

Written evidence submitted by Authentic Equity Alliance [GRA2019]

As Director of Authentic Equity Alliance (AEA), I make this submission on behalf of AEA but I also draw on my former experience as a City Councillor and my four-year term as Lead Cllr on Domestic Abuse and Sexual Violence. Ann Sinnott

AEA is a Community Interest Company established to further the personal and professional interests of women and girls. The 2010 Equality Act (EA2010) is potentially a good law for females, provided it is implemented correctly. Aware of the widespread dissemination of misinformation about the EA2010 'single-sex exception', AEA provides training on applicable parts of EA2010 and other equality legislation. While females are AEA's designated community, AEA's training is based on current law and is impartial. AEA believes that everyone has the right to be treated fairly, free from discrimination.

The Government's response to the GRA consultation

Q1 Will the Government's proposed changes meet its aim of making the process "kinder and more straight forward"?

The provision of at least three more treatment centres meets a clear need and will reduce waiting times. Digitising the application process for a GRC will make the process easier and quicker, though there needs to be surety that no-one is excluded by such change. Both measures are welcome and demonstrate kind consideration.

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?

Digitising the process will reduce otherwise associated costs. At the least, a nominal fee should be retained in order to meet related government administration costs; a common standard requirement. Cost could perhaps be pegged to the level of other services, such as a Blue Badge for disabled people.

Q3. Should the requirement for a diagnosis of gender dysphoria be removed?

Changing legal sex is a serious matter with societal impacts beyond the individuals concerned. A diagnosis of gender dysphoria, as both an indication of need and as a significant element in a system of checks and balances, should be retained.

Q4. Should there be changes to the requirement for individuals to have lived in their acquired gender for at least two years?

The seriousness of the matter requires a concomitant demonstration of seriousness on the part of the applicant, which the time-lag fulfils.

Emerging trends also have a bearing. According to MOJ figures on GRCs granted, there have been demographic shifts over time.¹ MOJ tables are calculated according to the tax year. Latest available figures are up to April 2020. The GRA came into force in 2005. As of April 2020, a total of 5597 GRCs have been issued. To avoid any possibility of confusion, in this section the terms born female and born male are used.

In the first year, 2005/06, 1181 GRCs were issued, consisting of: 912 born males and 269 born females, with a predominance of older age groups. Age-bands are not disaggregated for sex. Of 1181: 348 born before 1949. 656 born 1950-1969. 153 born 1970-1979. 24 born 1980-1989.

In the year 2008/09 the age category '1990 onwards' was introduced, with only one individual recorded that year. By the year 2011/12, 13 GRCs had been issued to that age band. The following year, 2012/13, 16 GRCs were issued, with 32 issued in 2013/14. In the year 2018/19,

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GRCs issued to that age band (106) were 32.81% of the total issued. In the year 2019/20, GRCs issued to that age band (151) were 41.48% of the total issued. By contrast, in 2019/20 only 48 GRCs were issued to the age band '1960-1969', from a high of 318 GRCs issued in 2005/06.

Though the predominance of born males remains in the overall year figure, in the last quarter of 2019 and the first quarter of 2020 more GRCs were issued to those born female than to those born male: 61/47 and 49/41 respectively.

The age trend is clear - increasing numbers of young people are applying for GRCs, with decreased numbers in older age bands. If the sex trend indicated in the last two quarterly figures continues, more young females are applying for GRCs than young males.

There are two other salient features.

In regard to the growing numbers of children identifying as trans - predominantly girls - recent research by Dr Lisa Littman raises the possibility of social contagion.² From waves of anorexia, bulimia and self-harming in previous decades, we know that older girls and young women are also susceptible to social contagion.

Ever more visible on social media, young people, predominantly female born, experience regret and change their minds about being trans; tragically, after surgery in some cases. This is known as 'detransitioning'. Evidencing this phenomenon, a support group has emerged: The Detransition Advocacy Network³.

For all of these reasons – youth, sex, potential regret - caution should be exercised and the two-year waiting period not shortened.

Q5. What is your view of the statutory declaration and should any changes have been made to it?

A lifelong declaration is a good indicator of seriousness on the part of the applicant. However, given the numbers of young people in their late-teens and early twenties - predominantly female born - reverting to birth sex (see Q4), there should be a 'get-out' clause whereby a GRC can be quashed and birth sex reinstated on the birth certificate.

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?

The term 'spousal consent' is misleading. A marriage is 'voidable' on the grounds: '*one spouse is in the process of transitioning to a different gender*'⁴. The option to annul is available to either marriage partner. From instatement, more GRCs have been issued to those born male than to those born female, so we can safely conclude that in most marriages the transitioning partner is male born. For a heterosexual woman to give consent, in order that her marriage partner can obtain a full GRC, it is tantamount to an agreement to a same-sex marriage, in other words she has to accept being identified as a lesbian. That is not what she agreed to when she married. If obtaining a full GRC is overwhelmingly important, her marriage partner can apply for the marriage to be annulled.

The consent provision should be retained for another reason. The ability to annul a marriage should not be taken away from women of religious communities in which divorce and homosexuality is forbidden. Indeed, it could be argued that to do so would be discriminatory toward the protected characteristic 'Religion or belief'.

Q7. Should the age limit at which people can apply for a Gender Recognition Certificate (GRC) be lowered?

In view of trends highlighted above (see Q4), the age-limit should not be lowered.

Q10. Does the Scottish Government's proposed Bill offer a more suitable alternative to reforming the Gender Recognition Act 2004?

No. The time-lag in Scotland is less than 2yrs (see Q4).

Wider issues concerning transgender equality and current legislation

Q11. Why is the number of people applying for GRCs so low compared to the number of people identifying as transgender?

Many trans organisations state that it is because the current process is too bureaucratic, too expensive and demeaning. The overall figure for GRCS in the first year (1181), second year (532) and in the third year (392), indicate that not to be the case. That those high levels have not been met in subsequent years, could be construed as supporting the theory put forward by trans organisations. But there are two other salient features that have bearing.

There is a legal aspect. The 2004 Gender Recognition Act (GRA2004) broke ground and provided needed legal recognition and protection for 'transsexuals', which was also written into other relevant legislation, eg 1975 Sex Discrimination Act. Though GRA2004 dispensed with the need for surgery, it has other constraints, eg the time-lag. The 2010 Equality Act (EA2010), Part 2, 7. 'bridges' to GRA2004 by defining transsexuals as gender reassigned and *vice versa*. The EA2010 protected characteristic 'gender reassigned' is much more broadly defined: those '*proposing to undergo, are undergoing, or have undergone a process, or part of a process, for the purpose of reassigning the person's sex by changing physiological or other attributes of sex*'. Therefore, to be classed as 'gender reassigned' and have associated protections, a person need do no more than simply declare an intention to undergo reassignment of sex. EA2010 is thus an easier route to recognition and protection than GRA2004.

There is a cultural aspect. The transgender community is far more numerous than the segment that applies for a GRC. In the sixteen years since GRA2004 was enacted, there is now a greater societal awareness of diversity and inclusion, along with a greater acceptance of difference. Also, a new term emerged from the trans community: the Trans Umbrella. The umbrella encompasses numerous categories: transsexual, transvestite/cross-dresser, non-binary, intersex, drag queen, bi-gender, androgynous, gender non-conforming, third gender, transmasculine, transfeminine, dyadic, genderqueer, polygender, trigender, aliagender, aporogender, demigender, intergender, neotrois, novigender - the list is not exhaustive. This variety of terms indicates that the trans community has developed beyond definitions in GRA2004 and EA2010. While this doesn't affect current laws, it does suggest that obtaining a GRC might no longer be so important or even relevant.

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.

In GRA2004, sex and gender are frequently conflated - to the point of confusion in some instances - S20 (3) (b) is a classic example.

GRA2004 S9(1) states that the change of legal sex is '*for all purposes*' the '*acquired gender*'. Yet, '*for all purposes*' does not apply to S12 Parenthood, S16 Peerages, S19 Sport, S20 Gender-specific offences.

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'For all purposes' is therefore a misleading statement. Unfortunately, the phrase has been frequently cited - absent the caveats - by trans organisations and training agencies to assert that transwomen have a legal right to automatically access women-only services and spaces.

GRA2004 S9 (3) also states: '*Subsection (1) is subject to provision made by this Act or any other enactment or any subordinate legislation.*' The currently operative '*any other enactment*' is EA2010.

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?

EA2010 is clear. Sch 3, P7, 26, 27, 30 set out the grounds on which separate and single-sex services and spaces can be legitimately provided. Sch 3, Part 7, 28 (1)(2) makes clear that exclusion of trans people from separate and single-sex services does not equate to gender reassignment discrimination provided it is '*a proportionate means of achieving a legitimate aim*'. Read together, GRA2004 S9(3), EA2010 P2,7 and EA2010 Sch 3, Pt 7, 28(1)(2), make clear that such exclusion also applies to those with a GRC.

The law is clear but the same cannot be said for guidance on EA2010 from the EHRC nor from the GEO. EHRC guidance, which stood for almost a decade, stated that those with a GRC are allowed to access single-sex services/spaces. GEO guidance, which is still extant, states that trans people are allowed to access single-sex services/spaces.

EA2010 Explanatory Notes also fall short in that they only include domestic abuse refuges and sexual assault services for women as likely examples of the lawful exclusion of transwomen. As a social category, females are by definition vulnerable and disadvantaged, as revealed by statistics not only for domestic abuse, sexual assault/rape, child sexual abuse/exploitation (all predominantly female victims), the murder of 124 to 168 women every year by former partners or men known to them and the 4 to 10 women who commit suicide every week as a result of domestic abuse⁵, but also the Pay Gap, the caring burden, the maternity penalty on career development and low-waged occupations (predominantly female). The Explanatory Notes could therefore be more comprehensive.

The especially vulnerable females referred to in the Explanatory Notes are not just to be found in specialist services, they and their children are out and about in the wider world alongside other women and girls. Having experienced varying degrees and types of male violence, these especially vulnerable women usually endure long-lasting after effects of the abuse they have suffered, including PTSD, and involuntarily experience a sense of threat and disturbance in the presence of men. For women in coercively abusive relationships, very often the only respite they have are women's toilets, into which their abusive partner cannot follow them. Women such as these, clearly need and deserve women-only toilets and changing rooms. But especially vulnerable women are not alone in fearing men. Depending on the circumstances they find themselves in, most women fear men to one extent or another. All women deserve the peace of mind and freedom from fear, for their children and for themselves, that women-only spaces afford.

Women's fears, not only of men but also of transwomen, are justified, as evidenced by incidents involving transwomen – most notably 18yr old transwoman Katie Dolatowski⁶, who assaulted young girls in women's toilets in two different supermarkets, and the infamous prison inmate Karen White⁶. Voyeurism by males, by males disguising themselves as women and by transwomen⁶ has risen dramatically - hence the 2019 Voyeurism Act, otherwise known as the 'Upskirting Bill'. Of course, it's not all men nor all transwomen - but how to tell the difference between someone who is a threat and someone who is not? Making such an assessment is in itself is an anxiety-inducing burden. Women

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need and deserve safe women-only spaces where they are not afraid for their children or for themselves.

In the intimate spaces of toilets and changing rooms, women and girls are not only in varying states of undress, they will often also be dealing with the additional realities of female biological processes. Menstruation: menstrual cycles can be painful, unpredictable, with heavy blood flows necessitating the washing of underwear (commonly in sinks in communal areas adjacent to cubicles) and might also involve onset of menstruation in young teenagers and even younger girls. Miscarriages: while there are no firm statistics, the charity Tommys⁷ estimates that 1 in 4 of all pregnancies ends in miscarriage. The Miscarriage Association⁸ speaks of the difficulties that women face when miscarrying in public toilets. Women and girls need and deserve women-only toilets and changing rooms for reasons of privacy and dignity.

In summary, women need and deserve women-only services and facilities for peace of mind, privacy, dignity and safety, for their children and for themselves. Women-only services and facilities are in process of being decimated. **Action should be taken to stop and reverse that trend.**

In order to avert the evident conflict of interests between women and transwomen, some organisations have signposted disabled toilets for use by transwomen, apparently oblivious to resultant detriments for disabled people and also oblivious to the fact that 'disability' is also a protected characteristic.

Some organisations have changed some existing toilets to gender-neutral (in other words mixed-sex) while retaining urinals, and uproar has ensued⁹. Some organisations have made adaptations and now only provide gender-neutral toilets¹⁰. Some organisations have made women's toilet/s gender-neutral while retaining male-only toilet/s.

When feasible, the provision of gender-neutral toilets in addition to separate sex and disabled toilets is a good solution. When not feasible, organisations – bearing in mind that women urinate more frequently than men¹¹, that because of clothing women take longer and that they may well be dealing with other issues (see above) – would do well to consider the possibility of making adaptations to male toilets to provide a third or a gender-neutral facility.

Q14. Does the Equality Act adequately protect trans people? If not, what reforms, if any, are needed.

Under EA2010, all protected characteristics are rightly protected from discrimination and harassment.

Q16. Are legal reforms needed to better support the rights of gender-fluid and non-binary people? If so, how?

'Gender-fluid and non-binary' people are included under the Trans Umbrella (see Q11) and some construe that as being within the protected characteristic 'gender reassigned'. Indeed a recent case - in a lower court, so legal precedent not set - found as such¹². Both categories have protections within the protected characteristic 'sex'.

However, the meaning of 'gender-fluid' and 'non-binary' warrants inspection. Humans are a sexually dimorphic species, ie the material reality of female and male bodies. Historically, 'gender' related to roles assigned to each sex, ie a social construct. (NB. *In academia, Queer Theory, subsequently adopted by some trans people, has sought to reverse those categories with the assertion that gender is material reality and binary sex is a social construct.*) Against that historical background, 'gender fluid' implies gender being switched according to whim. 'Non-binary', implies being located outside of material reality

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– where, in the unquestionable reality of our material world, might that be?

An aspect of ‘non-binary’ that concerns many is that it ‘disappears’ sex. If sex is erased, how can sex-related matters – sex discrimination, ovarian cancer, the achievement of girls in STEM, the EA2010 single-sex exception - be assessed or measured? If sex is erased, sexual orientation as a protected characteristic disintegrates and the reality of lesbians and gay men can neither be named nor described.

People are free to think as they please and, within the law, do as they please, but *the law itself* cannot be based on whim and must necessarily be located in shared human reality, notwithstanding self-identified outliers.

- Ends -

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3. <https://www.detransadv.com/>
4. <https://www.gov.uk/how-to-annul-marriage>
5. <https://www.femicidecensus.org/reports/>
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