

The Gender Recognition Act Consultation

A guide for feminist and LGBTQ+ academics and allies

The UK's Government Equality Office is consulting on possible changes to the Gender Recognition Act 2004 (GRA). Anyone can respond. The consultation link is here:

<https://www.gov.uk/government/consultations/reform-of-the-gender-recognition-act-2004>.

The consultation ends at 11pm on 19 October 2018.

There has been a large backlash from people hostile to trans rights. It is important that academics who support trans rights respond to the consultation, ideally with reference to relevant evidence from scholarly research. This guide provides advice on doing so.

Background

- **At present, the GRA enables adults to obtain a Gender Recognition Certificate (GRC) and change the gender on their birth certificate from female to male, or vice-versa.**
 - This has consequences for the registration of sex/gender upon marriage or civil partnership and affects some insurance and pensions.
 - It is of symbolic importance for many trans people.
 - Non-binary genders and trans people under the age of 18 are not recognised.
- **The GRA is not relevant to legal changes of name or sex/gender marker in any other arena.**
 - Trans people are already able to change their name and sex/gender marker with organisations such as banks, schools, universities, social services, the DVLA and NHS. No medical evidence is required for this process.
 - Trans people are already able to change the sex/gender marker on their passport with a letter from a doctor.
- **Trans people have criticised the GRA for being unnecessarily bureaucratic and intrusive.**
 - Applicants submit evidence – including medical records, letters from mental health specialists, and proof that they have lived in their 'acquired' gender for at least two years – to the Gender Recognition Panel.
 - The process costs £140 (plus additional costs) and there is no right to appeal.
 - An official list of people who have changed their sex/gender in this way is kept on a 'gender recognition register'.
- Note: I use the term 'sex/gender' as current UK law does not distinguish between 'sex' and 'gender': the two are used interchangeably.

Backlash

Since the GRA consultation was announced, numerous single-issue anti-trans groups have emerged to oppose amendments to the GRA and argue for a wider push back against the social recognition of trans people's genders and access to sexed/gendered spaces.

- **Anti-trans groups have spread misinformation about the GRA.**

- e.g. the purpose and function of the GRA has been conflated with the Equality Act 2010, which governs trans people’s access to sexed/gendered public spaces.
- **These groups have a powerful voice in the mainstream media.**
 - Factually inaccurate, anti-trans news and opinion pieces are published every week in outlets such as the *Times*, *Guardian*, *Daily Mail*, *News Statesman* and *Spectator*.
- **These groups have access to significant funding that trans groups do not.**
 - Tens of thousands of pounds have been spent on billboards and newspaper adverts opposing trans rights.
 - Anti-abortion American fundamentalist groups such as ‘Hands Across the Aisle’ and far-right publications such as Breitbart and The Federalist have extensively promoted the work of ‘feminist’ anti-trans groups and shared crowdfunding pages.
- **These groups claim to represent feminism.**
 - They wrongly argue that gender recognition poses a threat to women’s rights.
 - Trans women are often represented as potential or actual sexual predators.
 - Trans men and non-binary people often are represented as tragic or deluded.
 - By contrast, numerous groups who work with vulnerable women (e.g. Scottish Women’s Aid) have supported trans affirming reforms to gender recognition.
- **These groups are encouraging their supporters to respond to the GRA consultation.**
 - This happened in response to a similar consultation by the Scottish government. While in that instance most respondents supported extending trans rights, thousands of anti-trans responses were also submitted.

Responding to the consultation as academics

As academics, it is important that we support good governance grounded in empirical evidence and the principles of equality and equity for all. As feminists and/or LGBTQ+ people, it is important that we recognise that current attacks on trans rights echo and are linked to similar attacks on women’s and LGBTQ+ rights.

In responding to the consultation:

- **Concisely reference scholarly evidence where possible (see example references, below).**
 - Assert your own expertise where relevant.
 - Below, I have used in-text citations for brevity. However, Government bodies tend to prefer links or full-reference footnotes, so please bear this in mind.
- **Ensure your response to each question makes sense as a stand-alone comment.**
 - Don’t build an argument across the entirety of your consultation response or cross-reference your previous answers.
 - Consultation responses will be analysed on a question-by-question basis.
- **Responses from organisations are given more weight by the government.**
 - If it is possible to submit a response on behalf of your department, school, centre, professional organisation or academic special interest group, please do so in addition to your personal response.
- **If you have limited time and energy** just responding to the tick-box questions will make a difference.
- **Please share this information with your colleagues** to ensure a large, evidence-based trans-positive response to the consultation.

Suggested starting points for responding to individual consultation questions

These are based upon my own perspective as a feminist scholar and trans person. I am sharing them for information and as a possible starting point for constructing your own responses. They are not intended as prescriptive. I will be soon updating my blog (<http://ruthpearce.net>) with my full response to the consultation.

Questions 1+2: If you are a trans person, have you previously applied, or are you currently applying, for a Gender Recognition Certificate? / Please tell us what having Gender Recognition Certificate means, or would mean, to you.

Relevant only if you are trans. Respond from personal experience.

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

There should be no requirement for diagnosis. Gender should be predicated on self-determination, not medical decisions. Diagnosis procedures are frequently experienced as intrusive and controlling by trans patients, and can rely on outdated gender stereotypes (Davy, 2011; Pearce, 2018). Official average waiting lists for a first appointment at a UK gender clinic are currently 12-30 months long (Vincent, 2018), although individual patients report waits of over 6 years. If someone was diagnosed overseas, or their diagnosing doctor has retired or died, trans people may have to pay to be privately re-diagnosed to meet the requirements of the Gender Recognition Panel.

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

There should not be a requirement for a report detailing treatment received. This is intrusive and may lead people to undertake medical interventions they do not want to in order to receive legal recognition. As noted in the Women and Equalities Select Committee (2016) *Transgender Inquiry Report*, the existing pathologisation of trans people in the GRA is highly intrusive and can cause significant distress. Hines (2010) has shown that for some trans people, the requirement for medical reports constitutes a severe breach of privacy. The doctor best placed to provide a treatment report is often a GP. However, as noted in the Women and Equalities Select Committee report, many GPs lack knowledge about trans issues, and some are actively unsupportive of trans patients.

Question 5: Do you agree that an applicant should have to provide evidence that they have lived in their acquired gender for a period of time before applying?

Individuals applying for gender recognition should not have to wait before their gender can be recognised. These waiting times can be intensely stressful for trans people and have been linked to depression, anxiety and suicide ideation (Nirta, 2018; Pearce, 2018). It can also cause problems as employers or service providers frequently request a Gender Recognition Certificate as proof of identity change during these two years (albeit in violation of the GRA as it stands), making it harder for trans people to produce evidence that they have been living in their acquired gender during this time (Women and Equalities Select Committee, 2016). An ideal outcome would be a system of self-determination that builds on progress in countries such as Ireland and Malta.

Question 6: Do you think the requirement for a statutory declaration should be retained, regardless of what other changes are made to the gender recognition system?

Statutory declaration is bureaucratic and potentially costly. Trans people applying for gender recognition already need to update relevant legal documents, which is a protection against fraud. The requirement for the applicant to live 'permanently in the acquired gender until death' is unnecessary. This places a legal requirement upon trans people (with a gender recognition certificate) that is not placed upon cis people (Nirta, 2018). Similar limitations are not placed upon a legal change of name. Finally, this requirement does not acknowledge non-binary people or possible gender fluidity.

Question 7: 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 provisions?

Spousal consent provisions must be removed. Current requirements for spousal consent grant trans people's spouses a dangerous power over their partner's legal status. This can form part of a pattern of coercion and control, as noted by domestic abuse charities such as Galop (2016). Research has shown that experiences of domestic abuse are common among the trans population: for instance, Stonewall (2018) found that 28% of trans respondents had faced domestic abuse within the previous year alone.

Question 8: Do you think the fee should be removed from the process of applying for legal gender recognition?

The requirement for trans people to pay for legal recognition is inequitable. The £140 application fee is frequently compounded by additional fees for supporting documents. Typical costs may be as follows:

- Passport £75.00
- Letter from GP for passport £25.00
- Medical report 1 (psychiatrist) £80.00
- Medical report 2 (GP) £80.00 (according to BMA guidelines <https://www.bma.org.uk/advice/employment/fees/gender-recognition-work>)
- Statutory declaration £5.00 (although many solicitors charge more)

These costs (totalling £405), plus possible private re-diagnosis at a typical cost of £300 (if the applicant's diagnosing clinician has died, retired or is overseas) place an undue burden on a population facing extreme levels of economic marginalisation. 60% of trans respondents to the Government Equality Office (2018) National LGBT Survey reported earning less than £20,000 a year. This number may underestimate the number of low earners, as a further 10% of trans respondents 'did not know' their income, and 7% preferred 'not to say'. Stonewall's (2018) research indicated that 25% of trans people have experienced homelessness. In Ireland, the gender recognition process is free.

Question 9: Do you think the privacy and disclosure of information provisions in section 22 of the Gender Recognition Act are adequate?

At present, the GRA provides important privacy protections for trans people, by restricting disclosures of personal information without their consent. Broadly speaking, this aspect of the GRA is beneficial, but has potential drawbacks for trans people attempting to access their records through the Department of Work and Pensions due to access restrictions. The Woman and Equalities

Select Committee (2016) *Transgender Inquiry* report notes evidence that section 22 is sometimes breached, but little enforcement action has been taken. Enforcement can only be taken within 6 months of the breach, even if the trans person does not become aware of the breach until later. A longer period and clearer procedures on responding to a breach of confidentiality would give trans people more protection.

Question 10: If you are someone who either has, or would want to undergo legal gender transition, and you have one or more of the protected characteristics, which protected characteristics apply to you?

Relevant only if you are trans. Respond from personal experience.

Question 11: Is there anything you want to tell us about how the current process of applying for a GRC affects those who have a protected characteristic?

This question asks how the current process of applying for a GRC affects those with a legally protected characteristic. It is important that cis women who support reform of the GRA tick the 'sex' box and explain that they feel the GRA does not negatively affect them if this is the case, given the emphasis on 'women's rights' in the anti-trans backlash. Other issues may also be raised at this juncture. For example:

- Young people with the protected characteristic of 'age' are discriminated against by the lack of provision for under-18s.
- Trans men with the protected characteristic of 'pregnancy and maternity' may be left in legal limbo due to existing contradictions between the GRA and laws relating to fertility, childbirth, maternity and paternity (White, 2018).
- People with the protected characteristics of 'race' and 'religion and belief' from cultural or religious backgrounds that recognise more than two genders may be discriminated against by the lack of recognition for non-binary genders.
- Trans people with the protected characteristic of 'race' (which legally includes individuals with a non-British nationality) who have updated their birth certificates in countries outside of the EEA need to reapply at full cost to gain recognition in the UK.
- Following Brexit, more people may be placed in a legal 'grey' area. The wording of the EEA provisions means it is currently ambiguous what will happen after the UK leaves the EU.
- Trans people with the protected characteristic of 'disability' may experience the current GRC application process as inaccessible (Pearce and Lester, 2016).

Question 12: Do you think that the participation of trans people in sport, as governed by the Equality Act 2010, will be affected by changing the Gender Recognition Act?

At present, trans people's participation in sport is governed by the Equality Act 2010 and relevant sporting bodies, and this should continue to be the case. However, changes to the GRA may impact on sports bodies' attitudes towards trans participants, for instance where non-binary people are not currently recognised.

Question 13: 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?

The answer to the first part of this question is 'no': access to single-sex and separate-sex exemptions

is governed by the Equality Act 2010. For other parts of this question, respond if relevant if you have experience and expertise as a trans person and/or service provider.

Questions 14-18

Once again, the answer to these questions is 'no'. As there is no distinction made under the Equality Act between trans people who have GRCs and trans people who do not, there is no way the GRA reform could impact how the Equality Act is implemented. You may also wish to note that trans people do not pose a threat to women and girls (see also Q22).

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?

A system of recognition based on self-determination offers an alternative to the pathologisation and infantilisation of trans people. It may help improve public perceptions of trans people. Importantly, it could also offer legal recognition to non-binary people for the first time, and by extension, wider social recognition.

Question 20: Do you think that there need to be changes to the Gender Recognition Act to accommodate individuals who identify as non-binary?

Changes need to be made to accommodate individuals who identify as non-binary. A 2015 survey of trans people identified non-binary recognition as a key issue for GRA reform (Pearce and Lester, 2016). At present, non-binary individuals are not recognised under law, causing specific detriments in social, legal and medical settings (Vincent, 2016; Women and Equality Select Committee, 2016; Pearce, 2018). Legal precedents for non-binary recognition exist in Australia, Bangladesh, California, Canada, India, Malta, Nepal, New Zealand and Pakistan. At present there are no provisions for the legal recognition of non-binary migrants from these countries who settle in the UK.

Question 21: What other changes do you think are necessary to the GRA in order to benefit intersex people?

The first two parts of the question are relevant only if you are intersex. Respond from personal experience. Part C can potentially be answered by non-intersex people. Intersex people are not currently properly recognised in law, which can lead to issues for gender recognition. Intersex activists have argued that laws such as the GRA are not fit for purpose (Monro et al., 2017). Requirements for a diagnosis of gender dysphoria and report detailing medical treatment discriminates against intersex people whose sex/gender differs from that which they legally were assigned at birth, but have not had any reason to undergo medical transition. Intersex people under the age of 18 should have a route to access gender recognition. This should never be tied to a requirement to undergo medical intervention.

Question 22: Do you have any further comments about the Gender Recognition Act 2004?

Your opportunity to note any matters additional to those raised in the consultation questions. Suggested issues include:

- **Provisions for trans people aged under 18.** Gendered Intelligence, Mermaids, Stonewall and the National Union of Students (all of whom work with young trans people and/or their

parents) are calling for gender recognition to be available on the basis of self-determination from 16, and with the consent of parents or guardians prior to 16.

- **The Gender Recognition Register.** This is a national register of people who have obtained gender recognition. It potentially violates the privacy of individuals on the list, and no similar register exists for members of any other marginalised group. Ideally, this register would be destroyed as part of any reform to the GRA.
- **Self-determination has not been linked to sexual violence.** Detractors of GRA reform will respond to this consultation to argue that a system of self-determination constitutes a threat to women and girls in gendered spaces such as public toilets and changing rooms. There is no empirical basis for these claims (Hasenbush et al., 2018), and consequently numerous groups who work with vulnerable women have come out in support of self-determination (e.g. Close The Gap et al., 2018). Notwithstanding the fact that trans people already access these spaces under the Equality Act 2010, such that GRA reform will not make any difference to their access, it's also worth noting that no such troubles have been reported in countries that have already passed gender recognition laws that are based on self-determination: Argentina, Denmark, Malta, Ireland, Colombia, Norway, Belgium, Brazil, and Pakistan.

Further information, guidance and sample answers

- **Amnesty International**
<https://www.amnesty.org.uk/have-your-say-gender-recognition-act>
- **LGBT Foundation**
<https://lgbt.foundation/gra>
- **Stonewall**
<https://www.stonewall.org.uk/gender-recognition-act>
- **Mermaids**
https://www.mermaidsuk.org.uk/assets/media/Mermaids%20Guidance%20Pack_Responding%20to%20the%20GRA%20Consultation.pdf
- **Association of UK Dietitians**
https://www.bda.uk.com/union/equalities/gender_recognition_act_reform
- **National Union of Students**
https://nusdigital.s3-eu-west-1.amazonaws.com/document/documents/43614/9d6f51dba8993b819565ea229abf31e5/GRA_consultation_guidance.pdf?AWSAccessKeyId=AKIAJKEA56ZWKFU6MHNQ&Expires=1539348311&Signature=4c4tnsm2bawgJrw%2FeuqpXqNztGI%3D

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