

MERMAIDS' RESPONSE TO THE WOMEN AND EQUALITIES SELECT COMMITTEE (WESC) 'REFORM OF THE GENDER RECOGNITION ACT' (GRA) INQUIRY

Mermaids (Registered charity no.1160575) has been supporting trans, non-binary and gender diverse children, young people up to the age of 19 (inclusive) and their families since 1995. We will be responding to this inquiry within this context and wish to give oral evidence to this inquiry.

The Government's Response to the GRA Consultation

1. **Will the Government's proposed changes meet its aim of making the process "kinder and more straight forward"?**
 - 1.1. Mermaids believes that although the Government's recent proposed changes move in the right direction towards making gender recognition "kinder and more straight forward", but **recommends** that further reform would have to be implemented for the GRA to fully and satisfactorily meet this aim, in line with our recommendations at 9.1.

2. **Should a fee for obtaining a Gender Recognition Certificate (GRC) be removed or retained? Are there other financial burdens on applicants that could be removed or retained?**
 - 2.1. We welcome the fee being reduced to a 'nominal amount' to enable the application process to become more accessible, but note that any fee would pose an economic barrier to legal recognition for some.
 - 2.2. No one should be prevented from accessing legal gender recognition on the basis of their economic status, as this arbitrarily excludes those who cannot afford the fee including those who are financially dependent, and/or those who may be unsupported in their identity.
 - 2.3. Providing the evidence required under the current system incurs further cost, together with the prospect of paying for another application if the first application is unsuccessful.
 - 2.4. **We recommend** gender recognition should be no more than the current cost of a new birth certificate and that financial support is offered to those that need it.

3. **Should the requirement for a diagnosis of gender dysphoria be removed?**
 - 3.1. Yes. We strongly believe that the legal process for gender recognition should be completely de-medicalised, for all ages. As long as the diagnosis requirement continues, it will have a continuing heavily stigmatising effect on trans communities.
 - 3.2. In 2019 the World Health Organisation removed 'gender identity disorder' from its list of "mental disorders" (ICD-11) and in so doing, contributed to removing the stigma previously associated with trans, non-binary and gender diverse identities. Future systems should endorse the principle of disassociating being trans with being unwell and a self-determinative model would contribute to this.
 - 3.3. A number of jurisdictions have removed mental health considerations from their legal gender recognition regimes or introduced new schemes without such requirements. We recommend that the Government should consider existing laws in countries such as Ireland, Malta and Argentina.
 - 3.4. **We recommend** a process of 'self-determination', a principle endorsed by the British Medical Association.

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

- 4.1. Mermaids believes that this requirement, commonly known as the 'real life experience' test (RLE) is outdated and should be removed.
- 4.2. RLE creates an unnecessary, arbitrary barrier of providing 'evidence' of living as a man or woman, incorrectly suggesting that there is one identifiable way of living in a particular gender. This reinforces stereotypical assumptions about male and female conduct and holds applicants to these false standards of 'maleness' and 'femaleness' which is not expected of non-trans people. Nowhere else in UK law are men and women denied recognition of their gender simply because they do not conform to stereotypes.
- 4.3. RLE creates a specific accessibility problem for the more vulnerable population of trans people who may have been living in an unsupportive home or school environment as they may not have been able to change their gender marker on paperwork and systems. Those under 18 or victim of domestic abuse have a particular vulnerability in this respect.
- 4.4. Non-binary individuals have a particular barrier to access under this provision because the majority forms of ID do not recognise any other gender identity, other than male and female.
- 4.5. RLE suggests that trans people need a trial period to know what it is like to live as that gender, however they do not, because they experience that gender on a daily basis. There are several jurisdictions that have omitted RLE conditions including Ireland, Belgium, Malta, Norway, Sweden and Netherlands.
- 4.6. **We recommend** the RLE provision is removed.

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

- 5.1. Mermaids is not opposed to the retention of the statutory declaration requirement; as long it is the *only* requirement to obtain a GRC, but **recommend** that guidance and financial support be provided to those that need it, to ensure it is accessible to all. Ireland has a process of legal gender recognition based on a model of 'self-determination', by way of statutory declaration.

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?

- 6.1. No trans or gender diverse person should have to rely on anyone's consent, including a spouse, to allow them to self-determine their identity; such a requirement violates their right to a private life.
- 6.2. This gives spouses unwarranted power, which can be utilised to block an individual from having their gender legally recognised or to force them into a lengthy, unequitable and onerous divorce/separation.
- 6.3. There is concern that the 'spousal veto' provision may leave trans and gender diverse people at risk of abuse and coercive control.
- 6.4. Moreover, the 'spousal veto' strongly implies that having a transgender or gender diverse partner is undesirable for a spouse and to maintain this provision would be to perpetuate these negative attitudes.
- 6.5. **We recommend** the spousal consent provision should be removed fully.

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

- 7.1. Yes, because you must be 18 and over to apply for a Gender Recognition Certificate currently, which means that all trans people under 18 do not have access to having their gender identity legally recognised. This is despite the fact that many 16 and 17 year olds can obtain driving licences with the correct gender marker on and those under 16 can change their gender marker on their Passport.
- 7.2. In 2016, the Women and Select Committee recommended that the age for gender recognition should be lowered to 16, with appropriate support. This was an important step and in line with the ability of adolescents to consent to medical treatment in the United Kingdom.
- 7.3. Our service users expressed their disappointment that none of these proposals offer opportunity of recognition to those aged under 18. Mermaids believes that full legal gender recognition is an important part in supporting some trans young person's development and social transition, as well as their acceptance by wider society.
- 7.4. **We recommend** that the age limit at which people can apply for a Gender Recognition Certificate be lowered to 16 under a self-determination model. A system should also be in place so that children and young people under 16 have access to legal gender recognition subject to having independent capacity or consent from those with parental responsibility. Mermaids also **recommends** that the Committee and UK Government acknowledge that support needs to be provided to those young people who are not living in supportive households, nor of independent competence.

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

- 8.1. 8.1 Mermaids believes that the proposed changes will improve access for some trans people however, access to funds and technology should not be a barrier to legal gender recognition and therefore **we recommend** alternative non-tech based applications are still offered. Financial support should also be offered to those that need it.

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

- 9.1. **We recommend** a number of further reforms:
 - 9.1.1. The requirement for a diagnosis of gender dysphoria should be removed, to stop the continued pathologisation of trans and gender diverse people.
 - 9.1.2. The requirement for individuals to have lived in their 'acquired gender' for at least two years should be removed, as such a requirement is an arbitrary requirement when one's gender identity is self-identified.
 - 9.1.3. The spousal consent provision needs to be removed, to ensure an abuse of the provision cannot take place, and to ensure the individual's right to their identity is respected.
 - 9.1.4. A process of legal gender recognition based on a model of 'self-determination' should be available to all those 16 years old and over. A system should also be put in place which allows people under 16 years old to have appropriate access legal gender recognition.

9.1.5. Legal gender recognition should be available to those who are non-binary also.

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

- 10.1. Although the proposals are an improvement, we agree with Equal Recognition Scotland that there is no evidence that any waiting time is necessary (see para 4.4) and that evidence of lived experience should not be required (see question 4).
- 10.2. We welcome the proposal to lower the age to 16, but recommend appropriate access is also given to those under 16 (see question 7).
- 10.3. We believe non-binary people should also have access to legal gender recognition, which is not provided for in the proposed Bill.

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?

- 11.1. Trans people overwhelmingly report that the current gender recognition process is too bureaucratic, time consuming, dehumanising and expensive.
- 11.2. The long waiting lists for obtaining the medical evidence required under the current process, means that applicants cannot complete an application.
- 11.3. Not all trans people have access to applying for a GRC, including those under 18 and those who identify outside of the binary.

12. Are there challenges in the way 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?

- 12.1. The Equality Act 2010 (EA10) protects "A person [who] ... is proposing to undergo, is undergoing or has 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."
- 12.2. Section 7 does not require one to have a GRC to be protected by the EA10. The protections under the EA10 therefore, encompasses a wider range of people than just those with gender dysphoria. The GRA still currently requires trans people to experience gender dysphoria to have access to its provisions.
- 12.3. **We recommend** that a removal of the diagnosis requirement under the GRA would allow the EA10 and GRA to align with the principle that a trans person does not need to have a medical diagnosis to be respected for who they are.

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?

- 13.1. The Equality Act 2010 (EA10) already provides a general right for most trans people – irrespective of their medical status or whether they have a GRC – to access appropriate goods and services (e.g. single-gendered hospital wards).

- 13.2. The EA10 also contains two significant exceptions which entitle providers of single-sex services and communal accommodations to exclude trans people as a 'proportionate means of achieving a legitimate aim'. The prime example referred to in the Explanatory Notes is a counselling service for vulnerable women, where service users may refuse to attend sessions if trans women are permitted to attend.
- 13.3. Mermaids believes that the current provision understands the importance of respecting trans identities, it appreciates that trans people pose no threat in single-sex spaces simply because they are trans and is clear that provisions are not dependent upon someone having a GRC.
- 13.4. Mermaids has been concerned to see the suggestion that the EA10 exceptions act as a right to exclude trans people from spaces, rather than a defence to discriminate. Mermaids has been further concerned at the suggestion that GRA reform will impact women-only spaces and services despite the Equality and Human Rights Commission stating: '*There is no reason why simplifying the process for obtaining a GRC should have an effect on [women]-only spaces and services, which are covered separately under the Equality Act 2010*'.
- 13.5. Mermaids believes the current legislation is adequate, not in need of reform and preserves important jurisprudence principles in reflecting and using tests of legitimacy and proportionality when balancing rights.
- 13.6. Mermaids believes that simplifying this legislation would risk removing the nuance within equality law that ensures each scenario is dealt with on a case by case basis guided by principles of international human rights law.
- 13.7. **We recommend** that no reform to the primary legislation or the statutory code of practice is necessary. Rather we would ask the Committee to promote best practice, being a nuanced application of the EA10 on a case by case basis. This will ensure that the exceptions are not used as a vehicle for prejudice, but instead are implemented in line with international human rights law i.e. only when necessary and proportionate. EA10 is a robust piece of legislation which appropriately protects and balances rights. Any reform or guidance that risks oversimplifying the nuance, by adopting a broad-brush approach, could risk undermining the very rights which the EA10 was intended by Parliament to protect.

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

- 14.1. The Equality Act 2010 (EA10) protects individuals of all ages who fall under the s7 definition from unlawful discrimination, harassment and victimisation (on the basis that they have the protected characteristic of 'gender reassignment').
- 14.2. Mermaids welcomes the recent employment tribunal decision of Taylor v Jaguar Land Rover Ltd which found that EA10, s7 includes those who are non-binary or gender-fluid. This case illustrates that the current definition under s7 is broad enough to evolve with society's understanding around gender identity.
- 14.3. **We recommend** that no reform to the primary legislation is necessary. We would be encouraged to see the Committee and the UK Government acknowledge the Tribunal's decision that non-binary, gender-fluid, and gender diverse people are covered by the EA10 under the protected characteristic of 'gender reassignment'.

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

- 15.1. Children and young people aged under 18 currently face waiting times of over two years for a first appointment with an NHS Gender Identity Development Service, when they should be waiting no longer than 18 weeks. In 2016, the Women and Equalities Committee found “serious deficiencies in the quality and capacity of NHS gender identity services” and expressed concern about “the apparent lack of any concrete plans to address the lack of specialist clinicians in this field.”
- 15.2. When the waiting lists are so long, a supportive GP can be crucial to the health and wellbeing of a trans person. The Royal College of GPs in 2019 stated that “the UK lacks a nationally recognised training programme for gender identity health care” and “GPs often lack a deeper understanding of trans identities, gender dysphoria, referral pathways into gender identity services, and their own role in prescribing hormone treatment.” This has led to cases where appropriate and supportive care has not been provided. One of the biggest barriers for service users in accessing care is a lack of knowledge and awareness in GP surgeries.
- 15.3. Mermaids welcomes the independent review of the GIDS and are encouraged by this opportunity to improve care and support for this small population of young people by making it as easy to access as other NHS healthcare services.
- 15.4. **We recommend** that the Government and NHS England ensure adequate resources are provided in future, including providing adequate training around transgender awareness and transgender-related healthcare, to ensure that all trans, non-binary and gender diverse people receive the support and care they need in a timely way.

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

- 16.1. Non-binary people (this term is used as an umbrella term for everyone who has a gender identity that is not exclusively male or female) of all ages should also have access to legal recognition under GRA, which would be in line with recent development around equality law (see question 14).
- 16.2. For as long as non-binary people are unable to access legal gender recognition, a population of people will have their gender inaccurately recorded as either male or female and unable to contribute to society fully as themselves. Currently, non-binary people are unable to marry, die, travel (non-exhaustive) in their gender. The exclusion of non-binary recognition currently creates a system that is incoherent with the principles of autonomy and privacy that underpins the UK’s approach to equality.
- 16.3. **We recommend** that GRA should be inclusive of those who are non-binary.

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