



**Welsh Women's Aid response to
UK Government Gender Recognition Act Consultation**

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These are the views of:	<i>Welsh Women's Aid (Third Sector) - the national charity in Wales working to end domestic abuse and all forms of violence against women.</i>

About Welsh Women's Aid

Welsh Women's Aid is the umbrella organisation in Wales that supports and provides national representation for independent third sector violence against women, domestic abuse and sexual violence (VAWDASV) specialist services in Wales (comprising our membership of specialist services and members of the regional VAWDASV Specialist Services Providers Forums).¹ These services deliver life-saving and life-changing support and preventative work in response to violence against women, including domestic abuse and sexual violence, as part of a network of UK provision.

As an umbrella organisation, our primary purpose is to prevent domestic abuse, sexual violence and all forms of violence against women and ensure high quality services for survivors that are needs-led, gender responsive and holistic. We collaborate nationally to integrate and improve community responses and practice in Wales; we provide advice, consultancy, support and training to deliver policy and service improvements across government, public, private and third sector services and in communities, for the benefit of survivors.

We also deliver direct services including, for example, the Welsh Government funded Live Fear Free Helpline and a National Training Service partnership . We are piloting the Survivors Empowering and Educating Services (SEEdS) project, which is empowering survivors of violence and abuse to collectively influence and inform improvements in public services and commissioning frameworks, and help change attitudes.

We also deliver the Wales National Quality Service Standards, a national accreditation framework for domestic abuse specialist services in Wales (supported by the Welsh Government) as part of a UK suite of sexual violence and BME service standards for Wales delivered by partner agencies . (More information on the NQSS can be found here: <http://www.welshwomensaid.org.uk/what-we-do/our-members/standards/>)



Overview

We welcome the opportunity to respond to the UK Government's consultation on reform of the Gender Recognition Act 2004.

We understand the difficulties of the current gender recognition process and that the law as it stands does not reflect the real lives of most trans people. 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.

Our focus and expertise, as an umbrella organisation working to end violence against women, domestic abuse and sexual violence, is on supporting and giving a voice to survivors and specialist services in Wales. Our response focusses on aspects of the consultation relevant to our work and is informed by responses received from our network, by our Trans Policy and our role as a national charity and employer. Where there have been divergent views reflected amongst our membership, we aim to reflect this in responses to specific questions below.

Violence against women, domestic abuse and sexual violence is rooted in sex, gender and intersectional discrimination and oppression of women and girls under patriarchy. As a national charity, we are committed to anti-discriminatory practice and supporting the realisation of safety, rights, protection and justice for all women and girls, men and boys, including for trans people. We recognise the unique experiences of survivors of abuse and the ways in which difference and disadvantage may help or hinder access to support, safety and justice. Difference such as sex, age, gender identity, class, ethnicity, ability and sexuality intersect to inform lived experiences and these factors can further reinforce conditions of inequality and exclusion.

We abhor the bullying and transphobia that trans women and men face, which has no place in our society. Trans people's rights and women's rights are human rights which intersect, and trans people experience gender-based violence as a result of these structures of inequality and face additional barriers in accessing the specialist support they need. Just as women are not a homogenous group nor are trans individuals and different experiences of oppression will give rise to different needs.

Globally and nationally, we know that perpetrators of violence against women, girls and boys are predominantly male, and that male violence against women, including domestic abuse and sexual



violence, is a cause and consequence of the inequality women and girls face in society. We have worked for decades to build on the hard-won successes of the women's movement, and we aim to maximise and extend women's rights and protections enshrined in law, as they intersect with protected characteristics including sex, disability, sexual orientation, race, gender reassignment, religion or belief, marriage/civil partnership and pregnancy/ maternity.

Therefore we welcome the stated commitment that UK Government "are not proposing to amend the existing equality exceptions relating to single and separate sex services in the Equality Act". However, we are concerned that this consultation seems to ignore that the interplay between the Equality Act and the current Gender Recognition Act is complex, and denying there are implications of proposed GRA changes for the Equality Act, risks the legal uncertainty growing.

Providing strengths-based and needs-led services that are sensitive to the sex-based, gendered, cultural and other dynamics of violence is a crucial component of specialist services. We advocate rights to single-sex and sex-segregated spaces, informed by evidence of services by and for women and by and for Black and 'minority ethnic' women as being vital to women and girls' recovery from abuse. Women-only spaces provide a physically and emotionally safe environment that is vital to survivors' safety and recovery, helps women reduce their isolation and also enables women to develop peer support networks. Research shows that women-only spaces deliver better outcomes for women's confidence, health and well-being which in turn lead to positive economic and societal impacts (Women's Resource Centre 2011). This research – and evidence from survivors – tells us that if women-only spaces and services no longer existed, women who have been abused would not access support services that meets their needs.

This approach doesn't detract from the need for support, safety and justice for all survivors of abuse. Whilst our network of specialist services set their own policies and practice on access to support services, we provide national guidance and a framework of quality standards (along with partner agencies) that advocates the need for services to assess every survivor, including trans women and men, on a case by case basis in order to best respond to their needs. Many violence against women services in Wales are already supporting transwomen and transmen in accordance with the Equality Act, in refuges, rape crisis centres and in community-based services and will continue to do so.

At the same time, there is increasing concern amongst some services about the conflation of sex and gender in legislation and guidance, about the lack of visibility of sex as a protected characteristic in equality impact assessments, about the lack of clarity for services on how to implement the Equality Act exemptions on a case by case basis, and about the increasing and significant pressure and compulsion by commissioners and others to deliver "gender neutral" services (irrespective of any reforms to the GRA). Some have particular concerns about a system of self-declaration around gender identity being potentially open to abuse.

We are committed to working with Governments, our sister organisations and with other equality organisations to ensure that any new processes are appropriate, fair and have no unintended consequences. We support the need for full discussion about the impact of proposed legal reforms and for consultation with women's services, including on how proposals will impact on existing exemptions which allow for single sex services and on the need for disaggregated data to monitor sex



and gender-based discrimination. We have focussed on the following questions, as being of most relevance to our work, and our response below is informed by feedback received by specialist services that contributed to our request for feedback on this consultation.

Question 3: Do you think there should be a requirement in the future for a diagnosis of gender dysphoria?

Welsh Women's Aid is concerned that requiring a diagnostic psychiatric report in order to gain legal recognition feeds into the outdated notion that being trans is a mental illness. We agree that the current process is stigmatising, intrusive and in need of change.

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

However it is not clear what the legal basis will be for a person to legally change their sex, how this will be defined and what impact this will have on services. We would also call for this declaration to be backed up by consequences if the declaration is made in 'bad faith', for example if someone makes a declaration purely to access women only spaces.

Question 4: Do you think there should be a requirement for a report detailing treatment received?

Services in Wales were not unanimous in their views on this, with some advising that this should be retained whilst others noting that this continues to medicalise the process and should not be a requirement for legal recognition of their gender identity.

Services agreed that there should be full support available for someone who feels they want to medically transition, and that access to specialist support for trans people impacted by abuse should be available irrespective of treatment received for medical transition.

Question 5: Evidence of living in an acquired gender

Again, services in Wales were not unanimous in their views on this, with some advising that this should be retained whilst others noted that rather than providing evidence, transgender people should be able to simply explain why they wish to live in an acquired gender.

Welsh Women's Aid considers people to be sex-classified as biologically female, male or intersex, and understand gender identity to be neither biological nor innate but socially constructed. A person's gender identity (woman/girl, man/boy, genderqueer, non binary) and gender presentation (feminine, masculine, androgynous) can be defined differently in different times and places.

Gender is not only individually felt or ascribed, but as a social construct, also constitutes a system of social/power relations structured by a binary hierarchy between men and women, and harmful gender stereotypes and norms underpin violence against women, domestic abuse and sexual violence. Dismantling gender stereotypes and norms as a system of oppression that perpetuates women's inequality is vital if we are to make any inroad into preventing violence against women and to



achieving equality for women and girls. So we are concerned that requiring someone to live within prescribed gender roles for a period of time risks inscribing sexist stereotypes into law.

That said, some services felt there should be a period of reflection built into the process to ensure commitment to a decision to legally change gender identity/sex. Services also wanted to ensure single-sex spaces are protected while also ensuring services are able to promote equality and diversity within the services they deliver to survivors, including appropriate support to all transgender people. In the instance of single-sex provision, services in Wales expressed a clear commitment to ensure transgender people should be supported to access the support which fits with their gender identity (see below Q13).

Questions 6: Having to provide a statutory declaration

Do you think this requirement should be retained, regardless of what other changes are made to the gender recognition system?

Services in Wales supported the need for a statutory declaration. We are concerned about the 'until death' pre-requisite because the law must provide for those who want to de-transition and rescind this legal status if they later chose to do so. We agree that clear processes must be in place to safeguard against people abusing a statutory declaration, but this must be balanced with access for those who may need to transition or 'de-transition' more than once.

Services felt that consequences must also be in place for anyone who makes the declaration in 'bad faith' in addition to the current position to rescind the GRC on the grounds of fraud.

Marriage and Civil Partnership

The Government is keen to understand more about the spousal consent provisions for married persons in the Gender Recognition Act. Do you agree with the current provision?

The majority of service responses disagreed with the current provision, with a minority agreeing this should be retained.

As an organisation committed to eradicating coercive control, Welsh Women's Aid is concerned that currently a spouse can block an application. Given that transgender people can experience high rates of intimate partner abuse (Stonewall and YouGov found 16% of trans women had experienced abuse from a partner¹), this is an unacceptable example of legislation sanctioning abuse.

Welsh Women's Aid calls for a process that allows a trans person to obtain a certificate without spousal consent, and we are also pleased that the Justice Secretary has recently announced that UK Government will consult on so called 'no fault' divorces. In consultation with members they have also called for a change, with some services wanting to see no fault divorces to couples where one person is seeking to transition and the other person does not wish to continue in the marriage under that condition. Others felt this demonstrates the need to update the divorce laws in line with the Marriage

¹ https://www.stonewall.org.uk/sites/default/files/stonewall_and_nfpsynergy_report.pdf
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Equality Act. All services felt that support should be provided to both parties to mitigate the impact of these changes.

Question 13 - Gender Recognition and the Equality Act

Single and separate sex services

Do you think that the operation of the single-sex and separate-sex service exceptions in relation to gender reassignment in the Equality Act 2010 will be affected by changing the Gender Recognition Act? If you provide a single or separate sex service, do you feel confident in interpreting the Equality Act 2010 with regard to these exemptions?

Services in Wales were not unanimous in their views on this, with a minority feeling there would be no impact, and the majority feeling there would be an impact, in part due to the lack of clarity between both pieces of legislation.

Welsh Women's Aid Trans policy states specialist domestic abuse and sexual violence services should be delivered appropriately to all trans people who need support as a result of being abused. In terms of single sex provision, trans people should be supported to access the service which best meets their needs and identity. As most services pointed out to us, women-only services are experienced in assessing risk and do so for every survivor seeking support from their services, trans or not.

The Stonewall report on supporting trans women in domestic and sexual violence services, which included input from Welsh Women's Aid, found that single-sex services have been supporting trans women for some time². Some services told us that any changes to the Act will not impact how they work with trans survivors, because whether a trans person has a GRC or not currently makes no difference to how they would support someone.

One service said, for example: 'we provide an individualised service for every woman who uses our service. Refuge for instance, is not suitable for every woman we have to take into account not only her own needs but those of other women/families she will be living alongside. (transgender) women may not even be identified by the service unless they want to self-identify. However, their lived experience may mean we need to work slightly differently with them to achieve the same outcomes'.

Another service highlighted: "While it is important that there is training to ensure all service users and staff operate inclusively, we must also acknowledge the concerns of women using refuge spaces and work to create spaces which are both inclusive but not re-traumatising for women who have experienced male violence and may be uncomfortable sharing that space with male-bodied survivors."

A minority of services expressed concerns about changes, such as allowing a trans person to self-identify and legally change their birth certificate, risks people accessing single-sex provision inappropriately, particularly by male perpetrators.

Welsh Women's Aid nationally do not expect that changes to the GRA will significantly change the delivery of single-sex services. Welsh Women's Aid supports the need for the provision of specialist

² Op Cit – Stonewall – Supporting Trans Women in Domestic and Sexual Violence Services
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services that are led by and for women and by and for BME women, which are lawful under the Equality Act.

However, Welsh Women's Aid is clear that sex as a protected characteristic **must** be retained in the Equality Act and we oppose any calls to remove single sex exemptions, as demanded by some charities/lobby groups. Women's services must continue to be able to apply exemptions on a case by case basis, in limited circumstances, for example where there are concerns about safety. Changes to the Act, therefore, shouldn't compromise a services ability to protect against any abusive individuals, but this should be further backed up by legal consequences for anyone who makes a false declaration to live as a trans person.

We feel further guidance and greater clarity is needed on the legal situation around the exemptions as they relate to the provision of single-sex or sex-segregated services. We endorse the concerns raised by Rights of Women, in their consideration of the consultation and issue of single sex services and support their belief that "there is a fundamental lack of clarity around how the existing GRA 2004 and EA 2010 exceptions interact with each other and that this relationship, in the absence of any clear case law, is open to interpretation."

We agree that Government guidance on the GRA and on the Equality Act is unclear, and we support their call for greater clarity as a matter of urgency, to clarify "how a service provider providing single or separate sex services can confidently and practically exclude those with the protected characteristic of 'gender reassignment' as 'a proportionate means of meeting a legitimate aim' in relation to a trans person who has obtained a GRC, has legally changed sex, and is therefore entitled to additional protections against discrimination in relation to their acquired sex as a protected characteristic and has rights relating to privacy."

As Rights of Women note, it is unclear how a service provider could actually establish whether someone holds gender reassignment as a protected characteristic. It is also unclear how rights in relation to sex as a protected characteristic acquired under a GRC interact with exceptions allowing discrimination on the basis of gender reassignment.

Services have fed back to us that it is not clear where trans women stand in relation to their rights to access services. The current lack of clarity leaves the onus and risk with women's organisations seeking to rely on their interpretation of the exemption aspect of the law, which if challenged could have devastating impacts on the service provider and women they support. Welsh Women's Aid is clear that provision and support must be strengths-based, needs-led and gender and trauma informed. We would urge UK Government, when reviewing this consultation and considering next steps, to ensure services are provided with better guidance and legal clarity about the above issues, particularly in relation to the interpretation of the Equality Act 2010.

We are also concerned about the confusion that exists by commissioners of services about the status of sex as a protected characteristic and its conflation with gender. The importance of sex-based data and monitoring is vital, to ensure robust needs assessments, that services can continue to meet needs of women and girls or address offending behaviour and challenge discrimination and oppression.



Some concerns have been expressed about the greater move to gender-neutral services, and that LGBT+ or BME specialist services are particularly under resourced. We believe the greatest threat to services is the deep and desperate funding crisis and this threat exists irrespective of any reforms to the GRA. This damaging and dangerous focus on 'gender neutrality' is worsening as the needs of the women we work with - hit hardest by declining public services and austerity - become more complex and demands on women's services more extreme.

Question 14: Do you think that the operation of the occupational requirement exception in relation to gender reassignment in the Equality Act 2010 will be affected by changing the Gender Recognition Act?

Our Trans policy and approach, in relation to employment, is non-discriminatory and we work within the law to ensure no person is discriminated against in line with our employment policies and practice. We utilise the Equality Act genuine occupational requirement provision and monitor this closely on a case by case basis, in line with the law. We do not envisage that this approach will be altered by changing the GRA.

There remains confusion with regards the contradiction between the GRA - that if a trans woman has a gender recognition certificate then she should be treated in exactly the same way as any other woman applying for a post restricted to women only - and the exemption in the Equality Act – which allows an employer to discriminate against a trans applicant for a job restricted to only one sex in exceptional circumstances.

Greater clarity is needed by employers running women-only services about their position under the Equality Act. Welsh Women's Aid also calls on the UK Government to invest in and provide guidance for service providers on trans inclusion, ensure adequate support for trans survivors, and ensure specialist services are properly funded to support all survivors.

Question 19 - Do you think that changes to the Gender Recognition Act will impact on areas of law and public services other than the Equality Act 2010?

Services expressed concern that offender management services could be impacted and highlighted the importance of training for staff to deal with the complexity of supporting a trans person who may have additional vulnerabilities. They also felt mental health services and the continuation/introduction of single-sex wards will be impacted.

Welsh Women's Aid would reiterate the points made above; any service should work from an inclusionary perspective while ensuring women feel safe. While those agencies that provide different responses or work separately with men and women are likely to see an impact, it is important the needs of all women, including trans people, are considered and addressed.

We also support Women in Prison's statement of support for the right of transgender people to access services that meet their needs, and for the continued scrutiny of requests by transgender individuals to move to a women's or men's prison. We share Women in Prison's concerns that it appears that rigorous and transparent risk assessment which includes background, motivation and risks to the individual and others, is not being consistently conducted and monitored. We support their call for UK Government to take action to ensure that thorough risk assessments are taking place and to



provide alternative facilities if it is decided that the placement of a trans woman or trans man is not appropriate in the prison of their self-identified gender. Such alternative facilities would need to take account of the particular needs of trans people, including for access to specialist services.

Question 20 - Non-binary Gender Identities

Do you think that there need to be changes to the Gender Recognition Act to accommodate individuals who identify as non-binary?

Currently, the GRA does not make a provision for non-binary people to have their gender identity recognised and the Equality Act does not include non-binary people. Services highlighted that there is a lack of clarity and discussion around how single-sex or women only services can support non-binary people. Through our consultation with members, services highlighted that this is an area that requires more thought from the women's sector.

ⁱ Our membership of third sector violence against women, domestic abuse and sexual violence specialist services in Wales, with whom we have national partnership agreements to ensure our work is coordinated and integrated includes: Aberconwy DAS, Atal y Fro, Bangor and District Women's Aid, Clwyd Alyn Housing Association (CAHA) Women's Aid, Stepping Stones, Safer Merthyr Tydfil, Carmarthen Domestic Abuse Service, Calan DVS, Cardiff Women's Aid, Cyfannol Women's Aid, Domestic Abuse Safety Unit (DASU), Gorwel (Grwp Cynefin), Montgomeryshire Family Crisis Centre, Newport Women's Aid, North Denbighshire Domestic Abuse Service, Port Talbot & Afan Women's Aid, RCT Women's Aid, Safer Wales (including Dyn Project), Swansea Women's Aid, Threshold, West Wales Domestic Abuse Service and Rape and Sexual Abuse Support Centre (RASASC) North Wales.