

Gender Recognition Act Consultation Paper

Background:

The Gender Recognition Act 2004 is a piece of legislation which allows transgender people to legally change their gender, therefore receiving a new birth certificate with their preferred name and gender on it. This process requires two years “lived experience” in the acquired gender, a diagnosis of gender dysphoria and the submission of evidence to a panel. This process costs at least £140 and potentially more due to the medical diagnosis and treatment required.

The government currently has a consultation open which the public and organisations can respond to about the Act. This consultation closes in early October. Not all of the questions are relevant to all people or organisations; some specifically ask trans people to talk about their experiences which is obviously not something that an organisation can answer.

Laura Douds (President) and Michael Turner (Trans Rep Cambridge) have drafted the following set of responses to the relevant questions, drawing heavily on NUS guidance from the NUS Trans and NUS Womens campaigns.

We felt that it was important to answer on our students’ behalf, as we feel like trans students (due to their age) are strongly affected by the rules regarding the length of time of the ‘lived experience’ and the associated costs.

Recommendation:

The Executive Committee is asked to **APPROVE** the following responses to the questions.

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

Answer: No

Please explain the reasons for your answer.

Not all trans people experience dysphoria, and not all of those who do experience it feel obligated to seek treatment for it; many people manage it non-surgically. Requiring a diagnosis of dysphoria pathologises being trans, and places an emphasis on receiving treatment. This implies that being trans is some kind of mental disorder that needs to be treated, rather than an identity which is valid.

Even if it were appropriate to require a diagnosis, it's important to remember that access to getting a diagnosis is not equal. Waiting lists vary around the country for gender clinics; in areas where waits are longer, trans people are penalised because of the 'postcode lottery' that is the NHS. This means that they have to wait longer to receive treatment and have to wait much longer to begin the legal process of changing their gender through no fault of their own.

In addition, trans people who have mental health conditions or who are otherwise neuro-atypical often face greater scrutiny and are subject to additional gatekeeping around a diagnosis of gender dysphoria. They are often considered to be 'confused' or told that their gender dysphoria is part of their other conditions. Any act which requires a diagnosis of gender dysphoria will be inherently discriminatory against disabled people as a result.

Trans people are also more likely to be homeless or not have a fixed address, and this means that they are less able to access a diagnosis. It makes accessing treatment harder, and trans people may feel wary about accessing treatment in the first place due to perceived transphobia from medial staff.

We support a non-assessment model, which would not require a diagnosis of gender dysphoria to begin and complete the process of changing one's legal gender.

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

Answer: No

Please explain the reasons for your answer.

Requiring a medical report pathologises trans identities by paying undue attention to medical aspects of transition over other aspects such as social transition, which trans people themselves have more control over. A report detailing the medical treatment an individual has received does not tell you the truth of their gender.

Requiring a report detailing medical treatment received reinforces the narrative that there are particular, specific ways to be trans, and that there exists a specific way to transition based on following a strict medical pathway. Not all trans people desire medical treatment and those who do not are still equally deserving of having their gender recognised officially. Trans experience is much broader than the treatments an individual may or may not receive, and treatments or lack thereof do not impact the truth of who that individual is.

We support a non-assessment based model which would eliminate the need for a report detailing treatment received.

Question 5: Under the current gender recognition system, an applicant has to provide evidence to show that they have lived in their acquired gender for at least two years.

5a: 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?

Answer: No

Please explain the reasons for your answer.

Some trans people may not have wanted to live as their gender identity before applying for legal gender recognition. For some, this is because of dangerous personal circumstances, though it may also be for other, valid, reasons. This is their right and we believe that they should not be prevented from changing their legal gender because of it.

Furthermore, living in a particular way does not necessarily indicate or reflect a person's gender identity - there is no way of 'proving' a person's gender upon observing the way they choose to live. In order to 'prove' something requires universal metrics by which that thing can be verified, however we believe that there are no universal experiences of living as any gender.

If the requirement be that a trans person provides some form of official documentation, this may present a barrier to trans people legally changing their gender. Trans people are less likely to have a fixed address, and are more likely to be unemployed or struggle to access employment because of transphobia on the part of employers. This makes official records difficult to obtain and similarly, changing documentation might have associated costs which can present a significant barrier.

For most trans people, transitioning looks like changing the way that you live your life, potentially changing your clothes, changing pronouns and how others refer to you informally. This is the reality of transitioning for most trans people – and the legal, formal method of transitioning must reflect this reality.

It is important to remember that transitioning can be difficult and dangerous for trans people; the burden of requiring evidence to prove their gender would be overly invasive and would add another burden to an already difficult process.

We support a non-assessment based model which would eliminate the need for an applicant to provide evidence that they have lived in their acquired gender for a period of time before applying.

5d: If you answered no to (5a), should there be a period of reflection between making the application and being awarded a Gender Recognition Certificate?

No.

Periods of reflection are not required for other similar changes such as name changes, so this requirement singles trans people out as somehow less competent to make similar decisions.

Also, people coming out as trans do not do so lightly; the social costs for doing so can be heavy and so those who decide to legally change their gender will almost always do so after a long period of having thought about it. Any time taken up until this point will not be included in this gender recognition process, so requiring a period of reflection places further barriers and unnecessary waits in the

process. Not being able to legally change their gender when they are ready to do so denies trans people dignity and respect and may have severe implications for an individual's mental health.

Furthermore a lack of legal recognition can put trans people in unsafe situations if they are forced to out themselves when needing to show their birth certificate which does not match their gender identity.

We urge the government to commit to the principle that no individual has a better understanding of their gender than they themselves. This would eliminate the need to introduce any measure which assumes that a trans person may actually be unsure of their gender, or would regret going through the legal process to change their gender.

Question 6 Currently, applicants for a gender recognition certificate must make a statutory declaration as part of the process. 6a: Do you think this requirement should be retained, regardless of what other changes are made to the gender recognition system?

Answer: No

Please explain the reasons for your answer.

Making a statutory declaration and then acting contrary to that declaration is a criminal offence and can result in fines, criminal records, and other financial and social costs. There is a significant risk here of trans people being accused maliciously by anti-trans individuals or groups.

Given that convictions for breaking a statutory declaration in gender recognition cases are almost unheard of both the UK and other jurisdictions with similar or more relaxed laws, it seems unlikely such mechanisms are needed.

We urge the government to acknowledge that abusive men do not need to change their legal gender in order to abuse women. Cases of men falsely changing gender for nefarious purposes has not been a significant issue in the UK since either the Equality Act 2010 or the Gender Recognition Act 2004 came into force, nor for any other jurisdiction who have similar laws or more relaxed laws. The only people who have been known to falsely claim gender changes have been anti-trans campaigners trying to make a point. As a result, the 'safeguards' provided by statutory declarations are unnecessary, and a deed poll style process is preferable.

Our preferred option would be one similar to changing one's name by deed poll, where a trans person would not face legal implications if they were deemed to be not living as their legal gender. Should statutory declarations be the government's preferred option however, protections should be put in place to protect trans people against malicious accusations of breaking a statutory declaration. It is largely acknowledged within the trans community that the courts do not have the cultural competency to deal with cases involving trans people in a way which understands the specific needs and contexts of the trans community. This would be particularly the case if non-binary people were given legal recognition, as "non-binary" is not an identity with a coherent and universally legible understanding, meaning that there may well be many wrongful accusations of breaking a statutory declaration upheld by the courts.

6c: If you answered no to (6a), do you think there should be any other type of safeguard to show seriousness of intent?

Most organisations in their data collection do not require safeguards in order to change gender on an administrative system. As a result, we have self-declaration of gender in almost all areas, which has not resulted in any adverse impacts. We believe therefore that no safeguards are necessary.

Furthermore, this proposal seems to suggest that trans people are somehow ill equipped to make decisions around the legal recognition of their gender. If the objective of introducing safeguards is to ensure that trans people have sufficiently considered their decision this is not only patronising to trans people but ignores the often long-term and challenging considerations many trans people will have had to make leading up to that point.

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?

Answer: No

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

Requiring spousal permission for a trans person to legally change their gender essentially leaves the decision regarding someone else's gender up to another person. We believe that this denies trans people autonomy and we urge the government to commit to the principle that no individual better understands a person's gender identity than the person themselves.

Furthermore trans people are more likely to be victims of domestic violence and abuse than their cisgender counterparts. As such, requiring trans people to gain the permission of their partner in order to legally change their gender allows abusive spouses to use their power to hold trans people's identities hostage, potentially compounding and exacerbating other existing forms of abuse.

If a spouse does choose to say no to a trans partner's gender recognition, then the trans person would need to start divorce proceedings in order to then be eligible to have their legal gender recognised. This is unacceptable considering that acrimonious divorces can proceed over a long period of time, especially when there is custody of children or significant assets at stake. Similarly, some people may not wish to get divorced for religious or other reasons, even if they are in a marriage where their partner is not comfortable with them legally changing their gender. Furthermore a trans person can live as their acquired gender without having written permission from one's spouse. As such, gaining permission for legally changing their gender is inconsistent with this. We believe therefore that the need to acquire permission from their spouse unfairly singles out trans people who wish to have their gender legally recognised.

The reason for maintaining spousal consent is that both members of a couple should 'have an equal say in the future of that contract', but this reinforces the wrong assumption that trans people (or anyone) chooses their gender. This is untrue and no expectation would be placed on an individual to gain permission from their spouse for something they have no control over otherwise. Whilst a trans person does technically have a choice as to whether they legally change their gender, not doing so is likely to have serious impacts on an individual's wellbeing and safety.

Question 8 Currently, applicants must pay £140 to apply for a Gender Recognition Certificate. (8a) Do you think the fee should be removed from the process of applying for legal gender recognition?

Answer: Yes

The Government is keen to understand more about the financial cost of achieving legal gender recognition, beyond the £140 application fee. (8c) What other financial costs do trans individuals face when applying for a gender recognition certificate and what is the impact of these costs?

Trans people face many extra costs as part of their transition, including costs associated with accessing healthcare. This can include extensive costs for travel, given that many trans people are required to travel across the UK to access support, because of the lack of Gender Identity Clinics. Some trans people also face the cost of prescriptions and private health care, for those who are unable to access support through the NHS for a variety of reasons beyond their control.

Trans people may also face the costs relating to their social transition including new clothes, losing or changing jobs and extra costs borne through being less employable if you are visibly trans.

Regarding the process of legally changing gender, trans people also face costs in relation to acquiring new documentation including a new passport and birth certificate as well as the cost of safe postage of important documents by courier.

These costs, and others, mean that legal recognition is a right that many trans people are unable to afford.

Question 9 Do you think the privacy and disclosure of information provisions in section 22 of the Gender Recognition Act are adequate? If no, how do you think it should be changed?

Answer: No

Whilst we do not believe that any legal changes are required to section 22 of the Gender Recognition Act (GRA), we do have concerns relating to section 22 which we urge the government to address.

Particularly, section 22 of the GRA often isn't upheld, with many violations of the privacy and disclosure provisions not leading to prosecution. A common experience for many trans people is to come across employees in administrative positions asking to see a Gender Recognition Certificate (GRC). This likely happens as a result of a lack of awareness amongst employees, and the population more broadly, and as such will not be fixed by a change in legislation. We do however urge the government to take action to build this understanding within companies and organisations.

Question 20 Currently, UK law does not recognise any gender other than male and female. Do you think that there need to be changes to the Gender Recognition Act to accommodate individuals who identify as nonbinary?

Answer: Yes

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

Over recent years non-binary trans people have seen their gender identities become increasingly reflected both legally and culturally, with the number of people openly defining as non-binary increasing.

As such the legal recognition of man and woman alone reflects an increasingly outdated model of understanding gender. Not only does it prevent many non-binary trans people from accessing legal recognition of their identities, but also sends a message to all non-binary people that their gender identities are less legitimate than cisgender and trans binary people. We urge the government to follow the lead of countries across the globe including Austria, Malta and now Scotland in taking steps to allow formal recognition of non-binary genders.

Representation of non-binary people is missing from almost every level of the UK's laws and institutions which in turn leads to their needs being disregarded. In enabling non-binary people to access legal recognition of their identities would improve an important first step in causing institutions and laws to move forward in recognising and providing opportunities for non-binary people.

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

Self-definition applies to many other protected characteristics including disability and sexual orientation and we believe that no state record or approval process should be needed to identify as any gender. We would note that "self-definition" is the norm in almost all of society. After all, the alternative to self-definition is either providing a birth certificate or a genital check, and these requirements are exceedingly rare.

We would also note that in relation to access to women's services, it is not one's gender that is deemed suitable, it is one's assumed birth assignment. For example, a trans woman who has undergone hormone replacement therapy and vaginoplasty and is read as a cisgender woman will only have her access to a single-sex service/space blocked in the case of a malicious intervention. Such a trans woman would not pose any risk to cisgender women, as they would all believe that she was assigned female at birth. A different example is with an intersex woman who was assigned female at birth having higher levels of testosterone, perhaps having visible facial hair or a deeper voice. This category of woman would be at risk of being excluded from women's spaces due to overzealous gatekeeping, where even a birth certificate may not be sufficient to gain entry to a vital service.

Therefore, we have to concede that it is one's perceived assigned gender at birth which governs access to women's spaces, not their actual assigned gender at birth. And given that the gatekeeping of gender is often based on gender stereotypes, we see many conceptual issues which remain even if gender recognition is reformed by Parliament.

Furthermore, we would like to see an end to the government register of those who have obtained a GRC. If this information is leaked, which can happen despite the best of intentions, it could completely destroy a person's settled life. As there is not a need for the state to have this information, we would like it to be destroyed for the safety of trans people.