



GENDER RECOGNITION: WHERE NEXT?

Introduction

“The fact that only a few thousand people have received a GRC after ten years, and that that number is comparable to the number of people in total currently on NHS GIC waiting lists, is a big sign that something is very wrong with the GRA.”

This report summarises the findings of a survey undertaken during November and December 2015 in collaboration with the Non-Binary Inclusion Project. The survey, entitled ‘Replace the GRC – but how?’ was created in response to calls for reform of the Gender Recognition Act 2004, in the wake of a Transgender Equality Inquiry conducted by the UK Parliament’s Women and Equalities Committee.

The survey consisted of four questions, and a comment box for additional suggestions. All questions were open-ended, with respondents encouraged to answer as they saw fit.

This report unpacks a number of key themes identified from responses to the survey. These findings do not necessarily reflect a consistent viewpoint, nor the views of UK Trans Info. However, we anticipate that they will be of use in considering possible approaches to the revision or replacement of the Gender Recognition Act (GRA) and Gender Recognition Certificate (GRC).

Findings

Burdens of the existing system

“The idea that I will have to wait 2 years, pay at least £150, gather evidence, and then submit an application to a panel of people (usually clinicians, possibly not even with lived experience of being trans) who will never meet me yet have the power to decide whether I suitably fit their idea of gender, is humiliating, exhausting and exceedingly unfair.”

The application process

The majority of respondents noted multiple problems contained within, or resulting from, the current gender recognition system. Nearly half of the responses to Question One (‘*What, in your opinion, are the specific problems with the current GRA?*’) expressed dissatisfaction with a process that lays the burden of proof upon the applicant, requiring a trans person to petition an outside (cis) panel for legal recognition. A significant number of respondents described the demeaning nature of the application and petition process. 34% described the system as unnecessarily difficult to navigate.



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A further 18% felt that the current process takes too long, and further objections were made to difficulties encountered by UK residents who were born/transitioned outside of the UK, to the perceived arbitrary nature of the process, and to negative interactions between the Gender Recognition Act and other areas of UK law, namely the Equality Act 2010 and the Marriage (Same Sex Couples) Act 2013. The exclusion of young people and intersex people was also noted.

Financial costs

Cost was another main issue, with 43% of respondents reporting this factor as a concern. A number of respondents noted that the actual cost of applying for a GRC was not the only concern, as doctors' letters and other paperwork could be particularly difficult to acquire for individuals on low incomes.

The medical system

Nearly a quarter of respondents felt that gender recognition should not be tied to medical transition. Other respondents suggested that legal gender recognition could be tied to medical care, but that the process should be simplified: for instance, gender recognition could be included as part of the NHS pathway following diagnosis.

Self-determination

"It's wasteful red tape that costs money and time"

"We can change name with a statutory declaration. We should be able to add a gender to that statement."

"If other countries can have self-recognition, there is no reason why the UK can not"

Self-declaration

When asked what should replace the current system, respondents overwhelmingly opted for some form of recognition based on self-determination. 58% of respondents argued for a system based around self-declaration in response to Question Two (*'What, in an ideal world, would you want to see replace the GRA?'*). The reasons given for this choice were two-fold:



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the reduction of bureaucratic red tape, and the possibility of legal gender status reflecting self-knowledge and lived experience rather than the judgement of an external panel.

Many respondents described the current system as archaic, costly, time-consuming and needlessly complicated. By contrast, they argued that self-declaration would provide a simpler, easier solution.

In addition, 10% of respondents noted that any new system should be free to the user.

Examples of self-determination in UK law

Many respondents listed examples of good practice that could be used as models for a new system of gender recognition. 11% of respondents to Question Two suggested a system similar to the current use of a deed poll or statutory declaration for change of name.

10% suggested the filling in of a short form (no longer than two to three pages). Respondents compared the ease with which they updated their passports and driving licenses with the difficulties involved in obtaining a Gender Recognition Certificate.

Examples of self-determination in international law

The fact that Ireland and Argentina have moved to systems based on self-determination was noted by a number of respondents. It was argued that if other countries are able to accommodate these changes, then it should be possible for the UK to follow suit.

Inclusion

“The current system, as well as humiliating and unjust, is incredibly inaccessible for those with specific learning difficulties, intellectual/cognitive disabilities, some mental health conditions etc. An unfair additional burden is placed upon such already disadvantaged people in the process. Local gateways or similar should be thoroughly instructed in assisting applicants with the process if needed, and monitored to prevent abuse.”

“Inclusion of non-binary recognition is long overdue, and critical to the advancement of a fair and equal society”

Non-binary/other gender options



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One of the most popular themes raised within the survey was that of non-binary inclusion. At present, the Gender Recognition Act only recognises two genders: female and male. However, many trans people identify between, beyond or outside of these genders, as (for example) non-binary, genderqueer, genderfluid, agender or non-gendered.

A majority of survey respondents (64%) identified the recognition of non-binary gender options as an issue 'not open to compromise' in response to Question Four (*'What is not open to compromise?'*). In an ideal world, many respondents stated that they would like to see gender recognition documentation that incorporated a multiplicity of gender options; others stated that they would prefer to address this issue by moving away from codified gender within legal documentation altogether.

A number of respondents raised the possibility of a 'third gender' option as a compromise for legal documents. In this instance, the gender markers 'female' and 'male' would be accompanied by an additional marker, such as 'non-binary', 'X' or 'other'. This would be in line with current best practice as employed by a number of public bodies, such as the Higher Education Statistics Agency.

Accessibility

34% of respondents raised the difficulty of applying for a GRC as a specific problem with the current Gender Recognition Act. The current system was portrayed as difficult to navigate; a frustrating and even demeaning process. An ideal new system was described by many of these respondents as one that is easier for people to understand and use, less stressful, and accessible for the broadest range of people.

Under-18s

Under-18s are currently excluded from the Gender Recognition Act. This was a relatively minor theme within the survey, but was raised in response to every question. Proposals for change included: allowing individuals over the age of 16 to apply for gender recognition; allowing individuals under the age of 16 to apply for gender recognition with the support of a parent or guardian; making specific provisions for under-16s with unsupportive parents or guardians.

Intersex inclusion



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A number of respondents raised the issue of intersex inclusion in any revision to the Gender Recognition Act. Several noted that current legislation does not recognise intersex people; however, they added that leadership on this issue should come from intersex activists and groups.

Interactions with existing laws

“Also those who do have a GRC are not always allowed into all single sex services for their now legal sex and gender. For example I have been raped and I cannot join any counselling sessions as I used to be a man, and they can justify that I would cause fear to other women.”

“Removal of the spousal veto - transition could be considered grounds for divorce, but divorce should not be a condition for receipt of a GRC”

“Many countries are now moving towards having a genderless system for their citizens. Identity documents/numbers will not require a gender marker. This seems like the ultimate solution.”

Equality Act 2010

16% of respondents argued that the Gender Recognition Act meshes poorly with current equalities law. For example, the Equality Act 2010 permits discrimination against transsexual people if it can be demonstrated to be a “proportionate means of achieving a legitimate aim”; the explanatory notes for the Act include the example of “transsexual person” being excluded from rape counselling services for women. Discrepancies such as this were seen as undermining the role of the Gender Recognition Act in actually recognising trans peoples’ genders, as in the example above the legal category of “transsexual” is clearly distinct from the legal category of “woman”. Respondents stated that protection from discrimination should instead be universal.

Privacy



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A number of respondents noted that the current Gender Recognition Act contains privacy protections for trans people, in that it is unlawful to disclose without permission that an individual has a GRC. They were keen for these protections to be maintained.

Marriage (Same Sex Couples) Act 2013

8% of respondents stated that addressing issues with marriage should not be open to compromise in any revision of the Gender Recognition Act. They argued that remaining discrepancies in law should be addressed, including the “spousal veto” – in which spouses may treat gender recognition as grounds for divorce – and the requirement for civil partnerships to be converted to marriage as a condition of gender recognition.

The removal of gender markers

13% of respondents proposed that gender markers be removed entirely from legal documents such as birth certificates and passports. This was proposed as an alternative to the legal recognition of ‘additional’ genders. A number of respondents noted that this would not prevent the monitoring of gender for equalities purposes, as it could be measured in a similar manner to race/ethnicity and religion. Similarly, it would still be possible for medical services to maintain records of relevant physical sex characteristics.



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Appendix 1: Methodology

The survey consisted of five open-ended questions. It was hosted online by Survey Monkey.

A convenience sample was acquired through snowballing. The survey was posted on the UK Trans Info home page, as well as within a number of trans social media spaces on platforms such as Facebook, Twitter and Tumblr. Respondents encouraged to further share it with their contacts. 176 individuals responded to the survey during November and December 2015.

Responses were coded manually using the qualitative data analysis programme NVivo, with the authors focussing upon identifying common themes. The analysis within this document is therefore largely qualitative, with indicative statistics (rounded to the nearest whole number) included to give the reader a rough idea of how popular any given theme was amongst the sample.

A full breakdown of identified themes in the four specified questions can be found in the below appendices.

We encourage readers to see this report as an initial, general insight into community feeling regarding the Gender Recognition Act at a particular point in time.



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Appendix 2: Responses to Question One

Question One: What, in your opinion, are the specific problems with the current GRA?

(174 responses)

(46%) Wrong to have a (cis) panel determining trans peoples' genders (81)

(45%) Exclusion of non-binary people (78)

(43%) Financial cost (74)

(34%) Unnecessarily difficult process (59)

(22%) Medicalisation (38)

(4%) Coercive treatment – e.g. surgeries (7)

(5%) Reliance on overstretched NHS services (9)

(18%) Takes too long (31)

(16%) Meshes poorly with current equalities law (27)

(13%) Issues with marriage, such as spousal veto (22)

(10%) Demeaning/degrading/humiliating process (18)

(6%) Exclusion of intersex people (10)

(5%) Exclusion of under-18s (9)

(4%) Requires a permanent change of gender (7)

(3%) Arbitrary process (6)

(3%) National register of trans people (5)

(3%) Inappropriate uses by officials (5)

(2%) Difficulties born/transitioned outside of UK (3)

(1%) Ableist (2)

(1%) The idea that the GRC 'ends' transition (1)

(1%) Not strict enough (1)



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Appendix 3: Responses to Question Two

Question Two: What, in an ideal world, would you want to see replace the GRA?

(172 responses)

(58%) A system based around self-declaration/self-determination (100)

(11%) With a GRC similar to deed poll or statutory declaration (19)

(10%) With a short form (no longer than 2-3 pages) to fill in (18)

(9%) With the Irish system as good practice (15)

(1%) With the Argentinian system as good practice (2)

(1%) With a notary as witness(2)

(20%) Some form of non-binary recognition (35)

(13%) An approach open to all gender identities (23)

(13%) The removal of legal gender categories (may allow for equalities monitoring) (23)

(12%) An entitlement to a GRC immediately following medical diagnosis (20)

(11%) A non-gendered option (19)

(10%) A system that is free to the user (18)

(10%) A broadly similar, but less demanding process (17)

(6%) Continued provision of a new birth certificate (11)

(5%) A system comparable to that currently used to change passports (8)

(3%) Improved equalities legislation (inc. removal of Equalities Act exemptions) (6)

(3%) Intersex recognition 6)

(3%) A system inclusive of under-18s (5)

(3%) Provision for multiple gender changes (5)

(3%) A system better integrated with marriage law (inc. no spousal veto) (5)

(2%) A system with basic proof of social transition required (4)

(2%) A system that prioritises privacy and confidentiality (3)

(1%) Ability to hold multiple names (1)



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Appendix 4: Responses to Question Three

Question Three: In a less-than-ideal world, what system would you accept as a replacement to the GRA?

(150 responses)

(31%) Some form of non-binary inclusion (46)

(11%) A single 'third' category (e.g. 'non-binary', or 'X') (17)

(1%) X Passports as an alternative to GRC (2)

(27%) Self-declaration (40)

(6%) Deed poll/statutory declaration type document (9)

(2%) Witnessed by a notary (3)

(1%) Witnessed by a medical professional (2)

(18%) Gender recognition as a simple step in the process of medical reassignment (27)

(17%) Significantly less proof required from applicants (26)

(9%) Significantly less expensive, or free (13)

(6%) A less medicalised system (9)

(5%) A less strict and/or trans-inclusive Gender Recognition Panel (8)

(4%) A system similar to passport application (6)

(4%) No compromise (6)

(3%) Provision for under 18s (4)

(2%) Intersex inclusion (3)

(2%) Improved intersections with marriage law (3)

(1%) Provisions for individuals born or transitioned outside of UK (2)

(1%) Scrap the Gender Recognition Panel (2)

(1%) Local Gender Recognition Panels (1)

(1%) Abolition of legal gender categories (1)



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Appendix 5: Responses to Question Four

Question Four: What is not open to compromise?

(158 responses)

(64%) Some form of recognition for non-binary genders (101)

(15%) Recognition of non-gendered individuals (23)

(11%) A less medicalised system (18)

(4%) No de facto requirement of surgery (6)

(15%) Self-determination (24)

(11%) Removal of the Gender Recognition Panel (17)

(9%) The implementation of a more simple system (14)

(8%) A reduction or elimination of costs (13)

(8%) Addressing issues for marriage, inc. spousal veto, Northern Ireland marriages (13)

(7%) Continuation/extension of legal protections, particularly related to privacy (11)

(4%) Intersex inclusion (7)

(4%) Inclusion for under-18s (7)

(3%) A reduction or elimination of the waiting period (5)

(2%) Continued gender recognition for binary trans people (3)

(1%) Allowing re-applications in recognition of gender fluidity (2)

(1%) Issuing of new birth certificates in full chosen name (2)

(1%) The Government should not keep a register of trans people (2)

(1%) Provisions for individuals born or transitioned outside of UK (1)

(1%) Abolition of legal gender (1)

(1%) A requirement of evidence for Real Life Experience (1)

(1%) A fast-track for post-op women (1)

(1%) Gender recognition must require full-time transition (1)

(1%) Some level of rigour in assessing applicants (1)