

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Third Delegated Legislation Committee

DRAFT GENDER RECOGNITION  
(APPROVED COUNTRIES AND TERRITORIES  
AND SAVING PROVISION) ORDER 2023

*Tuesday 6 February 2024*

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**The Committee consisted of the following Members:**

*Chair:* MRS SHERYLL MURRAY

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|--|---|
| † Abrahams, Debbie ( <i>Oldham East and Saddleworth</i> )<br>(Lab) | † Leadbeater, Kim ( <i>Batley and Spenningsdale</i> ) (Lab) |
| † Andrew, Stuart ( <i>Minister for Equalities</i> )                | † Oswald, Kirsten ( <i>East Renfrewshire</i> ) (SNP)        |
| † Carter, Andy ( <i>Warrington South</i> ) (Con)                   | † Scully, Paul ( <i>Sutton and Cheam</i> ) (Con)            |
| † Dodds, Anneliese ( <i>Oxford East</i> ) (Lab/Co-op)              | † Stafford, Alexander ( <i>Rother Valley</i> ) (Con)        |
| † Ellwood, Mr Tobias ( <i>Bournemouth East</i> ) (Con)             | † Strathern, Alistair ( <i>Mid Bedfordshire</i> ) (Lab)     |
| † Fletcher, Mark ( <i>Bolsover</i> ) (Con)                         | † Sunderland, James ( <i>Bracknell</i> ) (Con)              |
| † Hobhouse, Wera ( <i>Bath</i> ) (LD)                              | † West, Catherine ( <i>Hornsey and Wood Green</i> ) (Lab)   |
| † Hudson, Dr Neil ( <i>Penrith and The Border</i> ) (Con)          |   |
| † Johnson, Gareth ( <i>Dartford</i> ) (Con)                        | Ian Bradshaw, <i>Committee Clerk</i>                        |
| † Jones, Andrew ( <i>Harrogate and Knaresborough</i> )<br>(Con)    | † <b>attended the Committee</b>                             |

## Third Delegated Legislation Committee

Tuesday 6 February 2024

[MRS SHERYLL MURRAY *in the Chair*]

### Draft Gender Recognition (Approved Countries and Territories and Saving Provision) Order 2023

9.25 am

**The Chair:** Before I call the Minister, I remind the Committee that the debate should be restricted to the scope of the instrument and not stray into wider issues of policy.

**The Minister for Equalities (Stuart Andrew):** I beg to move,

That the Cttee has considered the draft Gender Recognition (Approved Countries and Territories and Saving Provision) Order 2023.

This statutory instrument updates the list of countries and territories from which citizens are eligible to use the fast-track recognition process to obtain a gender recognition certificate. I am grateful to the House for finding parliamentary time to debate this secondary legislation and to you, Mrs Murray, for chairing this sitting today.

We laid the statutory instrument before the House on 6 December. This is the first time, subject to parliamentary approval, that the approved overseas countries and territories list has been updated since July 2011. I know the statement given by the Minister for Women and Equalities on 6 December generated a wide debate. It touched on the importance of communicating these changes clearly. It is important that everybody understands why we are updating this international gender recognition process, and that includes our colleagues internationally. Today's sitting is focused on the details of the SI and our need to make this important update.

We are making these changes because the Government believe that it should not be possible for a person who would not satisfy the criteria to obtain legal gender recognition under UK legislation through the standard route to use the overseas recognition route to obtain a UK GRC. That would damage the integrity and credibility of the process under the Gender Recognition Act 2004.

There have been many changes in the international approach to gender recognition since the list was last updated in 2011. We have provided details of overseas countries and territories to be removed from and added to the list laid on 6 December, which is available to view on [Legislation.gov.uk](https://legislation.gov.uk). We have undertaken thorough checks in collaboration with the Foreign, Commonwealth and Development Office to verify our understanding of each overseas system in question, and then measure that against the UK's standard route to obtaining gender recognition. My officials and I have engaged extensively with posts, including those in the USA, Canada and Australia. I am confident that the international community understands the extent of the changes and the impacts of them on their citizens.

The overseas route to obtaining a GRC sees low volumes of application. Of the 370 total applications in the last quarter, only 4% used the overseas route for

their application. Of the 7,043 applications received since 2009-10, 94% were standard applications and 5% were overseas applications. The impact on transgender people in this country and abroad will be minimal. This update brings the overseas route back in line with the standard route, allowing for more equality in application requirements.

It is extremely important to ensure parity with those who have taken the UK standard route to obtaining a GRC. It would not be fair for the overseas route to be based on less rigorous requirements and consequently for the GRC to be more easily acquired. I hope that the Committee will join me in acknowledging the need for this important update and approve this SI today.

9.29 am

**Anneliese Dodds (Oxford East) (Lab/Co-op):** It is a pleasure to serve on the Committee with you in the chair, Mrs Murray. I am grateful to the Minister for setting out the draft order for the Committee. I welcome this further opportunity, after initial discussion in December, to debate the important mechanism in the Gender Recognition Act, which Labour passed in 2004. As the Minister for Women and Equalities, the right hon. Member for Saffron Walden (Kemi Badenoch) admitted when laying the order before the House in December, it is "long overdue".

The list of approved overseas countries and territories for people from other countries who apply for gender recognition in the UK has not been updated since 2011, as the Minister for Equalities recognised today. The explanatory notes for the Gender Recognition (Approved Countries and Territories) Order 2011 state:

"The Ministry of Justice keeps changes to international gender recognition systems under continual review and expects it will be necessary to explore updating the list of approved countries and territories within the next 5 years."

Let me repeat that: five years. Yet here we are, 13 years later, and the Government seem to have suddenly decided that action is urgently required. It is worth drawing Members' attention to the fact that no timetable for future revision is promised in the explanatory notes to the new order. After the Government missed their last target by eight years, it seems that the Minister for Women and Equalities wants to remove any risk of breaking a promise in the future, or perhaps she does not think the list should ever be changed again. It would be useful to hear the view of the Minister for Equalities while he is present.

We need to interrogate the reasons for laying this order now, nearly a decade and a half after the list was last reviewed. In December, the Minister for Women and Equalities told the House that it was because

"some countries and territories on the list have made changes to their systems and would not now be considered to have similarly rigorous systems as the UK's."

According to her, those changes are needed because

"it would not be fair for the overseas route to be based on less rigorous evidential requirements"

and that

"Inadvertently allowing self-ID for obtaining GRCs is not Government policy."—[*Official Report*, 6 December 2023; Vol. 742, c. 359.]

However, some of the countries that will be removed from the list changed their system of gender recognition many years ago. Denmark introduced self-ID in 2014, Portugal in 2016 and New Zealand as long ago as 2012.

I ask the Minister this: if inadvertently allowing self-ID for obtaining GRCs is, in his colleague's words, "not Government policy", why has it taken the Government 13 years to enforce that position? If it is "not fair" for the overseas route to be subject to less rigorous evidential requirements, why have the Government tolerated that so-called unfairness for so long? Do the Government believe it is fair that a trans person with a GRC from Denmark who arrived here at any time in the last 10 years could automatically have received a UK GRC, while one who arrives here in future could not? Why does Germany—a country that has, I believe, introduced a self-ID regime for changing birth certificates—remain on the approved list, while other countries with self-ID regimes for GRCs are coming off it? The Minister for Women and Equalities was unable to answer that question in the House. In fact, she seemed to suggest that Germany had been taken off the list. That was not the case; it remained on the list. Perhaps the Minister can explain to us in this Committee the response of the Minister for Women and Equalities to that question.

How are we in this position without, according to the Minister's definition, undermining the integrity of the UK process? Where is the consistency? I suggest that, unfortunately, the timing of these new changes has little to do with rigour or fairness in the UK system of gender recognition and everything to do with partisan politics. The Minister is absolutely right to state that the debate on the Floor of the House covered a range of issues. I think that that decision to cover a range of issues was the Government's. These matters are significant, albeit, as the Minister rightly said, for a small number of people. We should focus on those people and on understanding the impact on them rather than turning this into some kind of broader ideological debate.

I will leave the Committee to draw its own conclusions about the timing of this move and about why the Government saw fit to introduce the order at the last minute in December, with so little notice that that Members were unaware of which countries had been added to the list, even during the statement made by the Minister for Women and Equalities. On that note, I think it would be helpful if the Minister stated whether there was no formal warning that the SI was being laid at the time of that debate. Will he ask the Minister for Women and Equalities to correct her comments to the House on the day of that statement? She maintained that the SI was laid

"well before the statement to the House"

and that

"we have done our bit".—[*Official Report*, 6 December 2023; Vol. 742, c. 376.]

Will there be confirmation that that is inaccurate? The SI was not formally laid until after the statement, and it was not published by the Vote Office until straight after the statement: not before, but after. Will there be an apology to the staff of the House for the chaotic way in which this process has been gone about—again, a process for which the Government had 13 years to prepare, but still appears, sadly, to have been a complete shambles?

The order will make significant changes to the overseas list. It adds 14 countries and territories and removes 23, including several EU countries, Australian states, Canadian provinces and US states. The order newly recognises China, Iran, Belarus and Cuba—regimes that have, let us say, mixed records on LGBT+ rights—while

de-recognising many of the UK's closest friends and allies. The Minister for Women and Equalities said in December that this mechanism is not a tool for diplomacy, which is correct. However, it is not a tool for grandstanding or political point scoring either. The mechanism is for those who already have gender recognition in their home country and want to be able to access the mutual recognition route to obtain the same recognition here. That is why it is important to understand the criteria the Government have used to reach this decision.

The Government say that the SI is about protecting the integrity of the system. Can the Minister tell us how many nationals from the countries coming off the list have been granted UK GRCs? He mentioned some statistics, but how has that changed over time, particularly with regard to countries that have adopted self-identification? As I mentioned, several have done so, but the Government have not changed the list since those changes. If the Government believe there is a threat to the integrity of the system, surely they need to be able to spell out that information to us this morning.

The Government have said, and the Minister has just repeated, that they have conducted research in collaboration with the Foreign, Commonwealth and Development Office to verify their understanding of each overseas system in question and measure that against the UK standard route to obtaining gender recognition. However, weeks after the order was first laid, we still have not seen any of that research. Members are again being asked to make a decision on the basis of limited information. That is not how such decisions should be made. The notes to the SI are clear that systems vary widely, and there are no exact matches with the UK GRC system. Will the Minister commit to publishing that research urgently so that Members can actually understand the recognition criteria? That information is vital.

I understand the Government's argument that those who have undergone arduous or even brutal processes or practices to obtain legal gender recognition in countries such as Iran or Kazakhstan should not face additional barriers to obtaining that recognition here. As I said, the purpose of the mechanism in the GRA was to reduce burdens in obtaining a UK GRC, not to create them. Does not the Minister understand that removing some of our closest friends and allies, including our Five Eyes security allies, from the list, while adding regimes such as China, Belarus and Iran, legitimises the human rights record of the latter group? Does he not see how that suggests that the Government might be on the side of authoritarians rather than democracies?

The Minister referred to his conversations with representatives from other countries. Can he tell the Committee whether there was any pushback on these provisions, or whether there was an overwhelming welcome? It is helpful and important for the Committee to understand that, particularly when it comes to our allies.

**Catherine West** (Hornsey and Wood Green) (Lab): Does my hon. Friend agree that this has more to do with an election year than with facts and a genuine examination of what is best for the people concerned?

**Anneliese Dodds**: I am grateful to my hon. Friend for that point. The question is why this change is being introduced after 13 years, given that there were changes to a number of other countries' recognition systems many years ago—perhaps Members are not aware of

[Anneliese Dodds]

that—and the Government did not update the list then. Instead, they chose to do so just before Christmas. If this is such a significant issue, why has there been no Government action until now?

I have tried to interrogate this issue with a series of written parliamentary questions asking what discussions the Government have had with representatives of every country and territory being removed from the list. I regret to say that I received exactly the same answer to every question:

“The Minister for Women and Equalities has been in conversations with the Foreign, Commonwealth and Development Office...and is monitoring the international reaction to this legislation. Diplomatic posts have been consulted on and notified of the changes,”

and the Government are confident that

“our international counterparts are well informed about”

the changes. That is not the same as a direct conversation between the Minister for Women and Equalities and her foreign counterparts. Can we get confirmation of that today, please? Since this order was laid, have we received any representations from those territories and countries? It is important that the Committee understands that.

Let me be absolutely clear: Labour supports the mechanism for updating the overseas list and the principle of reciprocity and mutual recognition for GRCs for UK nationals living in other countries. That is why we enshrined those provisions in the 2004 Act, and why we have supported changes to the list in the past. We support the principle of reciprocity and mutual recognition not only for GRCs for UK nationals in other countries, but for equal marriage, adoption and pension rights. Does de-recognising so many of our closest friends and allies in relation to this matter potentially put those rights at risk? Will the Minister please indicate to the Committee whether there is any danger of that? Has he received any representations about those matters from other countries? Is he confident that these changes are compliant with the UK’s obligations under the European convention on human rights and other diplomatic treaties?

I want to press the Minister to answer some of the questions I put to the Minister for Women and Equalities in December, but to which I did not receive a satisfactory response. The GRA requires the Government to consult the Scottish Government and the Department of Finance in Northern Ireland before these changes, and the order confirms that that happened. Will the Minister please tell us what response was received from those bodies?

Last January, when first announcing plans to revise the list, the Government also promised to carry out an equality impact assessment to inform any changes. It appears, however, that a full impact assessment has not been produced, unless I am mistaken. I would appreciate it if the Minister confirmed that in his response. Why do the Government not foresee that these changes will have any, or any significant, impact on the private, voluntary and public sectors? If there is no anticipated impact on those sectors, why does the Minister believe the integrity of the UK system is under threat unless these changes are made? There seems to be a contradiction, so perhaps he can elucidate that for the Committee.

I am grateful to you, Mrs Murray, for affording me the time to ask these questions. I am sorry that there have been so many, but that reflects the fact that the process has been so incoherent and chaotic. I have

reservations about the motives for making these changes now, as opposed to previously, and the process by which they are being made—[*Interruption.*]

**The Chair:** Order. The shadow Minister is speaking. Can we please give her some respect and listen to what she has to say?

**Anneliese Dodds:** This is an unwelcome break from precedent, because past changes to the list, including under a Conservative-led Government, were not introduced with the divisive rhetoric we heard in the Chamber.

As I said, the Labour party remains committed to the provisions for updating the overseas list we wrote into law, as well as to the principle of reciprocity and mutual recognition for GRCs for UK nationals living in other countries. We do not want to undermine those important provisions or to add to the confusion and division that has been created by the process. However, I want to be clear: were Labour given the chance to serve, we would not use such a sensitive and complicated issue as part of a broader political argument. I hope that, the next time the House comes together to discuss changes to the list, we do so in an atmosphere that is more in tune, frankly, with the Minister’s opening remarks, which I appreciated, than with some of what we saw in the Chamber just before Christmas. I also hope that we come furnished with clear Government criteria for any changes, confident that our allies had been fully consulted, and with a commitment from Ministers to transparency about the future impact of any changes, particularly on UK nationals in relation to those other reciprocal rights.

**The Chair:** Before I call Kirsten Oswald, I remind Members who would like to speak to stand so that I can see who wants to contribute.

9.46 am

**Kirsten Oswald** (East Renfrewshire) (SNP): I am grateful to have the opportunity to contribute, Mrs Murray. I appreciate what you said about the scope of the instrument.

I start by reflecting on what the Minister said. Like the hon. Member for Oxford East, I appreciated the tone in which he delivered his opening remarks. He spoke about the need to make this important update, but we may differ on some of the detail.

The draft statutory instrument states:

“the Secretary of State has consulted the Scottish Ministers and the Department of Finance in Northern Ireland.”

With regard to Scotland, it is appropriate to point out the significant cross-party work done in this area, and the importance of this place respecting the democratic rights of the elected Scottish Parliament.

Looking at the detail, I think the direction of travel is disappointing. We are not looking forward in a positive way—that could be open to the Government—to simplifying things and improving lives. There are significant questions, a number of which have already been put, about the seemingly urgent need to examine the list after such a long time and with no particular date for future reference.

The Minister said that the impact on transgender people is minimal; he also said that it would not be right to make the process easier. I would be keen to hear a bit more from him on why he made those statements. I am not sure that either is true; the situation is certainly not as black and white as that.

I will not rehearse all the challenges in logic in the draft instrument, but the point about someone from Denmark who is currently recognised not being recognised in future is well made. This is confused and confusing for us; how much more so will it be for people who are directly impacted and potentially very concerned about it? It is disappointing that we are having this bit of the conversation again and failing to look at the needs of the people who are directly impacted, who already face such significant challenges.

We heard about the chaotic way in which a lot of this business is conducted, which does no good to those impacted or to us. That confusion extends to the logic underlying the list of countries that are recognised or not recognised which, again, will impact on individuals. I am keen to hear more about that and about the underlying data on which the decisions have been based—it is far from clear.

This is all disappointing and unhelpfully cloaked in very challenging bombast from those on the Government Front Bench. I hope we do not see that today; instead, I hope the Minister will tell us more about the detail, the logic and the need to support people who are directly impacted, and about where the data underlying his assessment of the equality impact lies in all of that.

9.49 am

**Wera Hobhouse** (Bath) (LD): Thank you, Mrs Murray, for calling me to speak. I apologise for not being aware of the rules for such a Committee; this is the first time I have served on one, and I was not aware that I had to say in advance that I was going to speak, so thank you for letting me say a few words.

The vast majority of people across the UK agree that we need to make sure everyone's rights and dignity are respected, and that includes legal recognition of their gender. From what I have just heard, it is difficult not to think that this measure is a political gesture. I am the last person who would want to put the rights or the safety of women at risk, but it is interesting that the women—on the Opposition Benches mostly—in whose name these policies are often designed are far less concerned about the way that this political debate has been held in the last few months or years. I believe that both sides need to be heard, and both groups are very vulnerable, so we need to make sure that we get the balance right.

The proposal in this order is that people from countries that have moved towards forms of self-ID for transgender individuals will be made to produce medical documentation when applying for a gender recognition certificate in the UK. In essence, those changes appear designed to make life for transgender people coming to the UK more difficult, especially if they come from countries that are most politically aligned with us. Surely, the Government have a good basis for doing that, and I would welcome an explanation as to what evidence the proposed changes are based on, apart from the fact that other countries have changed their rules.

No single-sex spaces or protected spaces currently require the presentation of a gender recognition certificate. Instead, trained staff undertake a dynamic risk assessment as to whether it is appropriate to grant admission to someone. I would be interested to hear from the

Government who they believe these changes benefit and whether any assessment has been made of their potential harm.

For almost 20 years, we have had a system that allows transgender people to have their gender recognised in law. The Conservative Government themselves concluded in 2018 that the current process is “too bureaucratic” and “intrusive”. What has changed since then?

We are now in the odd position where the Government are declaring that countries that have chosen to allow forms of self-ID are “not vigorous enough”, even though the Conservative Government supported the reforms in 2018. We Liberal Democrats still believe that the current gender recognition process is too bureaucratic and intrusive. The Government must have changed their minds since 2018, but other countries have not, and nor have the Liberal Democrats.

I would like to understand what the Government's thinking is when they say that our system is too bureaucratic, but people from countries that have introduced something less bureaucratic are now excluded from coming into this country unless they produce more evidence. I would be very interested to hear the argument.

9.52 am

**Stuart Andrew:** I thank all hon. Members who have participated in the debate. I am grateful for the discussion and for the views that have been shared, and I hope we can move forward.

I will try to answer some of the questions that hon. Members have raised with me. First, I should put on record that these are sensitive issues, and I want to conduct any debate on them in the manner that is incumbent on us all.

I understand the point about this measure being long overdue. In fairness, we spent a lot of time on the GRA consultation, and we thought it was important to focus first on a number of recommendations in it, such as reducing the fees and digitising the process. However, I do accept that this is something that should be done more regularly, and I am personally ensuring that we look at it.

The hon. Member for Oxford East asked why Germany is on the list. The reason is that there is currently a draft Bill on self-ID in Germany; it has not yet been introduced. The current system does require surgery, so it is equitable to us. We will obviously keep that in mind for the future.

On the issue of regimes, may I say right at the beginning that we have been very careful that we are saying that the systems in other countries need to be at least as rigorous as ours? That is not an endorsement of any of the processes or requirements in some of those regimes, and it in no way legitimises some of the processes that may happen in some countries.

Regarding responses from other countries, any and all of the concerns were heard very clearly, and they were considered in the usual way. I should point out that we were not required to do that consultation, but we did it because we felt that it was important to have that engagement.

The hon. Lady mentioned the timing of the laying of the SI. We sent it to the Vote Office ahead of the oral statement, but I am looking into the exact timings. If things were not done in the appropriate way, I apologise, and we will make sure that we learn from that. A full

[Stuart Andrew]

equality impact assessment was completed, not a regulatory impact assessment, as it is anticipated that there will be no impact on businesses.

The hon. Member for East Renfrewshire mentioned less rigorous processes. The reason we are having to make this change is that it would not be fair for people coming from another country, where the process is less vigorous than ours, to be able to get a GRA certificate, when people in this country are going through the agreed process that we have. It is about making sure that there is parity.

I agree with the hon. Member for Bath that both sides need to be heard. Sometimes, the extremes on both sides shout at each other, and a lot of us in the middle want to have a much more considered debate.

This is not about having a bureaucratic system but a system that is rigorous, because these are big decisions

that people are making, and we want to ensure that they have all of the compassion, advice, counselling and support that they need. It is right that we do that, and it is right that we expect people from other countries who want to use the overseas route to have gone through that same process.

I hope colleagues will accept that I have tried to answer as many of their questions as possible, and I hope they will join me in supporting these recommendations, which I now commend to the Committee.

*Question put and agreed to.*

*Resolved,*

That the Cttee has considered the draft Gender Recognition (Approved Countries and Territories and Saving Provision) Order 2023.

9.57 am

*Committee rose.*