

**November 2020. Submission by Women's Equality Party Sex-Based Rights Caucus, to House of Commons Women and Equalities Committee**

**Call for Evidence on Reform of Gender Recognition Act 2004.**

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1. Note: We refer to the Gender Recognition Act 2004 as 'GRA2004' and The Equality Act 2010 as 'EA2010'.
  2. INTRODUCTION & SUMMARY OF OUR HEADLINE RECOMMENDATIONS (further recommendations are set out in the substantive text below):
  3. We are the Sex-Based Rights Caucus<sup>1</sup> of the Women's Equality Party<sup>2</sup>. Our caucus works on clarifying, protecting, and strengthening the sex-based rights of women and girls. We use our platform to communicate the importance of sex-based rights, with the core aim of increasing understanding and creating compassion around why women and girls have sex-specific needs and why erosion of our rights is so dangerous. We represent over 1200 signatories to our petition calling for the protection of sex-based rights.<sup>3</sup> We are part of Women Uniting<sup>4</sup>, a UK collective of organisations with this common aim.
  4. Our submission is formed of the expert advice and experience of our Caucus members: we are victims of sexual abuse and other violence from men and are experiencing our trauma being compounded by erosion of single sex services and/or we are women who have worked and volunteered for many years in the women's welfare sector, supporting women using trauma-informed practice and research.
  5. We have all widely researched the issues we write about here. Our submissions are informed by our deep knowledge and concern for the safety and healing of women and girls, and also by our compassion for people who experience gender dysphoria, whom we say must remain protected from unfair discrimination and violence.
  6. We will address the following points in our submission:
  7. **Spousal consent.**
  8. Spousal consent is a necessary part of the GRA2004, and the government must take steps (such as clearer language) to address misinformation around what is meant by this.
  9. **Should the age limit at which people can apply for a Gender Recognition Certificate (GRC) be lowered?**
  10. No, the age should remain at 18 to safeguard children.

**11. Are there challenges in the way the GRA 2004 and the EA 2010 interact?**

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<sup>1</sup> <https://www.womensequality.org.uk/>

<sup>2</sup> <https://www.wepsbr.com/>

<sup>3</sup> <https://www.ipetitions.com/petition/wep>

<sup>4</sup>

[https://www.change.org/p/the-rt-hon-elizabeth-truss-mp-minister-for-women-and-equalities-women-uniting-call-on-the-government-to-protect-our-sex-based-rights?utm\\_source=share\\_petition&utm\\_medium=custom\\_url&recruited\\_by\\_id=218eb640-5d4c-11ea-8c58-3f16f942350e](https://www.change.org/p/the-rt-hon-elizabeth-truss-mp-minister-for-women-and-equalities-women-uniting-call-on-the-government-to-protect-our-sex-based-rights?utm_source=share_petition&utm_medium=custom_url&recruited_by_id=218eb640-5d4c-11ea-8c58-3f16f942350e)

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12. Yes. Inconsistent use of language in the GRA2004 contradicts and undermines the Equality Act 2010. We recommend that Government provide clear directions and guidance to all relevant people and organisations on what the two pieces of legislation say and what they require people to do.
- 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?**
14. No. There is a lack of clarity and a wealth of misinformation. We do not recommend reform of either pieces of legislation, but clearer guidance. We also recommend audits to ensure clarity and accuracy of information shared by both the government and NGOs.
15. We recommend a public education campaign, so that people understand their rights under the EA2010. The public are confused, and it is the Government's responsibility to remedy this.
16. We recommend that you, as the Committee, strongly press the Government to act the recommendations made by your Committee in Chapter 7 (Balancing rights in single-sex services) of your report of July 2019 called ' Enforcing the Equality Act: the law and the role of the Equality and Human Rights Commission'<sup>5</sup>. We agree with your recommendations.
- 17. Does the spousal consent provision in the Act need reforming?**
18. The spousal consent provision is a necessary and appropriate piece of legislation. If the nature of a marriage significantly alters, it is fair and proper that both parties in the marriage are legally facilitated to accept and consent to this change or refuse it. A GRC has the effect of changing a homosexual marriage into a heterosexual marriage and vice-versa. If a spouse does not consent to such a significant change in their marriage, they should be able to leave the marriage before the status is changed.
19. The granting of an interim GRC as part of the spousal consent provision is a much-needed provision for both parties. Granting an interim GRC does not bar a person from obtaining a GRC, nor slow the GRC process but does facilitate reflection and give compassionate consideration to the spouse or civil partner who can and should be provided with a legally-protected option to remove themselves from the marriage should they wish to. This mirrors the important opportunities provided when entering into a marriage to make it known if either party is unwilling or being coerced in any way, prior to the ceremony, and reflects the seriousness of the contract being entered into.
20. SUGGESTED GOVERNMENT ACTION:

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<sup>5</sup> <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/1470/1470.pdf>

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21. There is a common misconception that spousal consent means a person seeking to obtain a GRC must obtain their spouse's consent to do so. The phrase 'spousal exit clause' is a clearer definition, enabling a clearer understanding. Changing the wording of 'spousal consent' to 'spousal exit clause' affords the opportunity to clarify the law.
22. Notable organisations are campaigning to remove the spousal consent clause, misleadingly referring to it as the 'spousal veto'. Lord Ruth Hunt (previous head of Stonewall) refers to the spousal veto in her very first speech<sup>6</sup> to the House of Lords, further propagating the misconception that a spouse can veto the transition/ GRC process.
23. The Government must ensure organisations, especially those directly or indirectly receiving taxpayers' money, must audit and correct any of their organisation's documents, government briefing papers, social media, policy documents etc that are inaccurate and misrepresent the spousal consent law. It is our evidence that this misrepresentation is widespread. Stonewall, in their government submission<sup>7</sup> to the GRA consultation, used the term 'spousal veto' and misrepresented its meaning. This is a huge concern. Stonewall also described spousal consent incorrectly in their 'cut and paste' GRA consultation, which they encouraged members of the public to submit. In doing so, they misrepresented legislation to a wide, targeted audience. The Government must take action to ensure higher standards from organisations that receive public funding and have advisory and training roles for public bodies.
- 24. Should the age at which people can apply for a Gender Recognition Certificate (GRC) be lowered?**
25. No. We do not think the age limit should be lowered. Our concerns are:
  26. A GRC would become part of a model of social and medical transition.
  27. Children cannot consent nor commit to the legal GRC process.
  28. There is no legal reason for a child to have a GRC.
  29. This would impact disproportionately on girls and young women.
30. The issues around gender-identity are complex. There is little clinical evidence or consensus around models of diagnosis, support, healthcare pathways, or health impacts of social and/or medical transition<sup>8</sup>. Until we can understand the issues and build a clear evidence base, we believe that children (under 18's, as defined by the Children's Act 1989 and the UN Rights of the Child) cannot possibly understand the potential known and unknown ramifications of transition, whether this is a medical transition, or a social transition. It is our view that a GRC would become part of a social transition process which in more cases than not leads to medical transition, largely inappropriate for under 18's.
31. The GRC process misleads children and young people that a person can 'change sex'. We refer you to the evidence presented by Kristina Harrison, a trans woman<sup>9</sup>.

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<sup>6</sup> <https://www.theyworkforyou.com/lords/?id=2020-02-05b.1807.0#g1816.0>

<sup>7</sup> [STONEWALL RESPONSE: Consultation into the reform of the Gender Recognition Act 2004 \(Question 7\)](#)

<sup>8</sup> [Gender identity disorders in childhood and adolescence: currently debated concepts and treatment strategies](#)

<sup>9</sup> <https://youtu.be/pGSfWls486o>

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32. (Aside from the transition element, children and young people are vulnerable to entering a long-term legal process that they cannot fully understand, consent or commit to.
33. Gender nonconforming, or trans-identifying children do not need a GRC to protect them from discrimination. Children in these demographics are already protected from discrimination in the EA2010 under 'sex' and 'gender reassignment'. For example, 'sex' as a protected characteristic protects the right of a boy to wear a skirt as part of his school uniform (if a skirt forms part of the girls' uniform) as it would be discriminatory, on basis of sex, to prohibit him. Children are also protected under 'Gender reassignment', as the definition includes those without a GRC. We therefore see no legal reason why a child would need a GRC to protect against discrimination.
34. A GRC grants 'sex-secrecy'. This is inappropriate for a child, as they cannot understand the full implications to hiding birth sex, for example in a medical emergency and medical notes<sup>10</sup>.
35. Most referrals are for females<sup>11 12</sup>, a trend we see in many economically developed countries<sup>13</sup>.
36. Lesbian girls are also over-represented in the referrals<sup>14</sup>. Tavistock clinicians have reported that a '*trans-identity*' may be a way of navigating familial and societal homophobia and documented by BBC Newsnight investigation<sup>15</sup>.
37. There is a growing community of 'detransitioned' women expressing their regret at childhood transitioning. They express that their trans identity was an expression linked to childhood trauma, fear of becoming an adult woman, fear of being sexually objectified, or confusion and/or fear around their sexual orientation<sup>16 17 18 19 20</sup>

38. SUGGESTED GOVERNMENT ACTION:

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<sup>10</sup> [De-sexing the Medical Record? An Examination of Sex Versus Gender Identity in the General Medical Council's Trans Healthcare Ethical Advice](#)

<sup>11</sup> <https://pubmed.ncbi.nlm.nih.gov/25612159/>

<sup>12</sup> GIDS referrals increase slows in 2016/17

<sup>13</sup> <https://pubmed.ncbi.nlm.nih.gov/29346355/>

<sup>14</sup> Aitken M, Steensma TD, Blanchard R, VanderLaan DP, Wood H, Fuentes A, Spegg C, Wasserman L, Ames M, Fitzsimmons CL, Leef JH, Lishak V, Reim E, Takagi A, Vinik J, Wreford J, Cohen-Kettenis PT, de Vries AL, Kreukels BP, Zucker KJ. Evidence for an altered sex ratio in clinic-referred adolescents with gender dysphoria. J Sex Med. 2015 Mar;12(3):756-63. Doi:10.1111/jsm.12817. Epub 2015 Jan 22. PMID: 25612159.

<sup>15</sup> [NHS child gender clinic: Staff welfare concerns 'shut down' - BBC Newsnight](#)

<sup>16</sup> [Response to Julia Serano: Detransition, Desistance, and Disinformation](#)

<sup>17</sup> [https://www.youtube.com/watch?v=Q3-r7\\_ftc\\_w6c](https://www.youtube.com/watch?v=Q3-r7_ftc_w6c) feature=youtu.be

<sup>18</sup> <https://www.youtube.com/watch?v=H8FrT2M44CQ>

<sup>19</sup> <https://www.youtube.com/watch?v=nFoovHHrBe4&list=PLIqvYs4TiWba4YN8gkCLmpGmbaYEO5mlf>

<sup>20</sup> [LIFE AS A MAN VS. WOMAN VS. NON-BINARY // FtMtF detransition diary](#)

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39. Conduct an enquiry into the increased referral rate of children (especially girls), as promised by this Government in 2019. Until the Government and NHS has fully understood why girls, young women, lesbians, and children with ASD<sup>21</sup> are disproportionately represented by referrals, any change to procedure, or uncritical facilitating of transition (such as lowering the legal age limit of a GRC) must be halted.
40. Increase funding into CAMHS and child mental health services. After years of austerity, CAMHS is chronically underfunded<sup>22</sup>, lacking the funds to support people with complex needs. This has led to a crisis in mental health provision and lack of support services. In response to a lack of services and therapies - and social media filling the gap<sup>23</sup>. Many people understandably latch on to the notion of 'gender identity' as a socially acceptable and commonly promulgated answer to a diverse range of mental health issues and neuro-divergent conditions. This is reflected in the Tavistock data that shows over a third of referrals to their clinic are also on the ASD spectrum or have ASD traits<sup>24</sup>
41. Ensure that RSE guidance is fully implemented in schools to provide children with an education that questions sex stereotyping<sup>25</sup> and does not allow schools to teach gender identity for which there is no basis in evidence. We refer you to the scientific research presented by Dr Shereen Benjamin<sup>26</sup>.
- 42. Are there challenges in the way the GRA 2004 and the EA 2010 interact? In terms of the different language/ terminology?**
43. Yes. There is problematic use of language in the GRA2004 that contradicts and undermines the Equality Act 2010. We refer to the following language in the GRA2004:
44. The GRA2004 uses the term 'gender'. This term is ambiguous as it has variable meanings. Many adopt 'gender' as a synonym for 'sex', or a term referring to gender-identity issues, or as a critique of sex-stereotypes. Importantly, it is not a legally defined term.
45. This lack of clarity continues with the wording 'treated as their acquired gender for all purposes'. This language is undefined and contradicts later sections of the GRA2004. Section 9 [3] places considerable limits on where and when a person can be treated as their 'acquired gender'. In addition, Equality2010 also places

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<sup>21</sup>

<https://www.dailymail.co.uk/news/article-6401947/How-NHS-childrens-transgender-clinic-buried-fact-372-1-069-patients-autistic.html>

<sup>22</sup>

<https://www.theguardian.com/society/2018/jun/25/mental-health-services-young-nhs-silent-catastrophe-survey-chronic-underfunding>

<sup>23</sup> <https://www.transgendertrend.com/product/the-transmission-of-transition-2/>

<sup>24</sup>

<https://www.dailymail.co.uk/news/article-6401947/How-NHS-childrens-transgender-clinic-buried-fact-372-1-069-patients-autistic.html>

<sup>25</sup>

<https://www.gov.uk/government/publications/relationships-education-relationships-and-sex-education-rse-and-health-education>

<sup>26</sup> <https://youtu.be/YPFOQ6OmBPw>

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considerable limits on the definition of 'all purposes' please see Schedule 3, Part 7,26-28) and the Genuine Occupational Requirements (Schedule 9, Part1,1). Therefore, we suggest 'all legal purposes' in the GRA2004 misrepresents equality legislation.

46. The term 'legal sex' is also used and is lacking a clear definition. There needs to be clear distinction between this term in law and the scientifically-sound biological definition of sex.
47. The terms sex and gender are used interchangeably.
48. This confused terminology in the GRA2004 has a detrimental impact on the rights of women and girls provided by the EA2010, as the GRA2004 wording causes confusion. Moreover, this has led to conflict between groups belonging to different protected characteristics, which undermines the Statutory Declaration in the Equality Act 2010.
49. SUGGESTED GOVERNMENT ACTION:
50. Ensure GRA2004 defines the meaning of the word 'gender' as separate to 'sex' as it is a barrier to clarity and the law being applied as intended.
51. GRA2004 guidance must set out that the definition of 'legal sex' is different from sex as understood in the EA2010. This would help in clarifying the law for those that refer to it.
52. Conduct a full and thorough audit of all government documents to ensure that sex and gender are not used interchangeably and are based on the definitions suggested above when used.<sup>27 28 29</sup>
- 53. 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?**
54. We do not believe that the GRA2004 or EA2010 need reform, rather that they require substantial further guidance.
55. Due to confusion and to their fear of complaints, legal proceedings and even attacks, many women's services and other service providers are not using the single-sex exceptions as outlined in EA2010 and in the accompanying guidance notes. This is despite lawful examples given in the Explanatory Notes<sup>30</sup>, including women-only domestic abuse refuges and sexual assault counselling services, or circumstances where a person may reasonably object to the presence of a member of the opposite sex. For examples of how this guidance is being misapplied and misunderstood, see

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<sup>27</sup> <https://www.legislation.gov.uk/ukpga/2010/15/schedule/3>

<sup>28</sup> <https://www.legislation.gov.uk/ukpga/2010/15/schedule/9>

<sup>29</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/786910/t455-eng.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/786910/t455-eng.pdf)

<sup>30</sup> [Equality Act 2010 - Explanatory Notes](#)



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Annex B of the NHS document 'Delivering single-sex accommodation'<sup>31</sup>, and Stonewall's guidance on inclusion in single-sex refuges<sup>32</sup>, and Ministry of Justice guidance that states "transgender women prisoners with GRCs must be treated in the same way as biological women for all purposes"<sup>33</sup>. This clearly contradicts the qualifying notes of the GRA2004 and sex exemptions in the EA2010.

56. We also refer you to the important evidence and findings of your own Committee in Chapter 7 (Balancing rights in single-sex services) of your excellent report of July 2019 called 'Enforcing the Equality Act: the law and the role of the Equality and Human Rights Commission'<sup>34</sup>. We agree with your recommendations of July 2019 and ask that you continue to press Government to take the actions you recommended, in addition to the actions that we recommend in this submission.
57. Poor guidance around funding prerequisites has led to funding commissioners requiring organisations to have 'trans-inclusive policies'<sup>35</sup>. This has seen a dramatic reduction in funding allocated to women's groups and services that use single-sex exceptions and consequent drop-in services available for those women and girls reliant on single-sex services.
58. It is contrary to the intention of the Equality Act (Schedule 3, paragraph 27) that women may be accessing services that they believe to be single sex but are in fact unisex. An example is Survivors Network<sup>36</sup> in Brighton which is a unisex service with no single-sex provision. However, any woman accessing the service is not made aware of this and therefore cannot consent to the terms of the service. Survivors Network, in adopting this policy, have left Brighton women with no option of single-sex rape crisis provision. This is entirely inappropriate for survivors who are traumatised by the presence of men<sup>37 38 39</sup>. Please see the expert evidence of Karen Ingala-Smith, Chief Executive of NIA<sup>40</sup>.
59. There is an issue with how single-sex exceptions can be delivered when a GRC changes the sex markers on a person's ID. Although we recognise that trans people do require this for reasons of privacy and dignity, sex-secrecy is incompatible with upholding single-sex exceptions.

**60. SUGGESTED GOVERNMENT ACTION:**

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<sup>31</sup> [Delivering same-sex accommodation](#)

<sup>32</sup> <https://www.stonewall.org.uk/resources/supporting-trans-women-domestic-and-sexual-violence-services>

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/863610/transgender-pf.pdf?fbclid=IwAR2Mc3KM4rs7WIWP96M-UU-zUmMwfyA780A1WONG0uF4HYQSNDspqo0aYTQ](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/863610/transgender-pf.pdf?fbclid=IwAR2Mc3KM4rs7WIWP96M-UU-zUmMwfyA780A1WONG0uF4HYQSNDspqo0aYTQ)

<sup>34</sup> <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/1470/1470.pdf>

<sup>35</sup> <https://forwomen.scot/29/12/2019/funding-conditions/>

<sup>36</sup> <https://survivorsnetwork.org.uk/>

<sup>37</sup> <https://www.wepsbr.com/vawg>

<sup>38</sup> [https://fairplayforwomen.com/wp-content/uploads/2018/09/FPFW\\_report\\_19SEPT2018.pdf](https://fairplayforwomen.com/wp-content/uploads/2018/09/FPFW_report_19SEPT2018.pdf)

<sup>39</sup> <https://www.wepsbr.com/post/letter-six-evawg-debating-women-s-rights-and-secondary-trauma>

<sup>40</sup> <https://youtu.be/-7sKU4t24XY>

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61. Consult women's groups and organisations that use sex exceptions to improve the guidance notes to address the issue of 'sex-secrecy' which undermines their ability to deliver single-sex services.
62. Ensure funding guidance for all service commissioners clarifies that the requirement for LGBT inclusive policies is not impacted by the appropriate application of sex exemptions under the EA2010<sup>41</sup>.
63. Require all organisations in receipt of government funding to self-audit to ensure that they do not use sex and gender interchangeably, do not misrepresent the law around 'acquired sex' and 'sex' as a protected characteristic and are explicitly clear about how to apply single-sex exceptions from the EA2010.
64. Consider mechanisms to allow a person's sex to be identified in limited and specific circumstances.
65. Ensure all guidance notes are clear that it is acceptable to refuse access to a single-sex space when the provider has reasonable concerns that the person is not of the sex that their ID states.
66. Ensure that all relevant guidance make clear that single-sex exceptions must be used in situations where a person would reasonably assume a service or spaces are single-sex and include clear examples in the guidance notes. This would include, but would not be limited to, changing rooms, toilets, women's shelters, women's wards, women-only swimming, girls'/women's sports teams, and all shared sleeping accommodation including private organisations such as youth hostels.

<Ends>

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<sup>41</sup> <https://forwomen.scot/29/12/2019/funding-conditions/>