

Submission to the UK Government Equalities Office on Intersex Inclusion in the Gender Recognition Act

16th October 2018

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Introduction

1. IntersexUK (iUK) is an intersex led organisation that has been delivering education, support, and consultancy since 2011. We are the first public intersex human rights organisation in the UK to deliver consultation, training and support. We work with the United Nations, the UK and Scottish Governments and Parliaments, the Equality and Human Rights Commission, the Children and Young People's Commissioner Scotland, and others across the UK and the world to advance intersex human rights.
2. This submission is based on our diverse engagement with people born with intersex bodies / variations of sex characteristics (VSC) and their families, and our expertise in applying international human rights and equality principles to intersex/VSC issues. It is also informed by our ongoing partnership work with national and international academic researchers and human rights organisations.
3. We welcome the UK Government's consultation on the reform of the Gender Recognition Act to provide a less intrusive and bureaucratic process for legal sex/gender recognition and welcome that the consultation includes a specific question about intersex inclusion.
4. The current UK legislative framework fails to recognise the needs of people born with intersex bodies / VSC in a variety of contexts including human rights, equality protections and policy. A wide range of anti-discrimination law, education and enforcement procedures are needed.¹ Reform of the Gender Recognition Act provides a limited opportunity for people born with intersex bodies / VSC to begin to have their rights to self-determination and privacy supported, respected and upheld.
5. We note that the Gender Recognition Act is very limited in its scope and therefore cannot address all key intersex/VSC equality and human rights priorities. Therefore, this submission focuses only on birth certificates and legal sex/gender recognition. We will submit our wider intersex/VSC legislative and policy priorities, including the need for legal protection from non-consensual medical interventions, to the forthcoming separate intersex/VSC call for evidence.

Summary of submission

¹ Garland, F and Travis, M (2018) Legislating Intersex Equality: Building the Resilience of Intersex People through Law, Legal Studies.

6. The main recommendations of our submission are:
- i. The UK should reform the Gender Recognition Act to explicitly include intersex/VSC and uphold the fundamental rights of self-determination and privacy.
 - ii. The name of the legislation should be amended from 'Gender Recognition Act' to 'Gender and Variations of Sex Characteristics Recognition Act' to make explicit that it is inclusive of intersex/VSC corrections of birth certificates.
 - iii. In addition to the standard application process shared with trans people, a more inclusive and less intrusive version of the existing General Register Office (GRO) intersex/VSC birth certificate correction process should be incorporated into the legislation.
 - iv. A clear and inclusive definition of intersex/VSC should be included in the legislation.
 - v. The requirement for a diagnosis of gender dysphoria (or any report by a medical practitioner or clinical psychologist practicing in the field of gender dysphoria) should be removed.
 - vi. The requirement to provide intrusive medical evidence should be removed.
 - vii. The requirement to evidence any set time period of living in the 'acquired gender' should be removed.
 - viii. There should be no restriction on the number of times a person can correct the legal sex recorded on their birth certificate.
 - ix. Young people aged under 18 who are Gillick competent should be permitted to apply to correct the legal sex recorded on their birth certificate. If a child is not Gillick competent but a correction of their legal sex would more accurately reflect their life, their parent/guardian should be permitted to apply on the child's behalf for a correction to Female or Male.
 - x. When correcting the legal sex recorded on a birth certificate, the option of recording 'X' rather than Female or Male should be available to over 18s and to under 18s who are Gillick competent. The initial registration of a birth and any correction by a parent/guardian should not include an 'X' option.
 - xi. To uphold their human right to privacy, corrected birth certificates should not show any indication that there was a previous sex recorded and any correction register must be confidential and should not record the person as intersex/VSC or trans.
 - xii. There needs to be meaningful engagement of intersex/VSC human rights experts throughout all stages of legislation reform.

Terminology

7. We use the umbrella terms ‘intersex’ and ‘variations of sex characteristics (VSC)’ to describe the wide range of typically healthy variations of biology that do not fit the standard definitions, or represent the typical biological traits of male or female bodies. These terms are widely used both nationally and internationally by diverse human rights and equality organisations, the United Nations, the Council of Europe, national governments and academics.²
8. In common with other equality and human rights organisations, we do not use the analogous medical term ‘disorders of sex development (DSD)’ because it pathologises a range of medically benign variations of sex characteristics and privileges the positions of medical practitioners.
9. Intersex/VSC means a person’s genitals, gonads (reproductive organs), chromosomes or hormone receptor responses do not represent the typically understood definitions of male or female bodies. Being born with an intersex body / VSC does not predetermine a person’s gender. Intersex/VSC children are often subjected to non-consensual surgeries, hormone regimes and harmful practices in an attempt to enforce typical expectations of male or female bodies.

Making the name of the legislation more inclusive

10. The name of the legislation should be amended from ‘Gender Recognition Act’ to ‘Gender and Variations of Sex Characteristics Recognition Act’ to make explicit that it is inclusive of Intersex/VSC related corrections of birth certificates.

Standard and Specific Intersex/VSC Application Processes

11. A reformed standard GRC application process based on self-declaration should be open to intersex/VSC individuals as well as trans individuals. In addition, the Act should be reformed to incorporate an intersex-specific application process which is a more inclusive and less intrusive version of the existing General Register Office (GRO) intersex/VSC birth certificate correction process:

Reform Gender Recognition Act to Gender and Variations of Sex Characteristics Recognition Act	
Reform Standard Application Process so that it: <ul style="list-style-type: none">- Is open to trans people and Intersex/VSC people- Requires only a statutory declaration- Does not require any medical evidence	Add a Specific Intersex/VSC Application Process that is: <ul style="list-style-type: none">- Only open to Intersex/VSC people- Similar to existing informal General Register Office correction process- Requires only a simple medical practitioner confirmation that person has or is likely to have a VSC.

² Monro, S, Crocetti, D, Yeadon-Lee, T, Garland, F and Travis, M (2017) Intersex, variations of sex characteristics, and DSD: The need for change, University of Huddersfield: Huddersfield.

12. Some intersex/VSC people do not feel comfortable using a Gender Recognition process that is strongly associated with trans people or which requires any declaration about their lived identity. These intersex/VSC people would rather use the existing General Register Office procedure. However, the current informal process used by the General Register Office to make decisions about whether to allow intersex/VSC birth certificate corrections includes archaic criteria for intersex/VSC. This makes it difficult for some intersex/VSC people to correct their birth certificates as the criteria are not sufficiently inclusive. For example, some people with variations of Partial Androgen Insensitivity and atypical development of secondary sex characteristics are excluded because the criteria does not adequately include variations in sex hormone receptor responses.
13. When requesting a correction of their birth certificate, there should be no requirement to provide details of exactly which type of intersex/VSC a person has. Some intersex/VSC people do not have an exact diagnosis. Others have had parts of their medical records 'lost' or withheld to obscure the details of unnecessary non-consensual surgeries and other harmful procedures carried out on them. Some intersex/VSC people find their variations only start to become apparent at puberty or later in life. Intersex/VSC people should not be expected to send in highly sensitive medical reports and should not be subjected to inappropriate, humiliating, or degrading examinations or mental health assessments to correct their birth certificates.
14. Therefore, a more inclusive and less intrusive version of the existing General Register Office intersex/VSC birth certificate correction process should be incorporated into the legislation. A clear and inclusive definition of intersex/VSC should be included in the legislation. In particular, variations in sex hormone receptor responses should be included as a form of intersex/VSC. A person wishing to use this specific intersex/VSC application process should be able to select Male, Female or 'X'. The only evidence requirement should be a letter from a medical practitioner confirming there is indication that the individual has, or is likely to have, a variation of sex characteristics of their genitals, gonads (reproductive organs), chromosomes or hormone receptor responses. No further medical details should be required.

Standard Application Process Evidence Requirements

15. The current Gender Recognition Act requirement for a report by a medical practitioner or clinical psychologist practicing in the field of gender dysphoria and detailing the diagnosis of gender dysphoria has resulted in intersex/VSC people being unable to apply. Many intersex/VSC people who need to correct the sex recorded on their birth certificate do not consider themselves to have undergone a self-directed gender reassignment process and have no reason to attend any Gender Identity Clinic. They have often been subjected to non-consensual surgeries and harmful procedures in childhood that violated their self-determination, bodily autonomy and bodily integrity. They must not be further pathologised and disempowered through forced engagement with gender dysphoria specialists purely to correct their birth certificate. This current requirement for a specialist report detailing a gender dysphoria diagnosis should be completely removed.
16. Many intersex/VSC people have experienced profound trauma as a result of non-consensual, irreversible and unnecessary surgeries and harmful medical procedures. Society has often inflicted intense shame and stigma upon them which makes being forced to share information

about their bodies and medical histories extremely distressing. There should be no requirement to submit intrusive details of medical intervention or bodily configuration in order to correct the legal sex on a person's birth certificate. Their right to privacy of their medical history and their need to avoid exacerbation of previous trauma should be respected.

17. Likewise, requiring people to submit two years of personal paperwork such as bank statements, pay slips and utility bills to prove they are living in a particular gender is demeaning and unnecessary. It discriminates against some disabled people whose families/carers manage their financial transactions and also against people who have lost paperwork due to fleeing domestic abuse or otherwise becoming homeless. A legal statutory declaration affirming a person's commitment to living in their gender should be sufficient evidence.

Restrictions on the number of corrections

18. There should be no restriction on the number of times a person can correct the legal sex recorded on their birth certificate. Some intersex/VSC people experience intense social, family, cultural or religious pressures to live in a particular gender and this can result in them living in different genders at various times in their life. Furthermore, some people find that their self-understanding naturally develops throughout their life and the legislation should acknowledge and support this. Restrictions on the number of corrections allowed means a person could end up forced to remain in a legal sex that is no longer appropriate.

Under 18s

19. UK law currently requires sex markers on birth certificates to be assigned within the first 42 days (21 days in Scotland) from a child's birth. It is currently extremely difficult to later correct the sex marker initially assigned on the birth certificate. The time limits combined with the restrictions on later correction can cause psychological distress and create pressure on parents/guardians to make irreversible medical decisions, which increases the risk of medically unnecessary surgeries being performed on infants.

20. Young people aged under 18 who are Gillick competent should be permitted to apply to correct the legal sex recorded on their birth certificate. If a child is not Gillick competent but a correction of their legal sex would more accurately reflect their life, their parent/guardian should be permitted to apply on the child's behalf for a correction to Female or Male. Knowing that this is possible could reassure some parents/guardians sufficiently that they decide to take a less directive, non-medicalised approach to supporting their Intersex/VSC child.

21. UK legislation and policy needs to reflect that until a person is old enough for self-determination, the legal sex recorded on their birth certificate is effectively a presumption. Allowing easier subsequent correction of a person's sex on their birth certificate would enable parents/guardians initially to select a Male or Female sex marker with the reassurance that this does not need to be definitive and permanent. This will help encourage a flexible 'watchful waiting' non-surgical approach to supporting Intersex/VSC children while they do not have Gillick competency.

Option of Recording 'X' Rather Than Female or Male

22. We recommend against the use of an 'X' sex marker or leaving the sex blank for the initial birth registration of children born with intersex bodies / VSCs. We are concerned that such measures could undermine the privacy of these children and may create increased pressure on parents/guardians to agree to irreversible and unnecessary surgeries and harmful procedures. However, we support the provision of the option of subsequent correction of the sex marker to an 'X' once the individual is old enough to be Gillick competent.

Maintaining privacy about the correction of the birth certificate

23. To uphold the person's human right to privacy, corrected birth certificates should not show any indication that there was a previous sex recorded. The registration/issue date and format of the birth certificate should exactly match the original. If the General Register Office requires to keep a record of the correction history, then any correction register should be kept highly confidential and should simply note there was an error corrected on the birth certificate. The original uncorrected birth certificate should not be retained. Any correction register should not record the person as intersex/VSC or trans.

Facilitating meaningful Intersex/VSC engagement

24. There needs to be meaningful engagement of Intersex/VSC human rights experts throughout all stages of Gender Recognition Act reform processes, including consultation, legislative drafting, parliamentary scrutiny and implementation of the resulting Act.

25. At present, no dedicated Intersex/VSC organisations in the UK receive any national funding to undertake equality and human rights policy engagement work. To support the capacity of Intersex/VSC human rights experts to engage in policy and legislation development and implementation, the UK Government should provide sustainable Intersex/VSC organisational funding.

26. The Government Equalities Office should organise training for civil servants from Intersex/VSC human rights experts to increase knowledge and understanding.

27. We note that the Parliamentary Forum on Gender Identity (consistently ongoing since its creation in 1994) has been a valuable mechanism for aiding engagement between trans human rights experts, civil servants, MPs and Lords. A supportive MP or Lord should create a similar Parliamentary Forum on Intersex/VSC.

Acknowledgments

28. We would like to acknowledge the help and guidance of the following people in the creation of this submission: James Morton, Wilf Stevenson, Lu Toludo, Mitchell Travis. Any mistakes remain our own.