

Gender Recognition Act Call for Evidence **Submission from Nottingham BiTopia**

Summary

Nottingham BiTopia is a social and support group for bisexual people in Nottingham and the East Midlands that has been running since January 2014. A number of our members are transgender, non-binary or in relationships with such people. We regularly support bisexual people coming to terms with their sexual orientation and associated gender identity issues, and with related issues such as poor mental health and experiencing harassment. In our experience trans people often face considerably worse mental health issues as a result of inadequate transgender healthcare services, obstacles towards transitioning (both medically and legally) and experiencing alarmingly high levels of harassment and abuse.

We believe that the current process in the Gender Recognition Act is unduly burdensome and should be reformed to be de-medicalised and based on self identification. A Gender Recognition Certificate is primarily a legal and administrative document and the process for obtaining one should reflect this.

As a group we, as bisexual people, believe that trans rights are human rights, trans women are women, trans men are men and non-binary identities are valid.

Terms of Reference

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

Our view is that the Government's proposed changes are inadequate and do not go far enough to meaningfully make the process kinder and more straight forward. The Government has proposed to make some minor administrative changes that do not address the fact that this is an unnecessarily difficult and degrading process.

2. 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?

We believe the fee should be removed. A Gender Recognition Certificate is effectively a new birth certificate obtained to reflect a trans person's new gender. It is an important legal document that grants a trans person legal recognition of their gender identity. No person should be forced to forego such a right on financial grounds. While there may be some justification for a small fee to cover administrative expenses, we believe that this would have to be means tested and that it would most likely cost more to administer such a means tested system than to have no fee for all applicants.

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

We believe that this requirement should be removed and that the whole process should be de-medicalised. The reasoning for this is twofold.

Firstly, it is extremely degrading and cumbersome for applicants for a Gender Recognition Certificate to have to obtain a diagnosis of gender dysphoria. It predicates the obtaining of

an important legal document on a medical decision diagnosis that may be difficult and time consuming to obtain for reasons that are entirely outside an applicants control, such as the well documented excessive waiting times for transgender treatment services.

Secondly, the purpose of a gender dysphasia diagnosis is to access medical treatment. Making a diagnosis a prerequisite to obtaining a Gender Recognition Certificate effectively makes medical professionals decision makers in a legal process. Medical professionals should not be put in such a position, as they should be free to diagnose their patients taking into account only the best medical interests of each patient, without needing to think of the potential legal and administrative consequences this may have on the patient.

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

We believe that this requirement should be removed, as it is degrading, impractical and unduly burdensome for applicants. Two years is an excessively long period of time for a person to have to wait before obtaining legal recognition of their gender identity. The requirement in section 2(1)(b) of the Gender Recognition Act is worded in an unhelpfully vague and nebulous way, as it is unclear how to prove that someone has been living in an acquired gender and what constitutes such proof is highly subjective, particularly in a modern society where our social and scientific understanding of gender is continually changing. Finally, as a practical matter, it is difficult for someone to meaningfully live in their acquired gender without the legal recognition that a Gender Recognition Certificate grants them.

In summary, we believe that a signed statutory declaration with appropriate perjury penalties should be sufficient to prove that an individual is living in their acquired gender.

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

We believe that a sensibly worded statutory declaration would be adequate and ensure that only those with a genuine and sincere desire to change their gender will undergo the process.

6. 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?

We believe that this provision urgently needs to be reformed. It is not right that a spouse or civil partner can prevent a trans person from obtaining legal recognition of their gender. This has the potential to be abused and used to exert control over trans people during a critical and vulnerable time in their transition.

Should the Government legislate to enable “no fault divorces”, as it considered doing during the 2017-2019 parliament, the rights of a spouse or civil partner who no longer wishes to remain married or in a partnership with a trans person would be adequately protected. In the alternative, we believe that allowing a spouse’s obtaining of a Gender Recognition Certificate to be grounds for a divorce would provide adequate protection without infringing upon the rights of a trans person to obtain legal recognition of their gender.

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

We believe that the age limit of 18 is appropriate, providing that the current discrimination protections in the Equality Act 2010 remain in force to protect the rights of underage trans people who do not have a Gender Recognition Certificate and that guidance issued by the Department for Education and Government Equalities Office ensures that underage trans people are protected from harassment and discrimination. We believe that it is critical that there are adequately funded Gender Identity Development Services for people under 18 so that they can access non-permanent gender transition treatment within a reasonable amount of time.

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

We believe that the proposed changes are inadequate and will therefore fail to have the desired impact on trans people, namely of making it easier for them to obtain a Gender Recognition Certificate.

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

We believe that any reform of the Gender Recognition Act should expand the criminal offence under section 22 (prohibition on disclosure of information) to cover not just persons acting in an official capacity but anyone who obtains protected information and deliberately discloses it with malicious intent. A common tactic by transphobic people is to try to obtain trans people's original birth certificates to identify their prior name (often referred to as a "dead name") and then referring to them by this to harass and degrade them. A general criminal offence covering such behaviour (with appropriate safeguards such as a requirement to prove malicious intent) would protect the dignity and safety of trans people who have obtained a Gender Recognition Certificate.

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

We believe that the Scottish Government's proposed Bill is significantly better than the Gender Recognition Act 2004 and that it would be beneficial to have a similar approach in England and Wales to ensure that trans people throughout the UK have the same right to legally change their gender without being subject to undue burdens or an undignified process.

Wider issues concerning transgender equality and current legislation

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

We believe that the process for obtaining GRCs is so burdensome and time consuming that many trans people choose not to go through it, particularly when they already have to go through a lengthy and difficult process to obtain medical treatment, which will often be their primary focus.

12. 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.

We believe that these two pieces of legislation are separate and should be kept separate. The Gender Recognition Act creates a process by which trans people can obtain legal recognition of their gender identity, whereas the Equality Act guarantees certain protections to all trans people regardless of whether they hold a Gender Recognition Certificate. We believe that this distinction should be maintained, as a vast number of trans people would be stripped of their rights and dignity if the protections in the Equality Act only applied to trans people with a GRC.

13. 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?

We believe that the provisions in the Equality Act are clear and proportionate. We consider the Equality Act to be a world leading piece of anti-discrimination legislation, as demonstrated by US President-elect Joe Biden's pledge to enact a similar piece of legislation within his first 100 days in office. While minor changes to the wording of the Equality Act may be helpful (for example changing the wording of the protected characteristic "gender reassignment" to "gender identity"), we believe it is critical for the UK's LGBT+ community that none of the protections in the Act are removed or watered down.

We are aware that a number of groups purporting to represent the interests of lesbian, gay and bisexual ("LGB") people, and women, have been actively campaigning against reform to the Gender Recognition Act and to remove protections from the Equality Act. We would urge the Committee to disregard any such suggestions, which do not reflect the views of the UK's LGBT+ community. Such groups misrepresent the threat trans people allegedly pose to LGB people and cisgender women (indeed the alleged threat is entirely theoretical and unsupported by any evidence) and ignore the fact that trans people, particularly trans women, experience some of the highest levels of violence, harassment and discrimination. We would urge the Committee instead to listen to established and respected groups such as Stonewall and Mermaids who represent the views of the vast majority of the LGBT+ community and have years of experience supporting LGBT+ people.

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

We believe that the protections are adequate, although it may be beneficial to simplify the wording of the protected characteristic to "gender identity" as mentioned above. We believe the bigger barrier is enforcing those protections. For example, it is costly and difficult for a trans person to obtain legal redress if they are discriminated against, and trans people have faced a rising level of hate crimes over the last few years, which the police often lack the resources to adequately investigate. We believe that rather than further legislative changes to the Equality Act, increased funding for support services for trans people and hate crime policing would ensure that the existing protections can be enforced.

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

The biggest problem trans people currently face when accessing support services is inadequate funding for such services and a lack of understanding around the needs of trans people and challenges they face. This has been made worse in recent years through an increasingly toxic media environment, which has at times portrayed trans rights as a controversial issue in which the views of people opposed to trans rights should be given equal value to those of trans people struggling to survive. We would urge the Committee to take steps to ensure increased funding for support services and that the Government commits to protecting and upholding trans people's rights regardless of the toxic media environment.

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

We would support legal or administrative reforms to recognise and support non-binary people. While this is a larger topic that would merit a consultation in its own right, we would offer the initial suggestion of better protections under the Equality Act (for example having "gender identity" as a protected characteristic) and allowing gender neutral markers and titles to be used on identity documents.

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