

Response ID ANON-HSR6-99UT-X

Submitted to **Reform of the Gender Recognition Act**
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Your Details

About you

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About the Consultation

Additional information (as published in the consultation document)

Questions 1 and 2 - Experiences of Trans Respondents

Question 1: If you are a trans person, have you previously applied, or are you currently applying, for a Gender Recognition Certificate?

No

If yes, please tell us about your experience of the process. If no, please tell us why you have not applied?:

I have, in theory, been eligible to apply for a Gender Recognition Certificate since the passage of the original Gender Recognition Act. However, I initially did not have access to the relevant letter from a gender identity specialist, as I was on a gender clinic waiting list.

Since this time, I have chosen not to apply for a GRC for the following reasons:

- I have been able to change my name and gender on all records relevant to my everyday life without a GRC
- The process is too expensive
- I don't feel it is fair for me to apply for a GRC when other trans people cannot
- I don't feel that medical practitioners should have a say over my gender
- I have no desire to be listed on a formal government list of trans people (the "Gender Recognition Register") - I feel this is a disturbing imposition on trans people's liberties, and potentially dangerous should an authoritarian government take power in the future.

Not Answered

Question 2: If you are a trans person, please tell us what having Gender Recognition Certificate means, or would mean, to you.

If you are a trans person, please tell us what having Gender Recognition Certificate means, or would mean, to you.:

It would be of symbolic benefit to change the sex/gender on my birth certificate - as formal legal recognition of the lived reality of my womanhood.

Having a gender recognition certificate would enable me to marry my partner, and therefore have access to associated benefits with regards to housing, inheritance, insurance, tax and adoption.

Questions 3 and 4 - Medical Reports

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

No

Please explain the reasons for your answer.:

Gender should be predicated on self-determination, not medical decisions. In my own work as a social scientist specialising in trans health, I have shown that processes of medical assessment is frequently intensely stressful for trans patients, and some practitioners rely on personal prejudices and gender stereotypes in deciding upon a diagnosis (as described in my book, "Understanding Trans Health", Policy Press, 2018).

Being trans (and therefore requiring gender recognition) is not a mental disorder. To diagnose "gender dysphoria", clinicians must utilise diagnostic tools from the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-5). This very manual recognises that individuals can be trans without necessarily experiencing gender dysphoria, which is a form of distress associated with being trans, rather than a disorder that necessarily constitutes trans experience.

The requirement for a diagnosis creates severe waits for gender recognition in practice, due to the overburdening over NHS gender identity services. I found that waiting lists for a first appointment at a UK gender clinic far exceed the NHS 18-week standard. In their book "Transgender Health" (Jessica Kingsley, 2018), Ben Vincent shows that official average waiting times are 12-30 weeks long. In my work, I have encountered patients waiting at least 6 years for a first appointment in some cases.

At present, the Gender Recognition Panel only recognises a diagnosis from a specific list of experts. If a person seeking gender recognition has received a diagnosis from outside of the UK, or if the doctor who diagnosed them is not on the current list of recognised experts because they have died or retired, then they must be diagnosed anew. This can once again result in a wait of several years, or significant expenditure (c. £300) if they obtain a private diagnosis.

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

No

Please explain the reasons for your answer.:

Legal gender recognition should not be linked to medical treatments. In my work as a social scientist specialising in trans health, I have shown that not all trans people who live permanently in a new gender role wish to undertake medical procedures (see my book: "Understanding Trans Health", Policy Press, 2018). Similar findings have been reported in research such as the Trans Mental Health Study 2012 (https://www.gires.org.uk/wp-content/uploads/2014/08/trans_mh_study.pdf), and Parliamentary inquiries such as the Women and Equalities Select Committee Transgender Equalities Inquiry. In some cases, the expectation that trans people should receive particular medical interventions in order to receive forms of social and legal recognition may lead people to undertake procedures that they do not otherwise want.

Moreover, the pathologisation of trans people through requirements for a medical report can result in severe distress. In her research on the impact of the Gender Recognition Act, Prof Sally Hines has shown that such requirements can amount to a significant breach of privacy (see for instance her book chapter "Recognising Diversity? The Gender Recognition Act and Transgender Citizenship" in the book Transgender Identities (Routledge, 2010): <http://www.oapen.org/download?type=document&doid=650070>).

Many medical professionals - especially GPs, who are often otherwise best-placed to write a medical report - are also unsupportive of trans patients. This has been acknowledged in the Women and Equalities Committee Transgender Equality Inquiry, by NHS England (<https://www.engage.england.nhs.uk/survey/gender-identity-services-for-adults/>) and by gender identity specialists such as James Barrett, writing for the BMJ (<https://www.bmj.com/content/352/bmj.i1694>). As such, it can be difficult for trans people to acquire a report detailing treatment received, especially as trans patients may have to wait months or years for a first appointment at a specialist gender identity clinic.

Question 5 - Evidence

Question 5: (A) 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?

No

Please explain the reasons for your answer. :

In my work as a social scientist specialising in trans health, I noted that the great majority of trans people struggle with their identity for many years prior to coming out. Legal changes such as to a person's name typically take place as part of a dedicated process of change following a significant period of personal reflection. Requiring an additional wait prior to legal recognition being granted is both cruel and iniquitous.

At present, trans people frequently encounter difficulties in changing their name and gender on documents, as detailed in the Women and Equalities Select Committee's Transgender Equalities Inquiry report. Often, employers or service providers ask for a copy of their Gender Recognition Certificate. While this requirement is typically in breach of the law as it stands, in practice trans people may find themselves caught in a "catch-22" situation where they find it difficult to provide the necessary evidence they have lived in their acquired gender for a period of time before applying for a Gender Recognition Certificate because they do not already have a Gender Recognition Certificate. Making gender recognition a simple process based on self-determination (reflecting existing laws in countries such as Argentina, Ireland and Malta) would resolve this problem.

(B) If you answered yes to (A), do you think the current evidential options are appropriate, or could they be amended?:

Not Answered

(D) If you answered no to (A), should there be a period of reflection between making the application and being awarded a Gender Recognition Certificate?:

No. In my work as a social scientist specialising in trans health, I noted that the great majority of trans people struggle with their identity for many years prior to

coming out. Legal changes such as to a person's name typically take place as part of a dedicated process of change following a significant period of personal reflection. Requiring an additional wait prior to legal recognition being granted is both cruel and iniquitous. No other form of legal recognition for marginalised groups requires a period of reflection.

Researchers such as myself ("Understanding Trans Health", Policy Press, 2018) and Caterina Nirta ("Marginal Bodies, Trans Utopias", Routledge, 2018) have shown how unnecessary waits for recognition can leave trans people caught in a state of "limbo", leading to feels of depression and anxiety as well as possible suicide ideation and attempts.

Question 6 - Statutory Declaration

Question 6: (A) Do you think this requirement should be retained, regardless of what other changes are made to the gender recognition system?

No

Please explain the reasons for your answer.:

There is no requirement in England and Wales for a statutory declaration in order for an individual to legally change their name. This should also be the case for a legal change of gender. Trans people who legally change their gender also already need to update various associated documents, which provides protection against the possibility of fraud.

It is important also that there is no requirement for trans people to live permanently in their acquired gender "until death". This places an iniquitous legal requirement upon people with a Gender Recognition Certificate that does not exist for people without one. Moreover, this requirement does not recognise that gender may be fluid and change over time, which may lead to the necessity of a further change of legal status. For instance, in their 2016 thesis on non-binary genders (<http://etheses.whiterose.ac.uk/15956/>), Dr Ben Vincent has observed that some trans people move through the world as non-binary for a period of time before coming out as a man or a woman, or conversely start living as a man or a woman for a period of time before eventually coming out as a non-binary.

Not Answered

(C) If you answered no to (A), do you think there should be any other type of safeguard to show seriousness of intent?:

No. In my work as a social scientist specialising in trans health, I have found that gender transition is consistently regarded as a very serious endeavour indeed by those who undertake it. Similar findings have been reported by researchers such as Dr Zowie Davy ("Recognising Transsexuals", Ashgate 2011) and Prof Sally Hines ("TransForming Gender", Policy Press 2007).

Question 7 - Spousal Consent

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?

No

Please explain the reasons for your answer. If you think the provisions should change, how do you think they should be altered?:

The current provisions effectively grant spouses a "veto" over gender recognition. This can put trans people at significant risk of domestic abuse, as observed by domestic abuse charities such as Galop in their 2016 submission to the Women and Equalities Select Committee's Inquiry on Trans Equality (<http://www.galop.org.uk/wp-content/uploads/2016/01/Galop-submission-Trans-Inquiry.pdf>). This is particularly concerning as experiences of domestic abuse are common among the trans population, with Stonewall's 2017 LGBT Equality: Trans Report indicating that 28% of trans people had experienced domestic abuse within the previous year (<https://www.stonewall.org.uk/sites/default/files/lgbt-in-britain-trans.pdf>).

The provisions should be altered such that spouses do not get a say over the gender of their partners, and that existing marriages and civil partnerships can be maintained in law regardless of the gender status of the partners in question.

Question 8 - The Cost of Legal Gender Recognition

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

Yes

Not Answered

(C) What other financial costs do trans individuals face when applying for a gender recognition certificate and what is the impact of these costs?:

Additional financial costs that trans individuals may face when applying for gender recognition may include:

- Passport £75.00 (as evidence of living permanently in the acquired gender)
- Letter from GP for passport £25.00 (required for a change of gender marker)
- 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 some solicitors may charge more)

Together with the £140 application fee, these estimated average costs total £405. If an individual requires an additional private diagnosis (for instance, if their original diagnosis was given by a doctor who has retired, died, or lives overseas) this may cost an additional £300).

This places a significant burden upon a population that faces severe economic marginalised population, and may in effect price many trans people out of applying for gender recognition. In my work as a social scientist specialising in trans health, I have observed first-hand that many trans people live in significant poverty. The Government Equality Office's own National LGBT Survey found that 60% of trans people earn less than £20,000 a year; this proportion may actually be far higher, as 10% of trans respondents to the survey "did not know" their income, and 7% stated that they preferred "not to say" how much they earned. Stonewall's 2017 LGBT in Britain: Trans Report indicated that 25% of trans people have experienced homelessness (<https://www.stonewall.org.uk/sites/default/files/lgbt-in-britain-trans.pdf>).

An ideal outcome would be a free process for gender recognition, as in Ireland.

Question 9 - Privacy and Disclosure of Information (Section 22)

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

No

If no, how do you think it should be changed? :

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.

Questions 10 and 11 Impact of Legal Gender Recognition Process (Protected Characteristics)

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? You may tick more than one box.

Gender reassignment, Sex, Sexual orientation

Please give us more information about how your protected characteristic has affected your views on the GRC application process.:

As a person with the protected characteristic of gender reassignment, I have, in theory, been eligible to apply for a Gender Recognition Certificate since the passage of the original Gender Recognition Act. However, I initially did not have access to the relevant letter from a gender identity specialist, as I was on a gender clinic waiting list.

Since this time, I have chosen not to apply for a GRC for the following reasons:

- I have been able to change my name and gender on all records relevant to my everyday life without a GRC
- The process is too expensive
- I don't feel it is fair for me to apply for a GRC when other trans people cannot
- I don't feel that medical practitioners should have a say over my gender
- I have no desire to be listed on a formal government list of trans people (the "Gender Recognition Register") - I feel this is a disturbing imposition on trans people's liberties, and potentially dangerous should an authoritarian government take power in the future.

As a bisexual woman (with the protected characteristic of "sex") I have been disturbed by the notion that trans people's rights and women's rights (especially lesbian and bisexual women's rights) are in conflict, a view that has been expressed by many who oppose reforms to the GRA. In my personal experience as a trans woman and professional opinion as a social scientist specialising in trans health, there is no active conflict between trans rights and women's rights, especially as there is no empirical evidence that gender self-determination impacts upon the safety of women and girls in single-sex spaces (as observed for instance by Hasenbush and colleagues in their 2018 article "Gender Identity Nondiscrimination Laws in Public Accommodations: a Review of Evidence Regarding Safety and Privacy in Public Restrooms, Locker Rooms, and Changing Rooms", published in the journal of Sexuality Research and Social Policy: <https://link.springer.com/article/10.1007/s13178-018-0335-z>). This perspective has been backed by numerous organisations who specialise in supporting vulnerable women, as seen for instance, in the following (2018) response to the consultation on proposed changes to the Gender Recognition Act by Close The Gap, Engender, Equate Scotland, Rape Crisis Scotland, Scottish Women's Aid, Zero Tolerance: <https://www.engender.org.uk/content/publications/Scottish-Womens-Sector-response-to-the-consultation-on-proposed-changes-to-the-Gender-Recognition-Act.pdf>.

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?

Enter your answer below.:

- At present there are no provisions for trans people under the age of 18. This is discriminatory and may cause social, legal and emotional difficulties for individuals with the protected characteristic of "age". An ideal solution to this would be the introduction of access to gender recognition from the age of 16, and enabling access to these services with the consent of parents or guardians prior to this age.
- 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. In my current work as a social scientist specialising in trans health, I am speaking with trans men and non-binary people about their experiences of pregnancy and childbirth. Several of my research participants have discussed the difficulties of attempting to access the "maternity" leave they should be entitled to while also being recognised as a man in the workplace. Others have encountered difficulties in attempting to

register the birth of their child. In their 2018 legal and policy report on this topic, my colleague Francis Ray White has observed that there is a conflict between the GRA as it stands (which theoretically recognises trans male parents as a "man" in all legal contexts) and legislation on pregnancy and birth, which only recognises the birth parent as a "mother" or "woman" (<https://transpregnancy.leeds.ac.uk/wp-content/uploads/sites/70/2018/05/Trans-Pregnancy-policy-review-UK.pdf>).

- 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.
- In 2016 I co-authored a research report with CN Lester, looking at what trans people would like to see from any subsequent reforms to the GRA. Many individuals with the protected characteristic of "disability" noted that the existing procedure is inaccessible due to their mental and/or physical impairments (<https://transactivist.files.wordpress.com/2018/10/gender-recognition-where-next.pdf>).
- Contrary to the claims of many who oppose reforms to the GRA, the current process of applying for a GRC does not effect individuals with the protected characteristic of "sex"; except insofar as many trans women find the existing process difficult and demeaning, and many be required to conform to outdated stereotypes of femininity by medical practitioners in order to obtain the necessary diagnosis of "gender dysphoria". This is an issue I have observed in my work as a social scientist specialising in trans health (see: "Understanding Trans Health", Policy Press 2018).

Introduction to Wider Considerations of Impact (Equality Act)

More information (as published in the consultation document)

Question 12 - Impact on Sport (Equality Act)

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?

Yes

Please give reasons for your answer.:

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 - Impact on Single-sex and Separate-sex Service (Equality Act)

Question 13: (A) 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?

No

Please give reasons for your answer.:

Not Answered

Please give reasons for your answer.:

Not Answered

Please give reasons for your answer.:

Not Answered

Question 14 - Impact on Occupational Requirements (Equality Act)

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?

No

Please give reasons for your answer.:

Question 15 - Impact on Communal Accommodation (Equality Act)

Question 15: Do you think that the operation of the communal accommodation exception in relation to gender reassignment in the Equality Act 2010 will be affected by changing the Gender Recognition Act?

No

Please give reasons for your answer.:

Question 16 - Impact on the Armed Forces (Equality Act)

Question 16: Do you think that the operation of the armed forces exception as it relates to trans people in the Equality Act 2010 will be affected by changing the Gender Recognition Act?

No

Please give reasons for your answer.:

Question 17 - Impact on Authorising or Solemnising Marriages (Equality Act)

Question 17: Do you think that the operation of the marriage exception as it relates to trans people in the Equality Act 2010 will be affected by changing the Gender Recognition Act?

No

Please give reasons for your answer.:

Question 18 - Impact on Insurance Operation (Equality Act)

Question 18: Do you think that the operation of the insurance exception as it relates to trans people in the Equality Act 2010 will be affected by changing the Gender Recognition Act?

No

Please give reasons for your answer.:

Question 19 - Impact on Other Public Services (beyond the Equality Act)

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?

Yes

Please give reasons for your answer. :

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. The most important possible impact of changes to the GRA would be the legal recognition of non-binary people, with GRA reform possibly offering legal recognition to non-binary people for the first time, and by extension, wider social recognition. As social scientist specialising in trans health, I feel this would be a very important move.

Question 20 - Non-binary Gender Identities

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

Yes

If you would like to, please expand more upon your answer.:

As a social scientist specialising in trans health, I regard this as one of the most important arenas for GRA reform. It is not entirely clear whether or not non-binary people are properly covered by protections in the Equality Act 2010, especially as there is no case law on the matter. This is a historic opportunity to extend rights and recognition to this group of people.

The Government Equality Office's National LGBT Survey indicated that approximately half of non-cis respondents identified as non-binary. Non-binary people face specific detriments in a range of social, legal and medical settings, as indicated for example in the 2016 report of the Women and Equalities Select Committee Transgender Equality Inquiry, in research undertaken by the Scottish Trans Alliance (<https://www.scottishtrans.org/wp-content/uploads/2016/11/Non-binary-report.pdf>), in Dr Ben Vincent's PhD thesis on non-binary gender identity (<http://etheses.whiterose.ac.uk/15956/>) and in my own work (e.g. my book "Understanding Trans Health, Policy Press 2018). These include misrepresentation, lack of access to services, direct discrimination, harassment, violence and abuse. Consequently, respondents to a survey undertaken in 2015 by UK Trans Info and the Non-Binary Inclusion Project identified non-binary recognition as a key demand for reforms to the GRA, with 64% of respondents arguing that this should "not be up for compromise" (<https://transactivist.files.wordpress.com/2018/10/gender-recognition-where-next.pdf>).

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: Experiences of Intersex Respondents

Question 21: (A) Do you have a variation in your sex characteristics?

Not Answered

(B) Would removing these requirements be beneficial to you?:

(C) What other changes do you think are necessary to the GRA in order to benefit 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. Getting a relevant medical report can be impossible for intersex people, or otherwise deeply traumatic.

Question 22 - Any further comments?

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

Yes

If you answered yes, please add your comments.:

- 1) As a social scientist specialising in trans health, I was very disappointed not to see a question on extending gender recognition to trans people aged under 18. As demonstrated in the findings of research such as the Trans Mental Health Study 2012 and Government Equality Office's National LGBT Survey, younger trans people face particular social challenges and consequently have poorer mental health outcomes in comparison to older trans people. However, research in top journals such as Pediatrics and the Journal of Adolescent Health has shown that the affirmation of young trans people's identities is significantly linked to better mental health outcomes, including decreased suicidality (e.g. Russell et al., 2018: [https://www.jahonline.org/article/S1054-139X\(18\)30085-5/abstract](https://www.jahonline.org/article/S1054-139X(18)30085-5/abstract), Olson et al., 2016: <http://pediatrics.aappublications.org/content/137/3/e20153223>).
- 2) The Gender Recognition Register must be destroyed. This formal list of trans people who have obtained gender recognition potentially violates the privacy of individuals on the list, and no similar register exists for members of any other marginalised group. This may have chilling consequences for trans people should an authoritarian government come to power, as in the United States where trans people have reported being denied permission to apply for new passports.
- 3) 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. As noted by researchers such as Hasenbrush and colleagues (<https://link.springer.com/article/10.1007/s13178-018-0335-z>) there is no empirical basis for these claims, and consequently numerous groups who work with vulnerable women have come out in support of self-determination (see for instance this response by Close The Gap, Engender, Equate Scotland, Rape Crisis Scotland, Scottish Women's Aid, Zero Tolerance to the consultation on proposed changes to the Gender Recognition Act: <https://www.engender.org.uk/content/publications/Scottish-Womens-Sector-response-to-the-consultation-on-proposed-changes-to-the-Gender-Recognition-Act.pdf>). 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.

Consent for publishing your response

Can we publish your response?

Publish my response, including my name

Yes