

Transgender, cisgender, and gender identity

To be transgender is to know that your gender is different from the gender you were assigned at birth.

To be cisgender is to know that your gender is the same as the gender you were assigned at birth.

But both transgender and cisgender people know their own gender on the same basis - the basis of direct personal experience. Both trans people and cis people can express their gender identity in diverse ways. The common testimony of both cis and trans people is that each person is *the* expert witness as regards their own self.

We know that trans men and trans women have both existed for a very long time. It is difficult to ascribe modern identity to historic eras, but people claiming transgender identities in the same sense as this motion uses them have certainly existed for at least 100 years (transgender people were some of the earliest victims of the Nazi regime in Germany, including a public book burning of May 1933: https://en.wikipedia.org/wiki/Institut_für_Sexualwissenschaft). People who lived under gender identities different than gender assigned at birth have existed for much longer than this: Dr James Barry died in 1865 ([https://en.wikipedia.org/wiki/James_Barry_\(surgeon\)](https://en.wikipedia.org/wiki/James_Barry_(surgeon))) Endocrinological, medical and surgical treatments to support gender identities have existed for 90 years or more.

A more recent example is Jan Morris, a journalist, historian and travel writer. She was also a trans woman and in 1974, published an autobiographical memoir of her transition and her gender reassignment surgery. She is clear that she had known her true gender identity since childhood. Jan continued to write and publish throughout her life and her books are well-known. (<https://www.theguardian.com/books/2020/nov/20/jan-morris-obituary>)

In many countries transgender identities were treated, like gay and lesbian identities, both as crimes and as psychological abnormalities until the last half of the twentieth century. This is one reason for the slowly increasing numbers of out trans people.

But there is now a strong and broad consensus in the psychiatric and psychological professions that to be transgender is not an illness, simply an identity. There is an equally strong and broad consensus that gender conversion therapy (attempting to force people to conform to a gender assigned at birth) is unethical.

ROYAL COLLEGE OF PSYCHIATRISTS

The Royal College of Psychiatrists have issued a policy statement which reads in part:

“Over the twentieth century, talking therapies and medical treatments emerged that tried to make homosexual or bisexual people, heterosexual. These so-called conversion therapies have no scientific basis and have been shown to be harmful in this context in many countries around the world, including the United Kingdom (MoU). The term ‘conversion therapy’ has also been used to describe treatments for transgender people that aim to suppress or divert their gender identity – i.e. to make them cisgender – that is exclusively identified with the sex assigned to them at birth. Conversion therapies may draw from treatment principles established for other purposes, for example psychoanalytic or behaviour therapy. They may include barriers to gender-affirming medical and psychological treatments. There is no scientific support for use of treatments in such a way and such applications are widely regarded as unacceptable”

...

“The College is committed to working with people who seek help in the context of gender diversity. It considers that **interventions that claim to convert transgender and gender-diverse people into cisgender people are without scientific foundation and thus both unethical and unacceptable.** Thus, the College concurs with the views of many

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international professional organisations, such as the World Professional Association for Transgender Health (WPATH), the American Academy of Child & Adolescent Psychiatry, and the American Psychological Association, that psychological treatments to suppress or ‘revert’ gender-diverse behaviours are unscientific and unethical”.

(https://www.rcpsych.ac.uk/pdf/PS02_18.pdf , emphasis added)

AMERICAN PSYCHOLOGICAL ASSOCIATION (APA)

The APA has issued a similar statement:

“Interventions aimed at a fixed outcome, such as gender conformity or heterosexual orientation, including those aimed at changing gender identity, gender expression, and sexual orientation, are coercive, can be harmful, and should not be part of behavioural health treatments. Directing the child to be conforming to any gender expression or sexual orientation, or directing the parents to place pressure for specific gender expressions, gender identities, and sexual orientations, are inappropriate and reinforce harmful gender and sexual orientation stereotypes.”

(<https://www.apa.org/advocacy/civil-rights/sexual-diversity/lgbtq-therapy>)

So the medical consensus is that gender identity is a civil right.

Transgender status is also a protected civil right under current law in the UK. Gender reassignment status is a protected characteristic in the UK under the Equalities Act 2010, as is sex. The definition in the Equalities Act is “A person has the protected characteristic of gender reassignment if that person 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.” The law in the UK does not distinguish between sex and gender and the two words are treated as synonyms. Under current law, a trans man is a man and a trans woman is a woman for all legal purposes (provided they have obtained a new birth certificate).

The motion does not seek to introduce any new rights for transgender people.

It also does not remove any rights from cisgender people, either cis men or cis women. (In particular, single-sex spaces and the ability to exclude men from women’s spaces are not affected. We have included evidence for this, taken directly from women’s refuge organisations websites, below.)

Instead, this motion seeks to make it easier and simpler for transgender people to obtain the use of their rights by obtaining complete legal recognition of their gender.

Current UK law

Under current UK law, trans women are women and trans men are men. (The UK law treats gender and sex as synonyms.)

This is not new law and the UK government says it does not intend to change this.

However, current law around obtaining a new birth certificate involves long delays (a minimum of two years). A trans person has to submit a package of documentation to the Gender Recognition Panel, which will eventually consider the information supplied, make a decision and *perhaps* issue a Gender Recognition Certificate (GRC): (<https://www.gires.org.uk/gender-recognition-panel/>) It costs £140 to apply (in addition to the cost of compiling a package of documentation). The equivalent application in Ireland is free.

Before you are permitted to apply, it is necessary to prove you have lived as your true gender for at least 2 years, including a change of your name. It is also necessary to have a medical diagnosis included in this package of documentation.

This means it is currently the law that a trans women or trans man **must** live as their gender for at least two years without any possibility of a Gender Recognition Certificate. They must self-identify in their gender consistently, in public, across all services they use, and in all social contexts for at least two years.

Nearly all other UK government identity documents apart from an updated birth certificate are already available on a simple self-declaration, including both a passport and a driving licence, so that the Gender Recognition Panel's advice includes:

“This proof must cover the required time that you've lived in your acquired gender. It could include copies of your:

- passport
- driving licence
- payslips or benefit documents
- utility bills or other documents of an official nature

All documents should be in your acquired name and gender. The earliest document must be dated before the beginning of the required time.”

The NHS will also update all medical records without requiring a GRC: (<http://gmmmg.nhs.uk/docs/guidance/RCPsych-CR181-Good-practice-guidelines-for-the-assessment-and-treatment-of%20adults-with-gender-dysphoria.pdf>)

“Once patients formally change their names and style of address, all GP, gender identity clinic, hospital and NHS records should be amended to reflect this change. A Gender Recognition Certificate is not required for this change to be effected. Some patients obtain a statutory declaration or a deed poll to mark their name change, but this is not obligatory, and treatments must not be made contingent on providing this type of documentation. A simple statement of intent will suffice.”

So a trans person who has not yet obtained a Gender Recognition Certificate (or who has decided that it is too slow, too intrusive, or too expensive to do so) is likely to live with government ID and medical records which contradict their birth certificate. This is not by choice but because they are forced to do so by law.

In addition many trans people feel that if they express their gender identity in a non-stereotypical, the Gender Recognition Panel will be less likely to issue a GRC. So some trans people feel forced into clothing and behaviour which is perceived as stereotypical of their gender. For the period of

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time while they are seeking a GRC, they do not feel able to make the same choices about clothing and behaviour that a cisgender person might.

The 2018 GRA consultation

In 2018, the UK Government recognised these issues and announced a consultation on whether the Gender Recognition Act should be changed to make it easier to obtain a new birth certificate and to reduce the role of the Gender Recognition Panel:

“ One public service that we know trans people are concerned about is the legal process for changing gender as set out in the Gender Recognition Act 2004. This Act allows an individual to get their gender legally recognised, giving them access to the legal rights of the gender they identify with and a new birth certificate issued in that gender. Many of the trans respondents to our LGBT survey said they found the current system intrusive, costly, humiliating and administratively burdensome. Whilst many trans people want legal recognition, too few are able to get it. **In too many cases the current system prevents them from acquiring legal recognition of who they are, denying them the dignity and respect that comes with it. It often leaves trans people in the difficult situation of living in one gender, and holding Government-issued forms of identification, credit cards, driving licence and all other documents in that gender, but a birth certificate and legal status in another.** This consultation seeks views on how the Government might make it easier for trans people to achieve legal recognition.

...

Although we do not know exactly how many trans people there are in the UK, we estimate that between 200,000 and 500,000 people identify in this way. ”

(https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721725/GRA-Consultation-document.pdf , emphasis added.)

Following a change of prime minister and general election in 2019, no new Gender Recognition Act or other amending act has been introduced. All the disadvantages of the current situation, as noted by the Home Office, still remain.

The Scottish Government held a consultation on amending the GRA for Scotland in November 2017. However, no legislation to amend the GRA has been introduced to the Scottish Parliament.

The self-declaration model

The self-declaration model does away with the Gender Recognition Panel. Instead, the application includes a statutory declaration made by the applicant.

A statutory declaration is not a casual statement. It is a signed and witnessed statement, and making a false statutory declaration is an act of perjury. (A false declaration may also be prosecuted as fraud if it is made to obtain any advantage.)

The law in Ireland changed to this simple model for a Gender Recognition Certificate more than five years ago (https://www.citizensinformation.ie/en/birth_family_relationships/changing_to_your_preferred_gender.html):

“When applying you have to sign a statutory declaration which is part of the application form. It must be signed in the presence of a peace commissioner, a notary public, a commissioner for oaths or a solicitor.

...

There is no charge for a gender recognition certificate. You apply using application form GRC 1 (pdf). You must complete the form, including the statutory declaration”

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We are not aware of any negative consequences from this change of law in Ireland. No mainstream political party in Ireland wishes to change this statutory declaration model for gender recognition, and it enjoys widespread public support.

Other countries already using a self-declaration model include Denmark and Malta.

If this model was brought into law in the UK or by devolved governments in the UK, there would be no change to the existing self-declaration process for most government identification (including a passport) and for medical records, as all these records are already updated on request. But obtaining a birth certificate that also shows the true gender would be cheaper, simpler, and shorter.

In the UK, the Equalities Act 2010 allows single sex spaces or the provision of single sex services where it is a proportionate means of achieving a legitimate aim to provide the service. This right would not change.

Civil society

Trans rights and the adoption of the self-declaration model enjoy widespread support among civil society in the UK, including among women's refuges. Recent relevant evidence of this includes:

TUC CONGRESS 2020

TUC Congress 2020 adopted a trans rights motion (<https://congress.tuc.org.uk/motion-30-gender-recognition-act-reform-trans-peoples-rights-and-solidarity-across-the-trade-union-movement/>), extracts from which include:

“Congress recognises:

- i. that transgender and non-binary members are entitled to be treated with respect and dignity in the workplace
- ii. the continuing attacks on trans people within mainstream and social media largely led by groups who argue against the proposed reforms to the GRA seeking to roll back the existing rights of trans people
- iii. the importance of standing up for the rights of trans and non-binary workers

...

- iv. the need to widely promote the message that trans women are women, trans men are men and that non-binary identities are valid – we must also encourage others to be trans allies and provide training to give them confidence to stand up for trans colleagues.
- v. transgender and non-binary people should be addressed by their correct pronouns and wilfully mis-gendering individuals is unacceptable

vi. that using sex and gender binary monitoring questions are discriminatory against non-binary people – non-binary people are thereby mis-gendered.

Congress notes:

- a. Transphobia is continuing during lockdown and beyond, clinic waiting times are increasing, and gender recognition reform is again delayed.
- b. Global campaigns by reactionary organisations including the ‘Alliance Defending Freedom’ are supported by powerful Evangelical and other conservative Christian institutions. These organisations are also homophobic, biphobic and against women's rights and they have financial resources to support legal cases.
- c. In the UK, anti-trans campaigners are deliberately stoking dissension between LGB and T sections of our communities, including the founding of the anti-trans LGB Alliance.”

THE BRITISH MEDICAL ASSOCIATION (BMA)

The BMA supports trans rights, including self-declaration of gender identity: (<https://www.bma.org.uk/bma-media-centre/leading-doctors-affirm-trans-and-non-binary-rights-in-healthcare>)

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“...this meeting affirms the rights of transgender and non-binary individuals to access healthcare and live their lives with dignity, including having their identity respected and calls upon the government to:-

- i) allow transgender and non-binary individuals to gain legal recognition of their gender by witnessed, sworn statement;
- ii) ensure that under 18s are able to access healthcare in line with existing principles of consent established by UK Case Law and guidelines published by the public bodies which set the standards for healthcare;
- iii) enable trans people to receive healthcare in settings appropriate to their gender identity;
- iv) ensure trans healthcare workers are able to access facilities appropriate to the gender they identify as;
- v) ensure trans people are able to access gendered spaces in line with the gender they identify as.”

SCOTTISH WOMEN'S AID

Scottish Women's Aid is an umbrella group of women's aid organisations and refuges in Scotland. They support self-declaration, and their member organisations have provided refuge to trans women on a self-declaration model for many years. (<https://womensaid.scot/wp-content/uploads/2018/05/SWA-Consultation-response-Review-of-the-Gender-Recognition-Act-2004.pdf>)

“Scottish Women's Aid groups are strongly committed to women-only services and spaces, and SWA has always been watchful that work to improve the inclusivity of our services support the principle of women-only work. We continue to be so, and our evidence gathering and analysis must be viewed in that frame. Women's Aid's gendered analysis of domestic abuse recognises gender as identity and separate to biologically assigned sex, and Women's Aid services are women-only organisations open to self-identifying women. Existing practice reflects this, and Women's Aid groups do not require sight of a birth certificate in order to grant access to services.

...

Women's Aid groups offered no evidence of issues arising or potential unintended consequences, given the lack of likely impact on current practice, and SWA therefore supports self-declaration with the critical proviso that women-only services continue to be legally protected.”

WELSH WOMEN'S AID

Welsh Women's Aid is an umbrella group of women's aid organisations and refuges in Wales and provided a response to the UK Government's consultation on the Gender Reform Anti including:

“We support the need for Gender Recognition Act reform, and any changes to the law should further the dignity of transgender people, to ensure that current processes to change birth certificates and other identity documents operate as smoothly as possible without pathologising or discriminating against trans people. Welsh Women's Aid's transgender policy (updated in 2016) commits to supporting the realisation of rights for trans people, and the delivery of trans inclusive services and support, on the basis of self-identification. In Britain, more than a quarter of trans people in a relationship in the last year faced domestic abuse from a partner.

Specialist services in Wales receive policy guidance, training and support to ensure trans people who have experienced abuse are supported to access services that best meet their needs. This means that anyone identifying as needing women-only or men-only support services (e.g. refuges) or as needing any form of support and advocacy in the community, should be offered a service that meets their need for support to access safety and to recover from abuse.

...

Given self-declaration with regards a person's gender identity is in place already for documents such as passports, driving licences, and in relation to access to services, we feel that a statutory declaration (rather than a medical diagnosis) would simplify the process

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of aligning a person's birth certificate with their gender identity, whether this is trans or non-binary."