

INTRODUCTION

Please find below my question-by-question response to the second consultation on the proposed changes to the Gender Reform Act (November 2020). I am responding as an individual. I am a feminist, a queer, cisgender person and a trans ally: I am also the partner of a trans person. During the initial GRA public consultation in 2018 I read published literature on all the issues under consideration, including case studies from countries where similar reforms had already been made, and provided detailed comments in support of the reform. My comments also advocated for more thoroughgoing reforms, including the explicit provision of rights and protections to all trans and gender non-conforming people. As the government has now dropped all but the most surface-level of reforms, I am writing again in support of extending legal protections and the human right of self-determination to all trans people.

Q1. WILL THE GOVERNMENT'S PROPOSED CHANGES MEET ITS AIM OF MAKING THE PROCESS "KINDER AND MORE STRAIGHTFORWARD"?

The proposed changes to the Gender Recognition Act do not go far enough and they do not make the process kinder.

A kinder gender recognition process does not need to be costly, overly bureaucratic, medicalised or stigmatising. It simply needs a mechanism to ascertain that the individual is serious in their declaration and intent. That should be sufficient.

Changes to the Gender Recognition Act should proceed from the starting point that every individual – whether cis or trans – is the best judge of their own gender.

A kinder gender recognition process would also allow non-binary people to have their gender recognised.

The act could be reformed to give every adult – whether cis or trans – the right to choose their own gender and have that recognised socially and in law.

A truly radical reform would go further, to examine and redefine the concept of legal gender, without all the cultural baggage and social assumptions of "traditional" gender. A kinder and simpler gender recognition process could proceed from and be informed by that understanding.

Q2. 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?

The cost should mirror that of other legal identification documents such as a driving licence.

Q3. SHOULD THE REQUIREMENT FOR A DIAGNOSIS OF GENDER DYSPHORIA BE REMOVED?

Absolutely. The notion that trans people are mentally ill is outdated and stigmatising and has no place in 21st-century law. The concept of gender dysphoria and the frameworks used to “measure” it in an individual are highly subjective and liable to bias. The need to be certified with a mental disorder would certainly put me off applying for a GRC.

Each individual is the best judge of their own gender: an individual should have the right to state their own gender and have it recognised in law without a medical diagnosis.

Q4. SHOULD THERE BE CHANGES TO THE REQUIREMENT FOR INDIVIDUALS TO HAVE LIVED IN THEIR ACQUIRED GENDER FOR AT LEAST TWO YEARS?

Yes. The requirement to live in one’s “acquired” gender without any legal recognition puts trans people in a vulnerable and dangerous situation. As the partner of a transgender person I have seen at first hand how traumatising the process of transition can be. Trans people meet with ignorance and prejudice and even harassment and violence. Providing legal recognition earlier in a transition process – if the individual desires it – would provide some much-needed protection.

Further, notions of “living in” and “acquiring” a gender are highly problematic and can be interpreted subjectively. Definitions of “living in” a gender are likely to rely heavily on stereotyped norms around clothing and external presentation. Such culturally loaded stereotypes are neither a necessary nor a sufficient condition for the recognition of gender. Each individual should have the right to state their own gender and have it recognised in law. No-one should be assigned or denied legal rights based on their pronouns or hairstyle.

Q5. WHAT IS YOUR VIEW OF THE STATUTORY DECLARATION AND SHOULD ANY CHANGES HAVE BEEN MADE TO IT?

A statutory declaration puts the individual at the heart of the gender recognition process. A medical diagnosis and “proof” of “living in” a gender turn the recognition process into a test, and require strangers to make life-altering decisions about an individual’s identity. Instead, a statutory declaration should suffice for legal recognition. In this way the law would take seriously every individual’s right to determine their own gender. Through a legal declaration, the applicant can show their seriousness about their gender identity without a requirement for medical and other “evidence”.

However, the current declaration could be improved, particularly where the phrase “until death” is concerned. An individual cannot be expected to know how they will feel far into the future. I personally cannot claim to know how I will feel about my gender in 10, 20 or 50 years’ time. Some trans people experience further changes to their gender identity over time: they should not be asked to make an unrealistic claim which may be held against them in the future.

Q6. 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?

Only an individual can truly know their own gender. No-one should have the right to prevent another from living the gender which feels right to them. Further, it is infantilising to the individual to expect them to "ask permission" from a spouse.

Q7. SHOULD THE AGE LIMIT AT WHICH PEOPLE CAN APPLY FOR A GENDER RECOGNITION CERTIFICATE (GRC) BE LOWERED?

I suggest that voices of young trans people and those who support and work with them be taken into account regarding this decision.

Q8. WHAT IMPACT WILL THESE PROPOSED CHANGES HAVE ON THOSE PEOPLE APPLYING FOR A GENDER RECOGNITION CERTIFICATE, AND ON TRANS PEOPLE MORE GENERALLY?

The proposed changes – as of Sept 2020 – will do very little to lessen the difficulties for people applying for a GRC. Further, they will have no impact on non-binary people, who will still be unrecognised in law.

The government should take seriously the outcomes of the 2018 consultation, where over 70% of respondents supported making substantive changes to the GRA. Those changes should be implemented at a minimum. Failure to do so has eroded trust of the government among trans people and those who care about them.

Q9. WHAT ELSE SHOULD THE GOVERNMENT HAVE INCLUDED IN ITS PROPOSALS, IF ANYTHING?

The government should have included:

- Legal gender rights for people who do not fit into the gender binary.
- Explicit protection (for everyone) from demands to reveal one's gender unless there is a legal requirement to do so.
- Explicit protection from harassment for gender non-conforming people, and those perceived not to conform to gender norms, whether they are trans or not.

At the heart of any reform should be a recognition that an individual is the best judge of their own gender. Any proposals for reform should enshrine the right to gender self-determination.

Q10. DOES THE SCOTTISH GOVERNMENT'S PROPOSED BLL OFFER A MORE SUITABLE ALTERNATIVE TO REFORMING THE GENDER RECOGNITION ACT 2004?

Yes – in particular the removal of the requirement to "prove" one's gender to a panel (usually comprising cis people), which can be a humiliating and stressful experience for many trans people. A sworn statement should be sufficient to recognise one's self-declared gender.

Q11. WHY IS THE NUMBER OF PEOPLE APPLYING FOR GRCS SO LOW COMPARED TO THE NUMBER OF PEOPLE IDENTIFYING AS TRANSGENDER?

This is a very useful research question. I hope the research is carried out by independent researchers, using trans people and genuine experts as respondents. I look forward to reading the peer-reviewed study when it is published.

Q12. 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.

Language and terminology evolve across decades, as does our understanding of marginalised groups such as trans people. In referring to “gender reassignment” instead of “trans people” the Equality Act is out of date. It appears to exclude those who choose not to have surgery, and those who do not transition neatly across the gender binary. An amendment could be made stating that all trans people are legally protected from discrimination and harassment. This is in the spirit – but not in the language – of the original Act.

Similarly, the definitions for “sexual orientation” assume that there are only two genders. This binary thinking is reductive and excludes, for example, those whose partner changes their gender, those whose partner is non-binary, and those who are non-binary themselves. Taking this definition literally I, as the partner of a non-binary person, would not be protected from discrimination on the grounds of sexual orientation because my partner is not the *same* gender as myself. However, the spirit of the Act intends to protect all those whose sexual orientation is not exclusively heterosexual. Again, this could be clarified without substantively changing the Act.

Q13. 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 instructions on single-sex spaces and services are generally clear, although the language is in some cases outdated, and all the examples are predicated on the assumption that gender is binary. In my own experience, those providing single-sex services (such as my local Women’s Centre) are experts in single-sex issues including the relevant legal obligations on them as providers. Many providers have also progressed their thinking beyond 2010 to explicitly signpost inclusion or exclusion of trans and non-binary people, as relevant to the service and space provided.

I find it more difficult to comment on whether the provisions in the Equality Act are clear for the *users* of single-sex spaces. The Act could state clearly that trans people have the right to self-select which spaces they use according to how they identify. It could also state more explicitly that service users may not challenge, harass or exclude other users on the basis of *perceived* gender. Many gender non-conforming people (whether trans or not) are likely to experience harassment in single-sex public spaces, such as toilets, and may opt not to use these spaces, even when no alternative is available. Contrary to recent opinion on social media, trans and other gender-non-conforming people are far more likely to be harassed or attacked in both mixed-sex and single-sex spaces. The

Equality Act could make clearer that someone's discomfort at another's non-conformity to gender norms does not provide grounds for harassment.

I am a cis-woman and a feminist. I care about the safety of women. I also support the dignity and inclusion of trans people. I do not feel threatened by giving legal rights and protections to trans people. I do not feel threatened by sharing a space with trans people. The trans and gender-non-conforming people that I know already have to think very hard before entering many public spaces, for fear of harassment or exclusion. I do not support any policies which make public life more difficult for them than it already is.

Q14. DOES THE EQUALITY ACT ADEQUATELY PROTECT TRANS PEOPLE? IF NOT, WHAT REFORMS, IF ANY, ARE NEEDED?

The Equality Act does not explicitly protect the following:

- Trans people not choosing to have surgery
- Trans people not transitioning to the opposite side of the gender binary
- Non-binary people
- Gender-nonconforming people (including cis people who are perceived by others to fall outside traditional gender norms)

Reforms are needed to ensure that these vulnerable groups have the rights, dignity and protections accorded to everyone. Most importantly, the Equality Act and the GRA need to affirm that trans people are who they say they are.

Q15. -

Q16. ARE LEGAL REFORMS NEEDED TO BETTER SUPPORT THE RIGHTS OF GENDER-FLUID AND NON-BINARY PEOPLE? IF SO, HOW?

The Equality Act and the Gender Reform Act currently do not extend rights and protections to non-binary people, or to gender non-conforming people.

This could be rectified in one of two ways:

- 1) The definitions be regularly updated and expanded in order to make explicit reference to all groups who fall under the trans umbrella. Currently, the Acts would need to make explicit reference to non-binary, Intersex, gender-fluid, gender non-conforming people and many other groups. Or:
- 2) The definition be altered so that it automatically includes all who fall under the trans umbrella. For example "trans includes anyone who does not identify with the gender associated with the legal sex they were assigned at birth."

A small but significant number of individuals do not experience gender as binary. Since there are no legal protections nor established "transition" routes for these individuals, they can feel a particularly strong pressure to stay "closeted" and to attempt to conform to ill-fitting gender roles. As the partner of one of these people, I have observed the sheer impossibility of this situation for someone who is living it. As a humane and progressive society we have a duty to recognise everyone's right to state their own gender, even if that means expanding our current understanding of the possibilities for gendered lives.

November 2020