to retain this requirement to deter prospective applicants.

There is considerable evidence that transition can be temporary and both men and women are increasingly seeking to detransition (Caspian, 2019; Marchiano, 2020). Particularly this is the case in relation to women. There are now numerous support groups internationally for women who regret transitioning and return to seeing themselves as women and, usually, lesbians. The harms of transition to health and social functioning, to career and family connections and friendships can be considerable and there should be adequate social and medical support for people who have been encouraged to transition by the existence of legal approval.

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?

The spousal consent provision exists in the legislation as a way to protect women. It is entirely reasonable that women should have the power to prevent their male or female partners from legally changing their sex markers while they are still in relationships with them. Otherwise the wives and female partners

could find themselves apparently in same or opposite sex relationships that they had never consented to.

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

The WHRC considers that the age limit should not be lowered. The women who are detransitioning generally began their process of transitioning as teenagers. The changes they have undergone are devastating to their physical health as well as their social networks and careers. There is a good deal of evidence that brains do not mature until the early twenties and this supports raising the age rather than lowering it.

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

The introduction of 'gender' and 'gender identity' into legislation affects all women and children and the impact on all women and children should be considered. The WHRC considers it to be a mistake to approach the issue of 'gender identity' as if it just refers to a small handful of people who are suffering from a problem with this. An impact assessment of how any proposals will affect women and children should be conducted.

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

No, it does not. The Scottish Government's proposed Bill removes the requirements that exist in the 2004 Act to assess the seriousness of the applicant and introduces self-identification. The practice of self-identification creates serious challenges to women's human rights by increasing the numbers of men who may seek to enter women's spaces such as refuges, prisons and other services, and acquire opportunities assigned to women to, for instance, increase political representation. These threats to women's rights already exist with the present conditions of the GRA but would be substantially increased with a move to self-identification. Also, the Scottish Bill allows for children below the age of 18 to apply for a certificate whereas the WHRC argues here that the age should be raised rather than lowered.

Wider issues concerning transgender equality and current legislation:

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

The number of persons in the UK identifying as trans is estimated by the UK government at 200,000 to 500,000 (Government Equalities Office, 2018). The number of those who had in 2018 been issued with a certificate, however, was low at 4,910. Transgenderism is a social and historical construction not a biological one, and will increase or decrease as a result of social forces. The idea that a person can be 'transgender' is now much more accepted and a certificate is not necessary for such persons to acquire social tolerance and access to desired spaces and services. In this way the GRA may be becoming an irrelevance.

The forces that construct transgenderism include:

- The development of a body of theory called queer theory which has established in the academy the notion that sex is mutable and promoted the idea that transgenderism is transgressive and progressive.
- The development of the pornography industry of which one tenth consists of transgender pornography for men (Jeffreys, 2016). As Genevieve Gluck points out, 'In recent years, the transgender pornography category has soared in popularity. According to Pornhub's metadata, both "trans" and "transgender" porn searches have more than quadrupled in the three years between 2014 to 2017 and, by 2018, trans was ranked the fifth highest search term of the year' (Gluck, 2020).
- A recently developed and rapidly proliferating category of pornography called sissy hypno hypnotises men to feel as if they are women for the purpose of sexual excitement. There is considerable evidence from self-reporting by the consumers that this hypnosis can make them feel as if they are transgender. Gluck found that, 'there are countless threads posted to reddit questioning if gender dysphoria is brought on by exposure to pornography and the development of a sissy fetish' (Gluck, 2020). Andrea Long Chu also talks about this in his book, *Females* (2020).
- The normalisation of men's cross-dressing by medical professionals who until the last few decades understood this practice to constitute the sexual paraphilia of transvestism, has popularised and encouraged the practice.
- Legal recognition, increasing recognition by many arms of the state and organisations, and much positive coverage in the media has also encouraged the practice.

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.

Transgenderism is a work in progress. The language that is being developed to apply to the practice in which mostly men adopt the sex stereotypes usually associated with women is in flux and will constantly change because, unlike the terms man and woman, it has no material basis. The practice is the result of ideas in people's heads that change according to different social and historical forces and the influence of different groups of transactivist campaigners. This is exacerbated by the fact that 'gender' is never defined in legislation. The UN definition above which sees gender as consisting of sex stereotypes would not fit well with the GRA 2004 or the Equality Act 2010 because it would make both look foolish. Gender needs to be defined in legislation in such a way that it cannot be confused with sex but this would clash with the ability to legally change 'sex' by means of a 'gender' recognition certificate.

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?

The Equality Act is unclear because it contains the unclear category 'gender reassignment' which the GRA determinedly confuses with change of 'sex'. One result is that it has been misinterpreted to mean that men should be able to access single sex services. Presently a legal challenge is underway by the Authentic Equality Alliance which is seeking a Judicial Review of guidance by the EHRC which states: '*Where someone has a gender recognition certificate they should be treated in their acquired gender for all purposes and therefore should not be excluded from single sex services.*' This is not in accordance with the Equality Act and has led to most women's services being made mixed sex with the loss of protections for women and women's human rights. This urgently needs to be addressed so that women's protections can be reinstated.

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

The concepts 'gender-fluid' or 'non-binary' have been produced by popular culture and may not exist in the future. People who consider themselves members of these categories are not a special sort of person but simply those who refuse to adhere to the sex stereotypes usually associated with their sex. Very many persons refuse these stereotypes who do not adopt these particular labels. Many are feminists and lesbians. There should be no discrimination

against any persons for refusing to adopt the sex stereotypes associated with their sex and this would obviate any need to include such categories in legislation. What is needed is legislation to outlaw the imposition of sex stereotyped clothing or behaviour on any persons in the workplace or schools, for instance, because this is a form of discrimination.

Recommendations:

- The Gender Recognition Act 2004 should be repealed.
- It should not be made easier for people to gain gender recognition certificates.
- Gender should be defined in all the instances where it occurs in legislation to make it clear that it does not in any instance refer to 'sex'.
- There should be an inquiry into the ways in which the Equality Act 2010 can be made clearer as to the protection of women's rights to single sex spaces, services and opportunities.
- There should be an inquiry into the ways that women's agencies and services have been forced to admit men in order to access funding or in response to incorrect guidance so that protection can once more be afforded to women.

References

Caspian, James, (2019, 23 October). Why Detransitioners Frighten Trans Activists. Spiked. <https://www.spiked-online.com/2019/10/23/why-detransitioners-frighten-trans-activists/>

Gluck, Genevieve (2020, forthcoming 28 November). Pornography's Influence on Transgenderism: The Proliferation of Sissy Hypno on Social Media. *Feminist Current*.

Government Equalities Office (2018). Trans People in the UK. Assets Publishing Service. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721642/GEO-LGBT-factsheet.pdf

Jeffreys, Sheila (2016). Transgender Pornography: the Bimbofication of women. In Brunskell-Evans, H. (Eds.) *The Sexualized Body and the Medical*

Authority of Pornography (1st ed., pp. 155-174). Cambridge Scholars Publishing.

Marchiano, Lisa (2020, 2 January). The Ranks of Gender Detransitioners is Growing. We Need to Understand Why. *Quillette*.
<https://quillette.com/2020/01/02/the-ranks-of-gender-detransitioners-are-growing-we-need-to-understand-why/>

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