

Written evidence submitted by Gender Identity Research & Education Society (GRA1479)

## **The Gender Identity Research and Education Society's (GIREs) Submission to the Women and Equalities Select Committee (WESC)**

GIREs is grateful for the invitation to submit these comments to the Committee. The charity previously made written submissions to the Committee's Inquiry regarding transgender equality. Terry Reed made oral submissions to the Committee on behalf of GIREs (Sept 8<sup>th</sup> 2015). GIREs/Terry were cited 9 times in the Committee's Report.<sup>1</sup>

Submission word count: 2996

### **Section 1: The Government's Response to the GRA consultation**

- 1) The Government's intention to make the Gender Recognition Certificate (GRC) application procedure 'kinder and more straightforward' is welcome, but needs clarification. It isn't clear, for example, that serving prisoners, without access to computers and others who lack computer skills and/or have disabilities such as dyslexia, will still be able to apply to the Gender Recognition Panel (GRP) by mail. Use of a computer is not 'straightforward', or even possible, for everyone.
- 2) Reducing the fee of £140, to a 'nominal' amount is welcome but needs clarification. How will this relate to the potential financial relief in the current policy? There are individuals for whom *any* fee is an undue burden. Financial exemptions should be permitted. Reduction in the amount of 'evidence' required by the GRP, would reduce the costs of providing such evidence. Requiring explicit evidence regarding surgery, if undertaken or planned, is an irrational element of the present process, since surgery is not a pre-requisite. A 'self-determination' approach based on a sworn statement would reduce the stress that the cumbersome process inflicts on applicants, as well as the financial burden. The GIREs helplines demonstrate that trans people struggle to provide the required evidence, including sometimes evidence which *cannot* be provided. Recently, a person with a UK Birth Certificate but living overseas, was unable to obtain the documents demanded by the GRP, because their birth is not registered where they are currently living.
- 3) Documentary evidence regarding two years of social transition and a 'diagnosis' is often difficult to provide, especially where medical and other documents date back much further than 2 years. The self-determination approach would overcome this, and remove the emotional burden of 'proving' oneself by obtaining a 'medical opinion'. This diagnostic requirement tends to invite 'typical' narratives, carefully slanted to satisfy the expectations of the clinicians. This implies that the clinical opinion about the 'diagnosis' will be no more reliable than the direct personal evidence of the individual regarding their gender identity. Face-to-face interviews with the GRP are not permitted but an opportunity for dialogue, would be welcomed by some trans people. Furthermore, it is unhelpful to use language such as 'acquired' gender. Trans people seeking a GRC, are not 'acquiring' a gender identity, rather they are establishing, legally, the identity that they already have. "The Scottish Government considers that there are policy reasons, including international developments,

---

<sup>1</sup> GIREs citations at points: 49, 79, 101 147,162, 165, 191,217, 522

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/535764/Government\\_Response\\_to\\_the\\_Women\\_and\\_Equalities\\_Committee\\_Report\\_on\\_Transgender\\_Equality.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/535764/Government_Response_to_the_Women_and_Equalities_Committee_Report_on_Transgender_Equality.pdf)

for changing the GRA to move towards a statutory declaration-based system and away from the current system.”<sup>2</sup>

- 4) **The term ‘self-determination’ is notably absent in the Committee’s Terms of Reference. This is a regrettable omission, since self-determination is available in many other jurisdictions without the negative consequences that many have predicted.** A statutory declaration, in a lawyer’s office or before a Magistrate’s Court should be regarded as a sufficient basis on which to establish a self-determined, permanent change of the birth certificate, and facilitate the updating of other legal documentation, to match an individual’s identity. The Scottish proposal to criminalise fraudulent claims, might help to satisfy those opposed to the simplification of this process. Cost implications must also be taken into account when considering the financial outlay. An unenrolled Deed-Poll is a cheaper option, and equally appropriate in establishing ‘self-determination’.
- 5) **The Historic Trans Resolution Adopted at Council of Europe:** On April 22<sup>nd</sup> 2015, the Parliamentary Assembly of the Council of Europe (PACE) adopted a comprehensive resolution on trans human rights, addressing access to healthcare, depathologisation and anti-discrimination legislation. The Assembly calls upon Member States to “develop quick, transparent and accessible procedures, based on self-determination”.
- 6) Jurisdictions that have already introduced self-determination include: Ireland, Argentina, Denmark, Mexico City, Malta, Norway, California, Belgium, Pakistan, Portugal, Chile, Germany and Spain.
- 7) In Ireland, trans people over 18 can now apply to have their gender identity legally recognised by completing a simple form, which includes a Statutory Declaration; several hundred individuals have done so. There have been no reversals and no frauds. In 2018, a Civil Registration Office in Argentina permitted the deletion of the gender marker in an individual’s legal documentation, demonstrating a flexibility that is, sadly, lacking in England. Such a ‘deletion’ would make travel safer when entering or leaving jurisdictions that are hostile to trans people, and possibly enable a temporary presentation in line with birth sex, to avoid discovery.
- 8) Gender diversity is now reclassified in the International Classification of Diseases (ICD11), as non-psychopathological. At the time of the previous WESC Enquiry, the World Health Organisation (WHO) was considering this change. GIRES gave oral evidence that medical providers were required, inter alia, to take account of etiology when assessing people for treatment. Accordingly, clinicians other than psychiatrists may become specialists and be eligible to care for gender diverse people.<sup>3</sup> A mental illness diagnosis is no longer relevant when considering self-determination.
- 9) ‘Spousal consent’ must be reconfigured so that it cannot amount to ‘spousal veto’. Ethically and legally, non-trans spouses must be informed of unavoidable legal changes to their relationship with their transgender spouse. Grant of a GRC as well as conversion from

---

<sup>2</sup> <https://www.gov.scot/publications/gender-recognition-reform-scotland-bill-consultation-scottish-government/pages/6/>

<sup>3</sup> Gender specialists may be from many different clinical backgrounds, some specialising in mental health: psychologists, psychiatrists, counsellors or therapists, but they may also be GPs, endocrinologists, nurses, etc. ‘Good Practice Guidelines for the assessment and treatment of adults with gender dysphoria’ (2013)

## Written evidence submitted by Gender Identity Research & Education Society (GRA1479)

marriage to same sex marriage or civil partnership and vice versa can be achieved with the spouse's agreement. However, lack of agreement, must not be used to prevent access to a GRC for the transgender individual. When the application is made for a GRC, we suggest that the non-trans spouse be given official notice of the application, and granted a reasonable period (say 3 months) to confirm receipt of that notice. If confirmation is not provided within that time, the application will be processed without it. Accordingly, a more apt term for this requirement would be '*Informing Spouses*'. The Scottish policy offers a more benign process. "If your marriage was registered in Scotland, you can use an interim certificate to apply to the sheriff court for a full certificate. You do not need to end your marriage first."<sup>4</sup>

- 10) The wellbeing and mental health of young people who transition socially would be considerably improved, by having access to legal recognition earlier than 18 years old. More liberal approaches to gender recognition for young people exist elsewhere, and could serve as models for England and Wales. Argentina, for instance, has created an official administrative procedure whereby any minor with the support of their parents or guardians, may change their sex as listed in the civil registry. Neither judicial approval nor proof of psychological or medical treatments is required.
- 11) Norway's policy allows trans people from age 16 to have their gender recognised without any compulsory requirements. Six-year olds and upwards are also able to determine their gender, with the consent of both parents. Where one parent opposes reassignment, the authorities may accept the child's decision, if it is regarded as "in the child's best interest".<sup>5</sup> This affirmative approach to gender diverse young people is reflected throughout their legal, medical and social interactions. Scotland is considering lowering the age of access to a GRC to 16 years old.
- 12) Learning from other models, notably those close to home, such as the current Scottish proposals would be a big step forward. These proposals, if adopted in the rest of the UK, would stop the current application through the GRP, and replace it with a simple process of direct application to the Registrar General, after a period of three months living 'in role'. A further three months of reflection time is required before granting the GRC. As in England, a lifelong commitment is required, in a Statutory Declaration to a Notary Public, or a Magistrate. Again, cost implications need to be taken into account, and mitigated or not imposed, where there is financial hardship.
- 13) In sum, the suggested Scottish amendments to the process of accessing a GRC are worthwhile, especially in avoiding the 'diagnosis' requirement, and specifying a shorter time frame. However, they are still not the simple self-determination that is available elsewhere. Those seeking a GRC from outside the UK, are more challenged under the current policy than are local applicants. The Scottish system appears to be more straightforward.<sup>6</sup> Regulations around costs generated by the demands of the proposed England and Wales process refer to 'nominal costs' but these are unspecified; would there be financial exemptions in selected circumstances? The simpler proposed Scottish process still needs to be flexibly applied according to a person's means.

---

<sup>4</sup> <https://www.gov.uk/apply-gender-recognition-certificate/if-youre-married-or-in-a-civil-partnership>

<sup>5</sup> <https://www.ilga-europe.org/resources/news/latest-news/norway-introduces-self-determination>

<sup>6</sup> Scotland "Provides recognition for GRCs issued in England and Wales or Northern Ireland and for gender recognition obtained overseas."

## Section 2: Wider issues: transgender equality and current legislation

The official estimate of population size is 200,000-500,000.<sup>7</sup> In the 2018 EHRC survey, thirteen years after the GRA became active, just 4,910 people had obtained a GRC.<sup>8</sup> In the Government Equalities Office' study, reasons for not seeking a GRC were: 44% thought they did not satisfy the requirements, 38% found the process too bureaucratic, and 34% found it too expensive.<sup>9</sup>

1. The relatively low uptake of the GRC arises for these and other reasons. The process is cumbersome, intrusive and costly and may impact negatively on couples' relationships. The Government's proposed improvements in accessing a GRC will not, on their own, overcome the reluctance of many binary trans people to apply. Non-binary, non-gender and other gender diverse people remain excluded from gender recognition, yet these groups outnumber those with binary trans identities by a factor of 3 to 4.<sup>10</sup>
2. Except for the acquisition of a new Birth Certificate, there are few benefits for trans people that do not already exist in the Equality and Human Rights legislation, at least by implication. Confidentiality, privacy, protection against discrimination, respect for their identity, are already protected. The very recent, and welcome, extension of the Equality Act protection to non-binary and non-gender individuals under the gender reassignment characteristic, through case law,<sup>11</sup> makes the GRC, in its present form, an even less welcome or helpful document by comparison.
3. The improvements being considered in Scotland, if introduced in England and Wales, although welcome, would still leave all these countries lagging behind the Republic of Ireland where self-determination has been available since 2015.
4. Regarding the use of language in both Equality legislation and in the Gender Recognition Act, this either was from the start, or has become, unhelpful. As stated in Section 1, the term 'acquired' gender in the GRA is inaccurate. The term 'transsexual' is totally outdated, and even offensive to most trans and gender diverse people. Conversely, other examples of use of language of the Equality Act, with regard to the 'protected characteristic of gender reassignment' have proved helpful. Rather than the inadequate suggestion that non-binary people might be protected from discrimination because they are 'perceived', even if wrongly, to be binary transgender, recent case-law, mentioned in point 2 above, has interpreted the wording regarding the intention or action of undergoing or having undergone "a process, or part of a process", to embrace the wider non-binary, non-gender

---

<sup>7</sup> GEO:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/721642/GEO-LGBT-factsheet.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721642/GEO-LGBT-factsheet.pdf)

<sup>8</sup> <https://www.equalityhumanrights.com/sites/default/files/consultation-response-gender-recognition-act-18-october-2018.pdf>

<sup>9</sup> op.cit.(GEO) July 2018 LGBT Survey Research Project

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/721704/LGBT-survey-research-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721704/LGBT-survey-research-report.pdf)

<sup>10</sup> Kuyper, L., & Wijzen, C. (2014). Gender identities & gender dysphoria in the Netherlands. *Arch. of Sexual Behavior*, 43, 377–385.

<sup>11</sup> *Taylor vs Jaguar Land Rover's plant*. The complainant, Ms Taylor, who identifies as non-binary, won her case against her employer. Her complaint was that she was harassed and directly discriminated against on the grounds of gender reassignment. <https://www.forbes.com/sites/jamiewareham/2020/09/16/non-binary-people-protected-by-equality-act-in-landmark-ruling-against-jaguar-land-rover/?sh=52cbc9ce79be>

identities. The fact that these groups remain excluded from the Gender Recognition Act seems discriminatory and it puts the GRA in conflict with equality legislation. The language used is unnecessarily patronising tone inherent in the words: 'undergoing, having undergone'. Why not: 'undertaking', 'having undertaken'? Also, updated names, pronouns and titles should not be described as 'chosen' or 'preferred', but accepted as simply the individual's name/pronoun/title.

5. Regarding single-sex spaces, especially women's spaces, particularly in public toilets, ill-informed debate has ballooned from the inexcusable behaviours of violent men towards their partners in domestic situations, to the fanciful suggestion that men dressed as women would be a similar threat in women's spaces, especially if supported by a GRC, accessed by self-determination. The GRC, as we know, does not indicate that genitalia have been refashioned, nor is it necessary in order to access women's toilets. Any man, whether dressed as a woman or not, with or without a GRC can enter these facilities. A GRC, no matter how it is obtained, does not permit assaults on women. A man assaulting a cis or trans woman would find that a GRC was an aggravating factor, not a mitigating factor in a Judicial context.
6. Liz Truss recently stated that the government aims, first, at protecting "single-sex spaces for women"(implicitly cis-women), and "**secondly** making sure that transgender adults are free to live their lives as they wish without fear of persecution, whilst maintaining the proper checks and balances in the system". These statements are potentially in conflict. The 'second' aim, cannot be achieved where 'checks and balances' are interpreted as justifying the exclusion of trans women from women's toilet facilities, which they have used for decades without incident, including in those jurisdictions mentioned above where there is 'self-determination'. The Equality Act (Sch.3) already provides added protection in single sex spaces such as women's refuges where the heightened sensitivity of women who have suffered abuse at the hands of their male partner is, rightly, taken into account. Accommodating a trans woman separately in these circumstances may be regarded as appropriate, where it can be shown to be 'proportionate to a legitimate aim'.
7. Accordingly, GIRES suggests that the Equality Act itself does not need amending, but 'further guidance' might be helpful. Examples could be given of how 'proportionality' works in practice, where checks and balances are *legitimately* applied, and are already practised in refuges.<sup>12</sup> Separate accommodation can be shown to be proportionate, and possibly agreed by a trans woman in a refuge. However, there is **no** evidence to support the argument that exclusion of trans women from women's toilets is 'proportionate' or necessary.
8. Many service providers and support organisations have accepted that not everyone is at one end of a gender spectrum or the other. Awareness raising, training and an emphatic application of equality and human rights legislation are important in supporting all trans people, but especially those who are outside the binary model.

---

<sup>12</sup> Rape Crisis Scotland <https://womensaid.scot/wp-content/uploads/2019/12/Participating-in-Equally-Safe-in-the-Highlands-and-Islands-Report-Summary-Digital.pdf>

9. Gaps in knowledge, in medical, and social contexts, as well as education, employment, and the Criminal Justice system, are now treated more seriously. Articles have recently appeared in the *Mensa* journal,<sup>13</sup> regarding the myths around single-sex spaces, and the Magistrates Association publication, regarding domestic abuse in LGBT+ situations since these are appearing more in our courts.<sup>14</sup> These are welcome acknowledgements that we should not rely on assumptions and stereotypes, when providing services to the public. An example of safe, ethical practice, is the trans-inclusive 'Scottish Women's Aid and Rape Crisis Scotland',<sup>15</sup> working with the Scottish Transgender Alliance "to improve gender identity and gender reassignment equality rights and inclusion in Scotland."<sup>16</sup>
10. The opening of further treatment centres is welcome, especially as a more liberal approach to treatment is concurrently being introduced in these centres. However, given the exponential growth in the numbers seeking treatment, three further Clinics is inadequate. There are 13,500 people on the waiting list, averaging two years for a first appointment, causing widespread, mental health issues in this population.<sup>17,18</sup> The pre-existing NHS undertaking of a maximum of 18 week waiting times, is not even on the horizon. To start addressing this crisis, primary care teams need to be upskilled rapidly, a wider range of clinicians may be involved,<sup>19</sup> and 'bridging prescriptions' should be provided in line with the 2013 Good Practice Guidelines.<sup>20</sup> Existing tools, such as e-learning can help to fill the immediate vacuum in medical education. GIRES offers such training modules, earning CPD points,<sup>21</sup> based on the current NHS protocols.
11. So far, the government, while acknowledging the need to address the issue of 'conversion' therapies, has only done so in respect of LGB groups. Conversion therapy is also causing significant harm in the trans population. Research indicates that this is occurring mainly in religious contexts but, occasionally, in medical contexts also.<sup>22</sup> This inexplicable omission of support for transgender people who have been subjected to these practices, exemplifies the greater difficulties that trans people experience in accessing services which are available to others. Those services which are available are often typified by ignorant, or even hostile attitudes from professional staff.<sup>23</sup>

---

<sup>13</sup> *Mensa*, Oct 2020, Beyond the Myths, Terry Reed

<sup>14</sup> Prof. Catherine Donovan et al. The training needs of magistrates in relation to domestic abuse. Report Oct/Nov 2020, Magistrates Association report, *Magistrates Magazine*. <http://bit.ly/magistrate20112>

<sup>15</sup> Rape Crisis Scotland <https://womensaid.scot/wp-content/uploads/2019/12/Participating-in-Equally-Safe-in-the-Highlands-and-Islands-Report-Summary-Digital.pdf>

<sup>16</sup> <https://www.rapecrisisscotland.org.uk/links/>

<sup>17</sup> <https://www.bbc.co.uk/news/uk-england-51006264>

<sup>18</sup> <https://www.gendergp.com/the-waiting-list-for-nhs-gender-identity-clinic-gic-patients-experiences/>

<sup>19</sup> "Gender specialists may be from many different clinical backgrounds, some specialising in mental health: psychologists, psychiatrists, counsellors or therapists, but they may also be GPs, endocrinologists, nurses, etc"  
Good Practice Guidelines, 2013

<sup>20</sup> CR181 Royal College of Psychiatry's Good Practice Guidelines for the assessment and treatment of adults with gender dysphoria, 2013 <https://www.rcpsych.ac.uk/docs/default-source/improving-care/better-mh-policy/college-reports/cr181-good-practice-guidelines-for-the-assessment-and-treatment-of-adults-with-gender-dysphoria.pdf>

<sup>21</sup> <https://www.gires.org.uk/e-learning/gender-diversity-for-primary-care-teams/>

Then scroll down for direct link

<sup>22</sup> GIRES is a member of the team studying the highly negative effects of Conversion Therapy in the trans population.....

<sup>23</sup> GIRES is a member of the Transforming Futures project which is conducting studies into deficits in Healthcare and

**Key points:**

- The Scottish approach would be a great improvement, though not the self-determination model that is already available elsewhere. ‘Nominal costs’ suggested for England and Wales needs further explanation; it should include zero costs in cases of hardship.
- Language, especially in the GRA, needs updating in order to avoid unnecessary medical diagnoses, or patronising, disrespectful implications.
- Spousal ‘consent’ should be replaced with an acknowledgement of ‘information’ by the non-trans spouse, regarding the change in legal status of the relationship.
- The age of access to gender recognition should be lowered, following existing models. The impact on young trans people and their families, would be: fewer mental health issues and fewer financial concerns. Robust requirements for equality and diversity education and practice in schools and universities should be obligatory, to support the changes in the GRA.
- Applicants for a GRC are few because the current requirements are unnecessarily medicalised, intrusive, time-consuming, and costly, potentially having a negative impact on marriages or civil partnerships. The new Birth Certificate aside, most protections are already present in Equality and Human Rights legislation, the former having been recently extended to cover non-binary, non-gender, and gender fluid groups.
- GRCs should also be available for gender diverse people whose identities are non-binary. It is discriminatory that this group is excluded from the benefits derived from the documentation available to the binary groups.
- Trans women MUST NOT be excluded from women’s spaces. The present exemption under schedule 3 Equality Act, permits separate accommodation of trans women, if ‘proportionate to a legitimate aim’. This is appropriate in ‘refuges’ but the wording is open to wide interpretation. ‘Further information’ would be helpful, about the interpretation of ‘legitimate aims’ and ‘proportionality’. These MUST aim to include, rather than exclude, trans women.
- GIRES recommends: a straightforward application process with little or no financial impact, based on the self-determination model, without the need for medical diagnosis; already available elsewhere for gender diverse people across all age groups, from 6 years old in Norway. Other requirements, linked with the wellbeing of this population include: more easily accessible medical services, more liberal treatment protocols generally; government to make rigorous demands on employers, schools, universities to actively pursue equality and inclusion policies for trans people.

November 2020