

Evidential Submission to the Women and Equalities Committee on Reform of the GRA

Executive Summary

- The government was right to reject calls to allow people to self-declare their 'gender' and gain a legal change of 'sex'
- More psychological support is needed for people confused about gender.
- SEX and Gender should NEVER be conflated. I call on the government to clarify sex-based rights to the public and to compel organisations to meet their SEX based obligations under the law.
- Where Organisations have confused sex and gender and have enforced an illegal 'gender' segregation in place of a legal SEX based segregation, the government has a duty to reverse this.

1. Introduction

I am a woman, and a campaigner for women's rights. I research and study the impact of laws relating to women and girls, and any changes to the nature of their legal recognition as females and their rights pertaining to that. I write and contribute to various women's rights organisations.

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

2.1. YES.

More clinics are a good move. More psychological support is required for people who are confused about gender, and who conflate this confusion with a futile wish to attempt to change sex through physical interventions. It's very important that psychological support to help people who are distressed about 'gender' to accept their sex is not inaccurately labelled 'conversion therapy'. Sex cannot be changed, and psychological support to help people who erroneously believe it can be is not 'conversion therapy' any more than psychological support for a girl with anorexia who believes she is fat is 'conversion therapy'.¹

2.2. Evidence suggests that too little psychological support is available to people who are distressed about what they perceive to be the gender expectations imposed upon their sex². The reality of biological sex – which cannot be changed and remains immutably male or female as observed at birth, despite every medical intervention – must be clearly distinguished from the stereotypical roles and expected attributes imposed by society and culture upon each of the two sexes; this is what gender is.³

It is entirely normal and a healthy human reaction to reject unfair sex-based stereotypes imposed upon your sex; to reject gender. What is not healthy, is to futilely attempt to reject bodily sex

¹ <https://www.transgendertrend.com/children-left-unprotected-by-new-memorandum-of-understanding-on-conversion-therapy/>

² <https://link.springer.com/article/10.1007/s10508-020-01844-2>

³ <https://web.archive.org/web/20170205171858/http://apps.who.int/gender/whatisgender/en/>

through damaging interventions to healthy bodies, whilst embracing and enforcing the stereotypes associated with each sex as if they themselves were valuable.

3. 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?

3.1. NO.

This crucial clause, the SPOUSAL EXIT CLAUSE, allows women (and men) to safely exit a heterosexual marriage contract before it is converted WITHOUT THEIR CONSENT into a same sex marriage (or vice versa, exit a same sex marriage), an act which falsifies and negates their own experience, their own sexuality, and even the facts of record – it is apparently permissible to change the real details of the marriage such as location and date to preserve the falsified rewriting of historical fact.⁴

A marriage is a record of fact between two people. It should never be permissible for one party to change those facts to a fiction without the consent of the other party involved in the marriage. It should never be permissible to change fact to fiction at all, but the GRA already allows for this in order to hide the cascading conflict of facts and fiction that results from first endorsing the legal fiction of changing sex on a birth certificate.

3.2. Evidence of impact upon spouses:

<https://www.transwidowsvoices.org/gra-reform-guidance>

3.3. Evidence of the allowable falsification of marriage certificate details:

3.3.1. Falsification of marriage location, and officiant:

“If you had a religious marriage” (eg in a church) “then **your new certificate will indicate that you married in a register office in the presence of the superintendant that was in charge there at that time.** They will usually use the register office that was nearest the place you actually got married, but you may be able to request a different register office if that is preferred”

3.3.2. Falsification of marriage date:

“If you married before 29th March 2014 then you will be given a choice. If you want to then you can keep the date of the original marriage on your new certificate, however unless you both obtained GRCs at the same time the new marriage certificate will reveal the one person has changed their legal gender. This is because at the time of your marriage it was not possible for a legally same sex couple to marry in England or Wales. The other option is to choose a date in the future. **You can pick any date**, but you will not get a new marriage certificate until after this date has passed. This option allows you to keep the anniversary date of your original marriage, but alter the year so that the marriage certificate won't out you. You don't have to pick your anniversary date though, you can pick any date you like as long as it is in the future.”⁵

3.4. The impact of changing legal sex involves a subsequent cascade of lies which impacts a spouse. To cover the truthful fact that a man and a woman were married on date X, at location Y, by officiant Z, the law has expressly allowed the record to be altered retrospectively to change all of these facts to fictions.

⁴ https://www.familylaw.co.uk/news_and_comment/the-legal-process-for-gender-change

⁵ <https://mermaidsuk.org.uk/wp-content/uploads/2019/12/gender-recognition-guide.pdf>

Removing the spousal exit clause would force an unwilling spouse into a falsified marriage record that states they married a woman, not a man, at a fictional location, rather than the real one, on a date they did not, officiated by a person who was never there, rather than the person who actually did officiate – all without their consent.

- 3.5. Any proposed change to remove this clause must never be allowed.
Consent of a spouse before changing a marriage record is imperative.
The Spousal Exit Clause must remain intact.

4. Are there challenges in the way the Gender Recognition Act 2004 and the Equality Act 2010 interact? For example in the different language and terminology used across both pieces of legislation?

4.1. CLARITY OF LANGUAGE

Sex based rights and protections for girls and women are being eroded because of the conflation of the terms 'sex' and 'gender'. 'sex' is a protected characteristic, it refers to biological sex (not 'gender') and it protects the rights of girls and women as the female sex. 'Gender' is not a protected characteristic, nor is it a well-defined term. It should never be used in place of sex, nor should any organisation or institution presume that everyone believes in, let alone possesses some type of invisible and unquantifiable 'gender identity'. The Equality Act 2010 clearly intends 'sex' to mean 'biological sex' and not 'gender'. This becomes abundantly apparent in the accompanying explanatory notes to the EA exemptions, which illustrate scenarios that reference biological sex alone, and distinguishes clearly how women may require services that only relate to female biology which are legitimate legal reasons to exclude male people who have gained 'legal female' status. In these scenarios the law clearly allows a distinction between two 'types' of women, who on paper at least are indistinguishable, both having legal female status. The distinction the law allows between these two apparent women is on the basis of SEX. Since their legal sex is identical, and in both cases they are each documented as legally female, the only possible meaning the law must hold that still allows such a distinction, is BIOLOGICAL SEX.

4.1.1. EVIDENCE THAT 'SEX' IN THE EA2010 MEANS BIOLOGICAL SEX

"Single sex services are permitted where: only people of that sex require it;

Example: a cervical cancer screening service to be provided to women only, as only women need the service;"

This example, provided in the explanatory notes to EA2010 Schedule 3, part 7. Para 27, demonstrates with perfect clarity that references to 'sex' and 'women' are references to biological sex, not legal sex, and not gender identity.⁶

4.2. OTHER EXAMPLES OF PERMITTED EXCLUSION OF THE OPPOSITE SEX PROVIDED IN THE EA2010 EXPLANATORY NOTES

4.2.1. *a fathers' support group to be set up by a private nursery as there is insufficient attendance by men at the parents' group;*

4.2.2. *a domestic violence support unit to be set up by a local authority for women only but there is no men-only unit because of insufficient demand;*

4.2.3. *separate male and female wards to be provided in a hospital;*

4.2.4. *separate male and female changing rooms to be provided in a department store;*

⁶ <https://www.legislation.gov.uk/ukpga/2010/15/notes/division/3/16/20/7>

4.2.5. *a massage service to be provided to women only by a female massage therapist with her own business operating in her clients' homes because she would feel uncomfortable massaging men in that environment.*

All of the above examples are laid out in the law itself as examples of entirely permissible applications of single BIOLOGICAL SEX exemptions, and yet each and every one listed has been misrepresented in guidance by organisations such as Stonewall, Mermaids, GiRES and even the EHRC to suggest they would be unlawful. This deliberate misrepresentation has led to organisations failing to apply single sex exemptions for fear of repercussions.

4.3. HOSPITAL WARDS

4.3.1. One of the most egregious examples of misrepresentation of the legal single sex exemptions is that of Hospital Wards. As can be seen from the law itself (sched 3, part7, para 27) and from the explanatory notes, the Equality Act was expressly written in such a way as to explicitly preserve SINGLE SEX (BIOLOGICAL SEX) Hospital Wards.⁷

However the constant conflation of sex and gender and the misrepresentation of the law provided by organisations such as GIRES has led to Hospitals not only FAILING to apply this legal exception created for the benefit of all patients, but of actually FINING hospitals who correctly place people in the appropriate single sex wards. If a person of the male sex demands to be placed on a female sex ward by declaring he has a female 'gender identity' the hospital will be fined for placing him in the male sex ward, because the single sex ward provision has been corrupted into a single 'gender identity' provision and a breach has been deemed to have occurred.

This is the opposite of what the law intended.

4.3.2. This deliberate conflation of sex and gender can be traced back to a 2010 directive from the Department of Health which very explicitly instructed the NHS to segregate wards by 'gender' not sex. Evidence that the full implications of this deliberate misrepresentation were in fact understood perfectly well by the government at that time, are minuted in NHS "Eliminating Mixed SEX Accommodation" policy documents, in particular with the following phrase:

"The Policy Commitment relates to gender, not sex, but to ensure a better public understanding it is referred to as Mixed-Sex Accommodation (MSA)"⁸

In other words, the public have been told that wards are segregated by sex, as per the provisions of the law. However the truth is that wards are segregated by so-called 'gender' which creates mixed sex wards, fines hospitals for 'breaches' of wards which are in fact truly single sex wards, and disincentivises hospitals from acting IN ACCORDANCE WITH THE LAW ITSELF.

Further, some hospitals have gone so far as to write policies that punish members of the public who attempt to assert their sex-based rights as expressly laid out in the law, labelling such patients as 'bigots'.^{9,10,11}

⁷ <https://www.legislation.gov.uk/ukpga/2010/15/schedule/3>

⁸ <https://medium.com/@anneharperwright/sex-gender-the-nhs-1e8f4e6363a6>

⁹ <https://www.thetimes.co.uk/article/patient-branded-transphobic-after-asking-for-female-medic-3jh3snddt>

¹⁰ <https://www.lancasterguardian.co.uk/news/lancaster-mum-fear-men-locked-hospital-ward-transgender-patient-653048>

¹¹ <https://www.lancasterguardian.co.uk/news/lancaster-mum-fear-men-locked-hospital-ward-transgender-patient-653048>

This is a direct consequence of the conflation between sex – a protected characteristic that allows for the exclusion of the opposite sex in services and spaces, and ‘gender identity’ a dubious imposter that has no such legal standing and should never be allowed to overwrite sex.

4.3.3. EVIDENCE OF PURPOSEFUL CONFLATION OF SEX AND GENDER IN THE NHS

<https://medium.com/@anneharperwright/sex-gender-the-nhs-1e8f4e6363a6>

4.4. PERMITTED EXCLUSIONS OF GRC HOLDERS FROM FEMALE-ONLY SPACES AND SERVICES

4.4.1. *Gender reassignment*¹²

28(1) A person does not contravene section 29, so far as relating to gender reassignment discrimination, only because of anything done in relation to a matter within sub-paragraph (2) if the conduct in question is a proportionate means of achieving a legitimate aim.

(2) The matters are—

(a) the provision of separate services for persons of each sex;

(b) the provision of separate services differently for persons of each sex;

(c) the provision of a service only to persons of one sex.

“EXAMPLE

A group counselling session is provided for female victims of sexual assault. The organisers do not allow transsexual people to attend as they judge that the clients who attend the group session are unlikely to do so if a male-to-female transsexual person was also there. This would be lawful.”¹³

4.4.2. The above example from the EA2010 demonstrates two things:

First, that it is permissible, legal, and justifiable to exclude even GRC holders from female spaces and services if it is in the best interests of FEMALE PEOPLE who hold and share the protected characteristic ‘SEX’ (BIOLOGICAL) with each other but DO NOT SHARE IT with the GRC holder, despite on paper them all sharing the same ‘Legal Sex’

Second, that even though a GRC holder may have the legal status of a ‘woman’, and may have ‘Female’ on their birth certificate, the law still expressly allows for them to be differentiated from actual females – and the basis upon which this can happen is SEX, the protected characteristic which can ONLY mean BIOLOGICAL SEX for this purpose.

THE LAW RECOGNISES BIOLOGICAL SEX ABOVE AND BEYOND LEGAL SEX, AND THE LAW ALLOWS FOR LEGAL DISCRIMINATION TO PRESERVE THE RIGHTS OF A BIOLOGICAL SEX. A GRC DOES NOT OVERWRITE THIS SEX BASED RIGHT.

5. RECOMMENDATIONS

5.1. ELIMINATE CONFUSION

Given that both the EA2010 and the GRA2004 make clear that SEX means BIOLOGICAL SEX, and that ‘gender’ does not in any way overwrite this protected characteristic, even if a person has obtained a GRC under the GRA which only makes them ‘female’ for legal purposes, not biological purposes, it is crucial that further clarity is provided in the language of both laws.

In addition, given that the current confusion is so great that many organisations mistakenly believe that it is illegal to distinguish a GRC holder which grants only a ‘legal sex, from people of the opposite biological sex, it is critical that such organisations fully understand the LIMITATIONS of a GRC. It is a

¹² <https://www.legislation.gov.uk/ukpga/2010/15/schedule/3>

¹³ <https://www.legislation.gov.uk/ukpga/2010/15/notes/division/3/16/20/7>

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document, not a magic spell. It does not change the holder's actual sex, nor does it make it illegal to perceive the holder's actual sex, and act in accordance with it.

5.2. CLARIFY DISTINCTIONS

My recommendation is that the laws MUST go further in clarifying the distinction between biological sex, which continues to be protected and which is impossible to change, and legally changed gender, which is currently treated in many organisation as if it were indistinguishable from sex. The government must produce clearer guidance that instructs organisations of their SEX BASED obligations to women, and that single sex exemptions which exist BOTH in the EA2010, and in the GRA2004 exist to be applied on the basis of BIOLOGICAL SEX, not gender identity.

5.3. COMPEL EXEMPTIONS, DON'T JUST PERMIT THEM

Currently the law PERMITS providers to apply single sex exemptions but does not COMPEL them to apply them. I believe a fairer future is to COMPEL organisations to provide services and provisions to the female BIOLOGICAL SEX in accordance with both laws, in the given examples such as hospital wards, school toilets, changing rooms, sports, shared communal accommodation, rape crisis centres, refuges, and other similar provisions. It is past overdue that we prevent organisations from misinterpreting the two laws to the detriment of the biological sex they were written to protect.

5.4. REVIEW THE GRA FOR REDUNDANCY AND NEGATIVE IMPACTS

It may well be time to reassess the Gender Recognition Act for fitness for purpose. What was created almost two decades ago primarily to bypass the need for same sex marriage is possibly now redundant, now that we live in a more tolerant era that has legalised same sex marriage and removed this barrier.

5.5. CONSIDER REPEALING THE GRA

Furthermore, many of the consequences of the GRA have been negative. The idea that for a person to live 'in the gender' of their liking, which to all intents and purposes simply means the freedom to wear what one wishes, enjoy ones own preferences, have the partner of one's own choosing, and be free from unlawful discrimination that person must obscure their biological sex as it is 'incompatible' with such a lifestyle, is profoundly regressive and wrong-minded. There have been too many casualties of the rigid, regressive thinking that sex; one's body, and 'gender'; one's lifestyle must align, and that the solution to a 'misalignment' between ones sex and the expected behaviour of that sex is to change SEX? That 'solution' is so archaic that perhaps the time has come to leave that type of thinking in the last century.

No-one can change sex. There is no gendered behaviour that should be expected to align with a sex. Harm has resulted from trying to contrive a 'legal sex change' where no such change has occurred in reality. Women and girls have been the largest casualty in this failed attempt to engineer a fictional new reality through a law. Perhaps it is time to repeal the GRA entirely and start again with laws that reflect the truth of sex and allow the full range of freedom of expression within it.

Sex matters. The law acknowledges this. The law as it exists must now be applied as it was intended, with protections for the sake of women and girls. And a fairer future may call us to repeal a law that cannot co-exist with a fair, factual, and truthful society.

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