

Follow up answers to questions asked at the oral hearing on 21st April 2021 held by the Women and Equalities Select Committee on GRA reform.

1. “What evidence is there that trans people, particularly transgender women, present a threat to women and girls” Elliot Colborn MP

- 1.1. The vast majority of sexual crime is perpetrated by the male sex. In contrast female sexual offending is rare. Only 1% of sexual crime is committed by the female sex. This is clearly evidenced by official prison statistics.¹
- 1.2. Most males don't commit any sexual crime but we can't tell which individual males present no risk to females. Therefore, to ensure 'unsafe' males are excluded there is a need to exclude all males to provide a safe 'male-free' space for women when needed.
- 1.3. Transgender women are members of the male sex who identify as women. There is no evidence that identifying as a woman changes a male person's propensity to commit sexual crime.
- 1.4. If identifying as a woman reduced male propensity to commit sexual crime to female levels we would expect this to be reflected in prison statistics. At the last count, there were only 125 female sex offenders in prison in England and Wales. If transwomen commit sexual crime at the same rate as women, we would expect no more than 1 or 2 transwomen in prison for sexual crime (when adjusted for the fact that the transwomen population is only 1% of the size of the female population).
- 1.5. Freedom of information requests made by Fair Play For Women have revealed there are over 70 male sex offenders in prison in England and Wales who identify as women². This is strong evidence that males who identify as women commit sexual crimes at a higher rate than female.

2. “.....or that reform of the GRA could lead to trans people presenting a threat to women and girls” Elliot Colborn MP.

- 2.1. Currently, most of the 70+ male sex offenders who identify as women are housed in the male prison estate. If the eligibility process for acquiring a GRC was changed to a self-declaration system it would mean any male, including these 70+ male sex

¹ MOJ Offender Management Statistics obtained for 31st March 2019 show that 99% of the 13359 sex offenders in prison in England and Wales were male (13234 prisoners). Only 1% of sex offenders were female (125 prisoners). <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-april-to-june-2019>

² Under a Freedom of Information request (#20061502) made by Fair Play For Women on 15th June 2020 it was revealed that 76 of these 129 male-born transgender prisoners had at least one conviction for sexual offending. The convictions included 36 convictions for rape, 10 for attempted rape and 21 sexual assaults. <https://fairplayforwomen.com/foi-200615022-data-final/>

offenders, could obtain a GRC and would be considered “female for all purposes” as stated in the GRA2004.

- 2.2. According to current HMPPS policy “female for all purposes” includes being located on the female prisoner estate. High-risk male-born prisoners may be accommodated in a separate accommodation unit but will be allowed ‘supervised association with women’ during the day where possible³. While the physical safety of female prisoners can be achieved through ‘supervision’ the potential for psychological harm due to ‘association’ with male sex offenders cannot be ruled out.
 - 2.3. If an additional 70+ sex offenders are relocated to female prisons this would increase the total number of sex offenders in women’s prisons to around 200, such that a third of ‘female’ sex offenders would have been born male.
 - 2.4. This problem has already arisen in Ireland following the introduction of a GRC system based on self-declaration. There are currently 3 male-born prisoners in possession of a GRC located on female wings in Irish prisons^{4 5 6}. At least two of those three obtained a GRC after committing serious violent or sexual crimes but before sentencing and transfer to prison.
3. **"We have heard from women's refuges and other women's support services that they have been able to enact the Equality Act where they felt that an individual had presented harm or a danger to women and staff in that setting. So we have heard examples of where it is possible for organisations to enforce those rights." Angela Crawley MP.**

- 3.1. Angela Crawley had asked me to elaborate on a claim made by FPFW in our written submission that ***"Any reforms that increased the number and range of people able to change the sex on a birth certificate would exacerbate issues with single sex spaces"***. In the session I explained how getting a GRC allows someone to change the sex written on their birth certificate. This causes problems for service providers who want to lawfully restrict a space or service only to people born female. This is because there would be no documentation that a service provider can ask to see that would enable them to distinguish between someone who was born female and

³ <https://www.gov.uk/government/publications/the-care-and-management-of-individuals-who-are-transgender>

⁴ <https://www.irishtimes.com/news/crime-and-law/courts/circuit-court/transgender-woman-to-be-sentenced-for-assaulting-three-men-1.4489730> “The court heard Kavanagh of Priory Hall Whitehall Road, Kimmage Manor, Dublin has transitioned to a woman since the assaults took place and is now known as Shauna Kavanagh. A gender recognition certificate was handed up in court.”

⁵ <https://m.independent.ie/irish-news/courts/teenager-in-custody-charged-with-threats-to-kill-two-people-39563823.html>

⁶ <https://www.lawsociety.ie/gazette/top-stories/male-bodied-transgender-inmate-housed-with-women-prisoners/> “When before the court last July, the prisoner was in possession of a gender recognition certificate.”

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someone who was born male but has a GRC. Both will have identical birth certificates saying they were born female. So even though it can be lawful for the service provider to treat these two people differently they can't reliably tell them apart based on documentation alone.

- 3.2. In response Angela raised doubts over whether service providers do actually have a problem, but then due to time constraints moved straight to another question and panel member. Angela had made an important observation so I would like to provide the Committee with some additional clarity on this point.
- 3.3. Currently, most transwomen do not have a GRC and so the majority will have a birth certificate that confirms they were born male. This means in most cases, even if a transwoman chose not to freely reveal their birth sex was male, a service provider could still confirm they were born male by asking to see their birth certificate. Being able to confirm birth sex in this way means it would be clear to that service provider that this particular transwoman could be lawfully excluded if necessary. As such it is possible that some service providers will have been able to enact the single-sex exceptions. However, this does not mean service providers will never encounter problems.
- 3.4. The problem for service providers that I raise in my evidence relates specifically to **when someone has a GRC**. Their birth certificate no longer accurately records their birth sex so cannot be used to confirm if they can or cannot be lawfully excluded by the service provider. This scenario is currently rare because fewer than 3000 male-born people have a female birth certificate. However, it follows that the more people who acquire a GRC the more common this problem for service providers would become.
- 3.5. Transgender advocacy groups claim the GRA has NO impact on single-sex spaces⁷. My example shows why this claim is incorrect. A system based on self-identification would mean anyone who identifies as transgender could become indistinguishable on paper from someone born the opposite sex. This would exacerbate an existing problem for service providers who want to implement the single-sex exemptions.
- 3.6. I would ask the Committee to reflect on the practical difficulties faced by service providers who wish to lawfully provide female-only spaces based on birth sex. How can a service provider use a law that is based on treating people differently because of birth sex if another piece of legislation can make birth sex unknowable? If a law is difficult to use, in part because some aspects are unworkable, then a service provider will be less inclined to use it at all. The result is less female-only service provision for women and girls to choose from if and when they need or want it.

4. **“You argue that the government decision not to change the eligibility criteria for a GRC... is fair and balances the needs of all stakeholders. Given that many trans people support a system of self-recognition why do you feel this is fair in any way to all stakeholders”.** Angela Crawley MP

- 4.1. Fairness is about striking a balance between the benefits acquired by members of one group and the cost incurred by members of another. Therefore, benefits need

⁷ <https://fairplayforwomen.com/campaigns/gra-reform/>

to be understood in terms of ‘who’ receives them, ‘why’ they might need them, and the ‘detriment’ to others.

- 4.2. When this balance was struck in 2004 the ‘who’ was restricted to a small group of severely dysphoric adults with a history of living in role as the opposite sex and *en route* to full genital reassignment surgery. The ‘why’ was because in the absence of other protections in law, the best way to prevent discrimination was for these people to hide their true birth sex. It was also illegal at the time for a transsexual woman to marry a man because marriage was restricted to partners of the opposite sex. Changing legal sex status therefore made marriage to a man possible. The ‘detriment’ to wider society was acknowledged by legislators at the time but it was considered tolerable and offset by the greater good of the benefits to a small group of people⁸. Nevertheless, it was still considered necessary to mitigate this ‘detriment’ by including a number of ‘exceptions’ into the legislation.
- 4.3. Today, any reforms to the GRA must again be assessed in terms of ‘who’ benefits and ‘why’, and any ‘detriment’ to others. The circumstances have changed in all three ways meaning that a new fair balance must now be struck.
- 4.4. It has been proposed that the definition of ‘who’ benefits should be expanded. However, the justification for ‘why’ someone needs the benefit has reduced over time. (Same sex marriage is no longer illegal and new laws protect all transgender people - not just those eligible for a GRC - against hate crimes and discrimination). The benefits are no longer sufficient to offset the existing ‘detriment’ to others.
- 4.5. Meanwhile, the existing ‘detriment’ to others has become clearer and would be expected to increase further if the benefit is extended to additional groups under the transgender umbrella. Legislators did not (and could not) foresee all the ‘exceptions’ that would be needed to be written into the GRA. For example, exceptions to prevent a male prison guard being lawfully entitled to search a female prisoner if they have acquired a GRC. Or an exception to allow data collectors to exclude ‘sex acquired by a GRC’ when asking “what is your sex”. Moreover, the existing exceptions have proven difficult to implement and are now rarely used. As such it would be clearly wrong to make any changes to the process that would make the ‘detriment’ to others worse.
- 4.6. This analysis highlights a problem with the narrow focus of the consultation undertaken for GRA reform. The only reforms under consideration have been to simplify the application process in part by removing some eligibility criteria. No consideration has been given to any reform necessary to address the consequences of the Act, both foreseen and unforeseen. This was a missed opportunity and a result of not including all stakeholder groups from the start. Changes to the legal implications of having a GRC (in terms of privacy protections and scope of exceptions) may have enabled a modified GRC to be extended to everyone under the trans umbrella without detriment to others. As such the only fair balance that could be struck in light of increased ‘detriment’ and the weakened argument for ‘why’ a GRC is needed today was to reject calls to expand eligibility to additional groups.

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⁸ <https://fairplayforwomen.com/transgender-rights-get-part-2-changing-legal-sex-status/>