

Written evidence submitted by Scottish Transgender Alliance, Equality Network to the Transgender Equality Inquiry

1. The Equality Network is a national lesbian, gay, bisexual, transgender and intersex (LGBTI) equality organisation in Scotland existing since 1997. The Scottish Transgender Alliance, based within the Equality Network since 2007, focusses specifically on transgender equality. This submission is on behalf of both the Equality Network and Scottish Transgender Alliance. It is based on our research into transgender inequalities and our multiple engagement events attended by over 200 diverse transgender people in Scotland. We also held a specific event on 8 August 2015 for trans people to directly shape this submission.
2. We are a member of the LGBT Consortium's Trans Organisations Network and endorse their submission.
3. We welcome this inquiry into transgender equality and hope the UK Parliament will use the results of the inquiry to urgently address transgender inequalities, especially the flaws within current UK legislation.
4. We urge the Committee to hold an inquiry into intersex equality as people born with variations in their physical sex characteristics have long been ignored within UK equalities and human rights work.
5. As our remit is Scotland-specific, our submission does not cover the important issues of health, education, hate crime and criminal justice because these are fully devolved to the Scottish Parliament.

II. Summary of submission

6. Our recommendations are:
 - The Committee should hold an inquiry into intersex equality
 - The Yogyakarta Principles definition of gender identity should be used in order to be fully inclusive of all transgender people
 - Data collection and analysis should be transgender inclusive and the UK Government should engage with trans organisations and researchers with trans-specific expertise to design research questions
 - The Gender Recognition Act 2004 should be reformed to:
 - Become a simple, cheap administrative procedure based on self-determination of gender and without any requirement for medical or psychiatric evidence
 - Open the standard Gender Recognition Certificate process to 16 and 17 year olds and create a process for those under 16 years old with the additional requirement of parental agreement
 - Allow people to opt out of being legally a man or a woman

- Provide automatic UK recognition of overseas gender recognition
- Passports with unspecified gender should be made available
- The Equality Act 2010 should be amended to:
 - Include gender identity as a protected characteristic
 - Remove the exception that allows single sex services to discriminate against trans people
 - Remove the genuine occupational requirement (GOR) allowing some jobs to require applicants must be cisgender¹ and replace it with a GOR allowing posts delivering trans-specific services to require applicants must be transgender
 - Provide protection from gender identity harassment in school education
 - Restore provisions on third party harassment at work and dual (multiple) discrimination
- Employment tribunal fees should be reduced for discrimination cases
- The DWP should review the unintended negative consequences of 'special customer record' privacy protections and inform trans people of solutions
- The DWP should ensure all sub-contractors have specific trans equality training and provide a clear and effective complaints mechanism
- The UK Government should take measures to improve the safety of trans asylum seekers in the UK and the implementation of Home Office guidance on dealing with gender identity based asylum claims should be improved
- The UK Government should review the transgender content for all country of origin asylum reports
- The UK Government should ensure that asylum seekers, refugees and immigrants who lack country of origin identity documents matching their gender identity and current name are not unfairly disadvantaged

III. Terminology and definitions

7. We endorse the Yogyakarta Principles definition of gender identity as *"each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms"*. It was developed by a distinguished group of human rights experts, including a former United Nations High Commissioner for Human Rights, members of human rights treaty bodies, judges, academics and human rights defenders.²

¹ The term cisgender refers to people who are not transgender:
<http://www.oxforddictionaries.com/definition/english/cisgender>

² 'The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity', International Commission of Jurists, 2007:
http://www.yogyakartaprinciples.org/principles_en.htm

8. We note the term gender identity has been adopted by the United Nations³, European Union⁴ and the Council of Europe⁵. We recommend the UK Parliament and all UK government departments use the Yogyakarta Principles definition of gender identity in all equality legislation, reports and policy development.
9. We recommend the terms transgender people and trans people be used as equivalent inclusive umbrella terms for anyone whose gender identity (including their gender expression) does not fully correspond with the sex they were assigned at birth. This is inclusive of:
 - Trans women – people assigned male at birth but who identify as women
 - Trans men – people assigned female at birth but who identify as men
 - Non-binary people – people who do not identify solely as men or solely as women. Instead their gender identity is between or beyond the man/woman binary or they have no gender. (This is an umbrella term inclusive of other terms such as gender-fluid, gender-queer, non-gendered, agender.)
 - Cross-dressing people – people whose gender expression includes dressing in clothing which does not fully correspond with the sex they were assigned at birth but otherwise identify with their assigned sex.

IV. Data Collection and Evidence

10. Some existing research evidence of transgender inequalities can be found at: <http://www.scottishtrans.org/resources/research-evidence/>
11. There is a lack of up-to-date data accepted by the UK Government on the current population levels of all types of transgender people. Without accepted population estimates, public service planning is impaired and the needs of transgender people are under-resourced.
12. Where existing data collection asks about sex/gender we recommend this should be changed to asking about gender identity (woman, man, other, prefer not to say) rather than sex assigned at birth. A separate question about transgender status should be included in all government surveys. Data collection needs to be done in a way that upholds the privacy rights of individuals, making gender identity and transgender status questions optional rather than compulsory.
13. Research by the European Agency for Fundamental Rights found 1 in 3 transgender respondents experienced gender-based violence or threats of

³ 'UN Human Rights Council Resolution 17/19 on human rights, sexual orientation and gender identity': <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/148/76/PDF/G1114876.pdf?OpenElement>

⁴ 'Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime': <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029>

⁵ 'Recommendation CM/Rec(2010)5 of the Council of Europe Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity': <https://wcd.coe.int/ViewDoc.jsp?id=1606669>

violence over the preceding 5 years.⁶ The EU has defined gender-based violence as “violence that is directed against a person because of that person's gender, gender identity or gender expression or that affects persons of a particular gender disproportionately”.⁷ UK gender-based violence data collection and reports should therefore be inclusive of all transgender people, rather than only addressing violence against cisgender women and girls.

14. We would like to stress the importance of an intersectional multiple discrimination approach to the analysis of data collection. It is important to consider the way that someone's race, sexual orientation, age etc. may interact with their transgender status when they experience discrimination. Failure to analyse data in a way that is mindful of this often leads to the most marginalised members of the trans community being overlooked.
15. Due to the complexity and sensitivity of transgender data collection and analysis, we recommend that the UK government engage with trans organisations and researchers with trans-specific expertise to design appropriate research questions.

V. Gender Recognition Act 2004

16. For all its flaws, the Gender Recognition Act (GRA) marked a significant step forward for the rights of trans women and trans men back in 2004. However, there has been substantial international progress on trans rights over the last decade and the GRA is now outmoded and urgently in need of reform. The recent Parliamentary Assembly of the Council of Europe resolution on discrimination against transgender people in Europe calls on member states to “*develop quick, transparent and accessible procedures, based on self-determination, for changing the name and registered sex of transgender people.*” The GRA fails to meet their recommendations because it imposes a two year delay and is based on a medicalised tribunal process not self-determination. Reforming the GRA to create a purely administrative self-determination process would save the government money by removing the need for the expensive tribunal gender recognition panel of judges and medics.
17. The GRA requirements for intrusive medical and psychiatric reports conflict with the newer non-medicalised gender reassignment equality protections of the Equality Act 2010. Trans people should not be forced to engage with medical and psychiatric services in order to realise their human right to recognition of their gender identity privacy about their gender

⁶ ‘Being Trans in the EU - Comparative analysis of the EU LGBT survey data’, FRA, 2014, page 53: http://fra.europa.eu/sites/default/files/fra-2014-being-trans-eu-comparative-0_en.pdf

⁷ ‘European Parliament resolution (2013/2004(INL)) on combating Violence Against Women’: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0126+0+DOC+XML+V0//EN>

history. Additionally, the medical evidence requirements result in clinical time within severely over-stretched NHS gender identity clinics being wasted writing gender recognition evidence reports.

18. We are also very concerned that the gender recognition panel is not keeping to the spirit of the GRA and is requesting unacceptable levels of detail about people's childhoods, exact hormone dosages, surgical procedures and future surgical intentions. We have supported several trans people who feel traumatised and humiliated by the gender recognition panel process. Many more trans people tell us that they have not applied for gender recognition despite being eligible because they are put off by the intrusiveness of the application process and the expense and inconvenience of gathering the required evidence.
19. The World Professional Association of Transgender Health (WPATH) medical professionals agree that all requirements for medical and psychiatric reports should be removed from legal gender recognition processes, stating: *"No particular medical, surgical, or mental health treatment or diagnosis is an adequate marker for anyone's gender identity so these should not be requirements for legal gender change."*
20. Many employers and service providers, such as the Scottish Prison Service⁸, successfully allow trans people to access single sex facilities in accordance with their gender identity regardless of their legal gender. The GRA's two year delay and intrusive evidence requirements have proven unnecessary for employers and services.
21. Trans people under 18 years are currently prevented from having their gender identity legally recognised in the UK, in some cases for several years after they have undergone social gender reassignment. They often experience significant difficulties with official student records and violations of their right to privacy due to the sex on their birth certificate not reflecting their gender identity.
22. With growing social acceptance, the annual number of children and adolescents coming out as transgender has increased five-fold over four years.⁹ We estimate over one thousand transgender young people have now transitioned with the full support of their parents and now require access to legal gender recognition. We call for the GRA standard application route to be opened to 16 and 17 year olds and a GRA youth application route with the additional requirement of parental agreement to be created for those under 16 years.

⁸ 'Gender Identity and Gender Reassignment Policy for those in our Custody', Scottish Prison Service: http://www.sps.gov.uk/nmsruntime/saveasdialog.aspx?fileName=SPSGenderIdentityandGenderReassignmentPolicy20142562_1392.pdf

⁹ 'Referrals for young transgender people increase', BBC newsbeat, 2015: <http://www.bbc.co.uk/newsbeat/article/31120152/referrals-for-young-transgender-people-increase>

23. In 2012, 29% of our survey of 794 UK trans people¹⁰ stated they had a non-binary gender identity. In 2011, the Equality and Human Rights Commission found that 0.4% of a sample of 10,039 respondents representative of the UK population answered 'In another way' to the question "*Which of the following describes how you think of yourself? Please tick one option: 'Male' 'Female' 'In another way'.*".¹¹ This indicates that a very sizable proportion of transgender people, numbering tens of thousands of people in the UK, have non-binary gender identities and do not self-identify solely as men or solely as women. Presently they have no legal recognition of their non-binary gender at all and are forced to have a binary legal gender which undermines how they actually live and identify. Non-binary trans people have stressed to us the importance of legal gender recognition that they are not solely men or solely women. Two typical quotes are:
- "Legal recognition [would] at least makes it possible for people like me to be part of society, to not be on the outside. It is also the best step forward towards more social acceptance and integration of non-binary identities. I can get by and live my life because I'm used to it, but it shouldn't have to be this way."
 - "It's pretty unpleasant knowing that your government doesn't really acknowledge your gender as real."
24. Many non-binary people are already openly engaging with service providers and employers and using gender-neutral titles and pronouns. Legal recognition of non-binary people would not increase the complexity of including non-binary people. A diverse range of countries, including Australia, New Zealand, India, Nepal, Pakistan, Argentina, Denmark and Malta have all successfully allowed people gender neutral birth certificates, passports and other official documentation. We call on the UK to reform the GRA to allow people to opt out of being legally gendered as a man or a woman.
25. Currently, people visiting the UK who have already received legal gender recognition in a country other than the UK are required to also further complete paperwork and pay under the GRA's overseas application process before their gender identity is legally recognised in the UK. Most trans migrants and holiday-makers unaware of this and can experience significant difficulties such as invalid insurance policies and unexpected rejections of marriage and civil partnership applications by registrars. We call for the GRA to be reformed to provide automatic recognition of overseas legal gender recognition without requiring any UK application process.

VI. Equality Act 2010

¹⁰ 'Trans Mental Health Study 2012', Scottish Transgender Alliance, 2012: http://www.scottishtrans.org/wp-content/uploads/2013/03/trans_mh_study.pdf

¹¹ 'Technical Note: Measuring Gender Identity, EHRC, 2011: http://www.equalityhumanrights.com/sites/default/files/documents/technical_note_final.pdf

26. The Equality Act 2010 does not adequately protect all trans people. We believe the flaws in the Equality Act provisions primarily resulted from parliamentarians lacking knowledge about the diversity of transgender people and their needs during the passage of the legislation. We hope that this Committee inquiry will assist in addressing these knowledge gaps and lead to positive amendments to the Equality Act provisions.
27. The current protected characteristic of 'gender reassignment' within the Equality Act does not encompass all transgender people; in particular most non-binary people and cross-dressing people are not adequately included. We are currently running an online UK survey of non-binary people and our interim analysis of the data four weeks after opening the survey shows 86% of 309 non-binary respondents are concerned about employment discrimination specifically due to their non-binary gender identity. All transgender people need to be clearly and fully protected from employment and service provider discrimination: it is not acceptable to only protect some and not others. Additionally, the Council of Europe explicitly recommends that member states should provide protection from discrimination on grounds of gender identity.¹² We strongly call for the Equality Act to be amended to provide a fully inclusive protected characteristic of 'gender identity' using the Yogyakarta Principles definition.
28. The provision in Part 7 of Schedule 3 to the Equality Act that allows providers of single-sex services and facilities to discriminate against trans people reduced the protection previously provided to trans people in the Sex Discrimination Act. It allows wide scope for service providers to identify service users they 'suspect' to be trans people, intrusively question them about their gender identity, physical sex characteristics and gender history, and then discriminate against them. We believe this breaches trans people's right to privacy under Article 8 of the European Convention on Human Rights. The provision can result in exclusion of vulnerable trans people from vital services such as homeless accommodation, emergency sexual health services and psychological support services. We recommend this single sex services exception be removed.
29. We call for the removal of the Schedule 9 paragraph 1(3)(a) provision for a genuine occupational requirement (GOR) that the post-holder must be cisgender. In its place, should be introduced the possibility of a GOR that the post-holder (perhaps where providing support specifically to trans people) must be a trans person, as exists for other protected characteristics. Indeed the current GOR provision, as well as violating trans people's article 8 human right to privacy about their gender reassignment history, is generally unworkable because the only way anyone could prove beyond

¹² 'Council of Europe Parliamentary Assembly Resolution 2048 on discrimination against transgender people in Europe', 2015: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=21736>

doubt that they had not undergone gender reassignment would be to submit to an unacceptably intrusive medical examination.

30. We are aware of increasing numbers of young people coming out as transgender while still at school so we are particularly concerned that the Equality Act does not make unlawful harassment on grounds of gender reassignment in schools. This should be amended.
31. We are also concerned that some important aspects of the Equality Act 2010 have subsequently been repealed or not commenced. We call for the reintroduction of provisions on third party harassment at work and dual (multiple) discrimination provisions.

VII. Employment Tribunal Fees

32. Research shows trans people experience high levels of discrimination at work, with the UK Government Equalities Office's 2011 survey showing 50% of respondents reporting this.¹³ We are very concerned that the increase in tribunal fees in 2013 has severely reduced access to redress for most transgender people experiencing workplace discrimination. We support the Equality and Human Rights Commission's position and recommend employment tribunal fees be reduced for discrimination claims.

VIII. Department of Work and Pensions

33. Unintended consequences of the DWP 'special customer record' privacy protection have negatively affected trans people in a number of ways, causing processing delays and difficulties accessing information about their benefits claims, difficulties in registering to vote, and problems hiring cars as their record cannot be found through a normal search of their national insurance number. We recommend that the government reviews these problems and informs trans people of solutions.
34. We would like to emphasise the concerns of transgender people around privacy and harassment in regard to ESA/JSA work placements and transphobia in medical assessments subcontracted by the DWP to private companies. We recommend that the DWP ensures that all sub-contractors have specific trans equality training and provide a clear and effective complaints mechanism.

IX. Asylum and Immigration

35. In 2011, we carried out UK research into the needs of transgender asylum seekers.¹⁴ We found that trans asylum seekers are at high risk of

¹³ 'Headline Findings from our Transgender E-surveys', UK Government Equalities Office, 2011:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/85499/transgender-survey.pdf

¹⁴ Chapter 6, 'Sanctuary, Safety and Solidarity', Equality Network, 2011: <http://www.equality-network.org/wp->

experiencing violence and harassment from other asylum seekers, particularly if placed in accommodation that does not match their gender identity. We recommend that the UK government take measures to improve the safety of trans asylum seekers, ensuring they are accommodated in accordance with their gender identities at all times, and to provide effective harassment reporting processes.

36. Despite being contrary to existing guidance, some trans asylum seekers are still inappropriately asked to 'prove' their trans status due to staff holding narrow and culturally inaccurate transgender stereotypes and expectations of hormonal or surgical interventions. We recommend that the implementation of Home Office guidance on dealing with gender identity based asylum claims should be improved.
37. We would like to highlight problems with data gaps in country of origin reports inaccurately implying that transgender people are not facing persecution. The presence of a gender recognition legal process, a transgender non-governmental organisation (NGO) or medical gender reassignment options within a country do not necessarily mean transgender people are not persecuted there. We recommend that the government review transgender content for all country of origin reports, with consideration of evidence such as media reporting and NGO reports.
38. Through no fault of their own, trans asylum seekers, refugees, and immigrants can lack country of origin identity documents that match their gender identity and current name. We recommend that the Home Office should ensure that those affected have their gender identities respected and are not unfairly disadvantaged.

21 August 2015