



Gender Diversity, Recognition and Citizenship:

**Exploring the Significance and
Experiences of the UK Gender
Recognition Act (GRA, 2004)**

The UK Gender Recognition Act (GRA, 2004)

The Gender Recognition Act (GRA) came into being in the UK in 2004. Before the GRA, Britain was one out of four European countries that failed to legally recognise the acquired gender of transsexual people (Whittle, 2000)ⁱ. The GRA can be contextualised within a post-1997 UK climate in which questions of equality and diversity came to the fore of policy and law. Thus the GRA is one of five recent pieces of UK legislation that address issues of gender and sexual equality. In turn, these legislative shifts map on to a broader equalities and diversity focus within a European context. Representing the civil recognition of gender transition, the Gender Recognition Act (GRA, 2004) enabled transgender people to change their birth certificates and to marry in their acquired gender.

The Project

The project sought to address the impacts and the significance of the GRA by considering how transgender people variously understand and experience this changing policy landscape. Key research questions asked:

1. Why some people view the GRA as significant and register for 'gender recognition', and why others do not.
2. How married people are negotiating the choice between gender recognition and the recognition of their partnerships.
3. The extent to which gender recognition characterises continuities and/or changes to the medicalisation of transgender.
4. The extent to which the GRA moves beyond a binary gender model.

Various qualitative methods were employed to collect data including textual/policy analysis; 25 in-depth one-to-interviews; 2 focus group interviews; analysis of virtual materials (online discussion forums).

We recruited participants through transgender support groups, self-help groups and campaigning groups. Some participants were introduced to us through existing participants or word of mouth.

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Individual Participants

GENDER: 19 participants defined themselves as women or female; 5 participants defined themselves as male or FtM (female to male); 1 participant described them self as non-gendered.

SEXUALITY: 8 participants identified as heterosexual; 4 participants identified as bisexual; 5 participants identified as lesbian; 1 participant identified as gay; 1 participant identified as queer; 1 participant identified as pansexual; 1 participant identified as asexual; 2 participants said that it was 'difficult to say' what their sexuality was; 2 participants were reluctant to talk about their sexuality.

AGE: 2 participants were aged 20-30yrs; 4 participants were aged 30-40 yrs; 5 participants were aged 40-50yrs; 8 participants were aged 50-60 yrs; 5 participants were aged 60+; 1 participant did not want to say what age they were.

RELATIONSHIP STATUS: 14 participants were in relationships and/or married/civilly partnered: of these, 6 participants were in relationships with their pre-transition partners and 2 were in civil partnerships; 10 participants were single; 1 participant did not want to talk about relationships.

PARENTING STATUS: 9 participants had children.

Focus Groups and Virtual Discussion Boards

To enable analysis of collective responses to, and experiences of, the Gender Recognition Act, analysis of two wiki discussion boards (anonymous) was carried out over a 6 month period and two focus groups were held. 8 participants took part in the first and 9 in the second. The first focus group took place as part of the Scotland Equality Network and the second was organised by the Scottish Transgender Alliance. Focus group members included transgender activists, community organisers and members of Scotland's broader transgender communities.

Gender Recognition Certificates

12 participants had *successfully applied* for a Gender Recognition Certificate (GRC). 1 participant had applied and received an *Interim Certificate*; 3 participants had *unsuccessfully applied* for a Gender Recognition Certificate; 6 participants were *unable to apply* for a Gender Recognition Certificate due to the application criteria; 3 participants had *chosen not to apply* for a Gender Recognition Certificate even though they met the criteria for application.

Successful Applications: The majority of the 12 participants who had registered, or wished to register, for a gender recognition certificate (GRC) spoke about their decision as being strategically guided.

Interim Certificates: 1 participant had applied for a GRC had received an interim certificate. This person was married to her pre-transition partner and the interim certificate was given for 6 months whilst she divorced.

Unsuccessful Applications: Reasons for unsuccessful applications were extremely complex and difficult to generalise. However, transitioning outside of a medically approved route of gender transition was linked to unsuccessful applications.

Restricted by Criteria: The participants who wished to register for a GRC yet had not done so fell into three categories: those who were married to their pre-transition partners and did not want to get divorced, those who had not followed a medically approved route of transition, and those who felt that their gender identities were more complex than the recognised male/female gender categories.

Choosing not to Register: Each of the 3 participants who explicitly chose not to register for a GRC described this as a political decision, which was aligned to 'queer' and 'non-assimilationist' politics.

Key Research Findings

- Participants overwhelmingly believed that the Gender Recognition Act would not have been possible without the lobbying of government by transgender political campaigning organisation *Press for Change*.
- The majority of participants believed that the Gender Recognition Act was an important law in terms of rights and recognition - a positive move towards citizenship parity.
- There were big differences in attitudes amongst participants as to the overall significance of the GRA.
- The majority of participants felt that the Gender Recognition Act had little impact on their work life.
- The majority of participants felt the Gender Recognition Act had minimal effect on relationships with wider family and friends.
- Participants were divided on whether the GRA had an impact on social and cultural attitudes and understandings of transgender.
- Participants were divided about the ease of the recognition process and on issues around required evidence.
- The majority of participants felt it was correct that the GRA did not demand that an applicant for a GRC had undergone surgery, though it

was often highlighted that the continuation of the 'real life test' undermined this.

- Around half of participants believed that medical and psychiatric professionals should not be involved in the process of gender recognition.
- The majority of participants felt that the Gender Recognition Act excluded people whose gender identities fell outside of the categories of male or female.
- The Gender Recognition Act was strongly criticised by the majority of participants for its criteria that people married to their pre-transition partners divorce before being granted a Gender Recognition Certificate.

Key Themes

❖ Transgender Lobbying

When talking about the GRA, the majority of participants were keen to draw attention to the long-time campaigning and lobbying of government by transgender political lobbying organisation *Press for Change*. Though many participants believed that transgender campaigning organisations should have argued more forcefully against the ‘divorce clause’ and some that they should have lobbied for recognition of non-gendered people, the work of transgender social movements in bringing about legal change was explicit:

“I never – we never - thought this could happen, so there’s a massive amount of gratitude to those that have done it.”

❖ Citizenship Parity

Many participants talked about the significance of the GRA in terms of extending or protecting their ‘rights’. That the Act emerged within a context of European human rights was seen to be important. This was also talked about in terms of ‘protection’:

“It’s a principle, almost to say, ‘hey, listen, if you do this you’re protected [...] You know there’s a framework there that you can move in, to get the test cases. It’s all backed up there by the

Human Rights Court and you think, 'yeah, wow, this is the way it should be'."

❖ Significance

In the main, the significance of the GRA was discussed in relation to simplifying bureaucracy. In this way, for most of the participants who had successfully applied under the GRA, the significance of the Act was strategic and pragmatic; changes to official documents made everyday life less complicated and smoother on a bureaucratic level:

"I guess it just that it makes everything simpler when all the documents match up."

A minority of participants linked the ability to change their birth certificate to their 'sense of self', seeing this as an important reflection of their gender identity:

"For me personally without that legislation my, what I believe is my right to correct an inaccuracy about me, about who I am, my identity, couldn't happen. And yes, you can change your passport, driving licence, any other pieces of documentation, but from my point of view, and I know you don't produce your birth certificate at the drop of a hat, but without that it's a piece of that jigsaw

that's incomplete, and would remain incomplete if the Act had never been brought in. And then there's all the rights that go along with that."

Yet for quite a few other participants, the holding of a GRC was not linked at all to self identity:

"Yeah for me it is more of a convenience thing I don't think it will affect me in terms of my identity. [...] I don't feel in any shape or form that I need a passport or a birth certificate to feel more strongly towards my identity I just need it for practical reasons."

❖ **Work Life**

Few participants felt that the GRA had any impact on their work lives. The vast majority felt that both the private and public sector were unaware of the changing law. This view applied equally to work colleagues, human resources and organisational structures:

"I really don't think anyone in my workplace has heard of the GRA. No one has ever mentioned it. No, nothing..."

While some participants talked about hoping that the GRA would be beneficial in relation to future discrimination in the workplace, others were more sceptical:

“You get to work, you get sacked from your job, but no-one puts the trans word in the equation. Can you prove it was because you’re trans? Well no, the GRA isn’t going to help you.”

❖ **Family and Friends**

Participants largely felt that their relationships with family members and close friends had been unaffected by the GRA. Gender transition more broadly was discussed as the factor that strained or deepened familial and friendship bonds, and the GRA was not believed to have affected this either positively or negatively:

“My friends are my friends regardless and things with my family have not changed because of that.”

❖ **Social Attitudes & Acceptance**

There was a big division amongst participants around whether the GRA would have a positive impact on cultural attitudes and the social acceptance of transgender. Some participants felt that there would be a

‘trickle down’ effect, which would enhance trans people’s cultural value and lead to a broader change towards social acceptance and greater understanding. Others, however, felt that legal change had little, if no, effect in social attitudes and cultural understanding:

“It [the GRA] creates a sense of formality, a sense of acceptance that with time will result in a reduction of prejudice within society as a whole.”

“A lot of people aren’t even aware that the GRA even exists. In fact I guess if you asked the person, man or woman in the street, can you tell me something about GRA? They’re not going to be able to. So actually some people seem to be quite surprised that you can do this.”

❖ Evidence

There was a big divide amongst participants around the question of the ease of the process and of the evidence required. Not surprisingly, this linked to whether or not the individual had been successful in their application for recognition. Of those that had, most spoke about the application process as being “straightforward” or “easy”. These people tended to be people who had transitioned via a medically approved route of care and were several years post-transition:

“Once I knew what I had to do it was ok. My GP had all my records and so it all must have got transferred from him. I didn’t have any problems with evidence, no. The whole thing was pretty straightforward really.”

For other participants, however, the process was experienced as complicated and frustrating:

“When I first saw the form I thought ‘oh no’ [...] I just hated it. That put me off for ages. I was thinking ‘oh, god’...”

Several participants had their evidence questioned:

“The major bugbear of mine is providing the diagnosis report. It’s a nightmare. I had to be re-diagnosed. Right, I was diagnosed years ago...why do I have to be re-diagnosed? It’s crazy. I came across a sticking point [...] Even though I’ve been through surgery, even though I’ve changed my name for six years, it’s perfectly clear what I’ve done. Which is really stupid, so I asked my GP to check their records and they found an initial diagnosis from X in 2001 and that initial diagnosis did say I had gender dysphoria, which is exactly what the GRP forms requested. I sent a letter back saying ‘that’s it, that’s all I can find you, like it or lump it,’ and finally that’s been enough.”

Some participants spoke out strongly about the medical evidence that was required by the gender recognition panel. Issues around privacy and potential disclosures were often cited as being problematic. One participant refused to supply the required evidence, believing that it broke ethics of confidentiality:

“I felt that the Gender Recognition Act was asking for a level of personal disclosure that was a breach of your medical confidentiality; in terms of the medical evidence that they were requiring. [...] Because these are highly personal issues, you know, when you go into a counselling session with a gender therapist and you’re talking about things to do with your family life, your love life, your sex life, how you felt as a child [...] And I thought, ‘no,’ that’s just wrong, that’s inherently wrong. And I thought, ok, I object to that [...] I think this is a breach of medical confidentiality [...] And I thought I’m not willing to do that, I’m going to question this and take it as far as I can.”

Other participants had supplied evidence that was rejected and others were not applying because they felt they did not have sufficient evidence. These were people who had not followed a medically approved route of gender transition.

❖ Non Surgical Criteria

All but one of the participants felt that it was positive that the criteria for a GRC did not involve surgery. It was felt that surgical criteria would have been discriminatory on a number of levels: against people who could not afford private surgery and were on NHS waiting lists; against people who were unable to have surgery due to medical reasons; for people who chose not to have surgery:

“I think that’s quite important because I’ve met a couple of trans men who have hepatitis C, they can’t take hormones; it doesn’t stop them from being trans [...] I mean why should that determine whether you should be a man or a woman or change your birth certificate? So I think that was one of the better parts of it. It’s also sort of saying that we don’t have any gatekeepers saying if you’re allowed to be trans or not. I think the time issue is long enough...that’s enough, you don’t need to have to prove yourself in any other way. Because who are you proving it to? Who should be judging?”

“It should never be a requirement. It’s down to freedom of choice.”

❖ Medical Involvement

Medical involvement in the gender recognition process was a contentious issue. Some participants broadly felt that there had to be some medical involvement to safeguard the process, though even here there was hesitancy:

“It’s difficult to know who else you could put in that position... To minimise the chances of mistakes. But then mistakes are rare and you’re never going to eradicate them 100% either [...]”

Many other participants, however, felt strongly that issues around gender and identity and recognition should not be left in the hands of psychiatry:

“I think it’s a very dangerous way of legitimising any piece of legislation that you have to have this array of medical support. You name anything else; you name any other situation that requires similar? You know, so for me it’s like, where’s the parity in that? Where’s equality in that? When you’re taking a particular group of people in society and saying in order for you to access and take advantage of this legislation, you’ve got to have the support, and it is support, not just contact with, but you’ve got to have the support of the medical profession in order to obtain your legal rights. Point out any piece of legislation that does the same?”

I'm not unhappy with my gender; it was society that was unhappy with my gender. So having to prove that you need support, treatment, whatever it is to be able to get to that end point... There are far more civilised ways of dealing with it than that."

That 'gender dysphoria' remains a listed mental illness on the Diagnostic and Statistical Medical Guidelines for Practitioners (DSM) was critiqued by many participants, with the involvement of medical practitioners in the gender recognition process being linked to this:

"No psychiatrists should be involved. This is not a mental illness. And in other parts of the world they're enlightened enough not to use mental health professionals any more. We are stuck with being subservient to the American Psychiatric Association and the DSM5 which is the psychiatric manual which defines what is a mental illness [...] They see this as some sort of sexual deviancy, right, which has to be dealt with by society and contained. It is absolutely appalling. It is the biggest affront to human rights as far as transgender and transsexual people, because both are tarred with the same brush, are concerned. It is the fundamental issue. [...] We have to remove this."

Some participants believed that the guiding framework of gender recognition should be separated altogether from a biological model of sex and gender:

“Western society is obsessed with gender and sex. The law should be framed in human rights terms, rather than in a bipolar notion of gender.”

❖ **Recognition for Non-gendered People**

The majority of participants felt that the GRC discriminated against people whose identity was not straightforwardly male or female. Many participants did say that they broadly identified as either male or female and so were not personally affected by having to identify in this way in order to register for recognition. Most of these participants, however, felt that the Act was unfair for those whose gender identities were not binary:

“If people are happy to be not either man or woman, if that is how they perceive themselves to be, then that should be recognised.”

Several participants felt that in order to obtain a gender recognition certificate, they had to fit into the categories of male and female when their gender identity was more complex:

“When you have to tick the boxes on a form I would usefully put my tick in the middle and I don’t think I want to push the boat, or rock the boat with this...so there are some forms that you don’t rock the boat and there are other forms that you think well this is

a piece of crap anyway and you tick in between the two boxes, create another box called 'other' or whatever. But I don't like the fact that we're always put into these kinds of categories all the time."

One participant explicitly felt that they were unable to apply for a GRC due to identifying as non-gendered. For this person, the GRA had no impact on recognition rights:

"I could only successfully apply for gender recognition if I were to identify within the gendered societal construct and also having been through the relevant statutory procedures and met the criteria as stated within the GRA. The law does not recognise human existence outside the gendered societal structure and I am trying to gain legal recognition as a person of non-gendered identity."

❖ **Civil Partnerships and Marriage**

Following gender recognition, some participants in same-sex relationships had registered for civil partnerships:

“It meant I was able to enter into a civil partnership, you know, with all the fanfare that that takes, rather than having to hide away and pretend.”

One of the key rights brought by the GRA was that, following gender recognition, transgender people were able to marry in their acquired gender. Some participants had taken advantage of this and felt very positively about being able to marry:

“The positives is obviously it’s allowed me to get a birth certificate, obviously allowed me to get married, so that side of things great.”

The situation regarding marriage, however, was very different for participants who remained married to their pre-transition partners. These participants were in a position where they had to choose between their long-standing marriage and gender recognition:

“X [participant’s wife] wanted to remain married [...] I feel that I have obligations to X. I mean our relationship is in some ways very similar to how it used to be, in terms of a responsibility relationship. And that is likely to continue because I take that responsibility seriously. [...] The continuation of that relationship has not enabled me to take some of the steps perhaps that I would have wanted to take to free myself from the past. I’m still fulfilling

for X that role as husband; not sexually but in other ways. And I still fulfil the role for my children. And I don't want to take that away from them."

In defence of the divorce clause, Ministers had argued that following divorce and gender recognition, people would be able to register their marriage under the Civil Partnership Act (CPA, 2004). None of the participants in this research project, however, felt that this alleviated discrimination for people in existing marriages. Civil partnerships were not believed to be on an equal footing – either symbolically or legally – to marriage, and participants often said that linking the two pieces of legislation demonstrated a lack of understanding of the complexities between gender and sexuality:

"A civil partnership is not appropriate at all. It's inappropriate for trans people in lots of ways. A civil partnership is not equal to marriage. And it just doesn't...there's no logic to it. I mean why should a lesbian couple, one of which becomes a man, be allowed to then marry, and a heterosexual couple, one of which changes gender, be forbidden marriage? Why? What's the logic? It's completely asymmetrical."

Summary of Research Findings

Overall, participants felt that the UK Gender Recognition Act (GRA) was an important and significant law in terms of transgender equality legislation. The majority of participants had registered, planned to register or wished to register (though were restricted by the criteria) for a Gender Recognition Certificate under the law. A minority of participants actively did not want to register.

The significance of the Act was, in the main, linked pragmatically to the changing of documents and in this way was, largely, discussed strategically rather than as a subjective reflection of gender identity. The GRA was seen to have had little impact on relationships with family or friends or on work life. It was hoped that the Act would have a positive social and cultural impact regarding transgender people, although the link between law and broader societal attitudes was sometimes disputed. Whilst some participants had found the process of recognition straightforward, others had found it a complex and problematic procedure, particularly in relation to the required evidence from GPs and psychiatrists.

That the Act did not require surgery was largely viewed positively, although the continued role of medical practitioners in the gender recognition process was strongly criticised by many participants. The GRA also came under criticism for neglecting the rights of non-gendered people. While a minority of participants felt directly excluded from the new rights brought by the GRA in this respect, a larger group felt that they were inappropriately forced to fit into categories of male or female. In this way, the GRA was critiqued for reproducing a binary gender model. The divorce criteria in the GRA came

under much criticism. While a group of participants had benefitted from the Act as they were now able to marry in their acquired gender, participants who remained married to their pre-transition partners spoke angrily about having to choose between marriage to their long-standing partners and gender recognition. While it was felt that civil partnerships worked for transgender people who were in same-sex relationships, linking the Civil Partnership Act and the Gender Recognition Act as the Government had done in defence of the divorce clause showed a lack of understanding of the complex relationship between gender and sexuality.

Overall, the project found that the UK Gender Recognition Act was seen to be an important first step towards greater equality for transgender people; a stepping stone to full citizenship rights:

“The GRA is a good start, but there is much more to be done.”

Recommendations

Research findings suggest that the following moves are needed to secure that all transgender people obtain the same levels of recognition and protection under the Gender Recognition Act:

- The removal of the divorce clause
- Recognition for non-gendered and multi-gendered people
- The removal of 'gender dysphoria' from the DSM
- A simplified application process and less requirement of medical evidence
- Less involvement of medical practitioners in the legal process of gender recognition

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ⁱ Whittle, S. (2000) *The Transgender Debate* South Street Press.