
REFORM OF THE GENDER RECOGNITION ACT - GOVERNMENT CONSULTATION

Response from LGBT Humanists, July 2018

ABOUT LGBT HUMANISTS

For over 30 years LGBT Humanists has promoted humanism as a rational, naturalistic worldview that trusts the scientific method as the most reliable route to truth and encourages a moral and ethical life based on logic, reason, and compassion. We campaign for equality, particularly relating to sexual orientation and identity – both in the UK and internationally. LGBT Humanists is a volunteer-led section of Humanists UK.

Humanists UK advances free thinking and promotes humanism to create a tolerant society where rational thinking and kindness prevail. Its work brings non-religious people together to develop their own views, helping people be happier and more fulfilled in the one life we have. Through its ceremonies, education services, and community and campaigning work, it strives to create a fair and equal society for all.

Are you responding as an individual or an organisation?

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Full name or organisation's name

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The Government would like your permission to publish your consultation response. Any responses will be treated in accordance with Section 22 of the Gender Recognition Act. This provides protection for the privacy of a person who has applied for and/or obtained a Gender Recognition Certificate by making it a criminal offence to disclose information acquired in an official capacity about a person's gender history or about their application to the Panel, unless a specific exception applies. One of the exceptions is if the person gives their consent to the disclosure of the information.

Publish my response, including my name

The Government may wish to contact you again in the future, but we require your permission to do so. Are you content for the Government to contact you again in relation to this consultation?

Yes

RESPONSE TO INQUIRY QUESTIONS

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

N/A

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

N/A

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.

We support the freedom of all people to make choices about their own lives to the extent that they do not harm others. In line with this, we have a longstanding commitment to supporting the human rights and dignity of transgender people and their equal treatment. Our values commit us to 'engage in dialogue and debate rationally, intelligently, and with attention to evidence' and 'recognise the dignity of individuals and treat them with fairness and respect'.¹ It is in line with this position and these values that we are responding to this consultation.

With regard to this specific question, following on from the above, we do not think there should be such a requirement, because we believe that such a change would enhance the freedom of transgender people to live their lives as they wish; but also because it should be possible to make this change while having no impact on existing protections for others, including those around sex found in the Equality Act 2010. (Indeed, the Government has stated it does not intend to amend the Equality Act.) In what follows we set out our rationale for why we are responding 'No', and then follow with our understanding of the safeguards in equality law that will be maintained.

Both in the medical and human rights professions there is growing consensus that gender dysphoria should not be considered a medical disorder and that its classification as such predominantly has negative consequences for transgender people, both in terms of the legal process of transitioning and in encountering social stigma and prejudice. For this reason, we believe that the requirement for an individual to have a medical diagnosis to gain a Gender Recognition Certificate (GRC) is outdated, not in keeping with the prevailing evidence base, and should be revised.

In June this year, the World Health Organisation (WHO) removed 'gender identity disorder', which was classified under 'mental and behavioural disorders', from its

¹ <https://humanism.org.uk/about/our-values/>

International Classification of Disease, instead classifying 'gender incongruence' under 'conditions related to sexual health'.² This move was made because 'while evidence is now clear that [gender incongruence] is not a mental disorder, and indeed classifying it in this can cause enormous stigma for people who are transgender, there remain significant health care needs that can best be met if the condition is coded under the ICD.'³ When the variables of social exclusion, violence and stigma are controlled for, there is no evidence that being transgender of itself causes either distress or impairment.⁴ Therefore, it is not appropriate to require a person seeking a Gender Recognition Certificate to have a diagnosis which has little to no medical basis.

As seen, the WHO also argues that there is significant evidence that the medicalisation of being transgender has been used to oppose rights for and to victimise transgender people. Guidance published by the United Nations Development Programme on sexual health for transgender people states;

*'Because the approval of mental health institutions is often needed to obtain a diagnosis of gender dysphoria in order to transition, mental-health services are viewed negatively by many trans people. The focus on a specific "diagnosis" related to binary gender norms, and the overall unpreparedness of mental health professionals to address other mental-health needs of trans people, may lead to service providers failing to diagnose real mental-health needs or making diagnoses which pathologize and stigmatize the trans person and cause additional suffering.'*⁵

Rebeca Robles *et al* in their study into the effects of medical classification recommended that moving away from such classifications 'could serve as a useful instrument in the discussion of public health policies aimed at increasing access to appropriate services and reducing the victimisation of transgender people.' Removing the requirement to have a medical diagnosis is likely to have a positive impact on the social acceptance of transgender people and reduce the burden of those wishing to gain legal recognition of having to undergo a mental health diagnosis and treatment which they may not need.

However, we should also be clear what this and the other proposed changes should not mean. First, there must remain in place other safeguards to ensure the genuine intent of applicants for legal reassignment. We return to this in question 5.

² World Health Organisation, *ICD-11: Classifying disease to map the way we live and die*, <http://www.who.int/health-topics/international-classification-of-diseases>

³ *Ibid.* See also Barlett, Nancy *et al*, *Is Gender Identity Disorder in Children a Mental Disorder?*, *Sex Roles*, December 2000, 43, pp753-785
<https://link.springer.com/article/10.1023%2FA%3A1011004431889>

⁴ Robles *et al*, *Removing transgender identity from the classification of mental disorders a Mexican field study for ICD-11*, *The Lancet*, 2016 3, 9, pp850-859
[https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366\(16\)30165-1/fulltext](https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366(16)30165-1/fulltext)

⁵ United Nations Development Programme, *Implimenting Comprehensive HIV and STI Programmes with Transgender People: Practical Guidance for Collaborative Interventions*
<http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/implimenting-comprehensi-ve-hiv-and-sti-programmes-with-transgend.html>

Second, it should continue to be the case, as is indeed proposed, that existing Equality Act protections on the grounds of sex will be maintained. These protections guarantee, amongst other things:

- that single-sex services can continue to be restricted to people of one sex only;⁶
- that services are provided separately (whether identically or differently) for people of one sex only;⁷
- that it is possible to restrict employment to people of one sex only;⁸
- that communal accommodation can be provided to people of one sex only.⁹

With reference to all of the above, services can treat people with the protected characteristic of gender reassignment differently, or exclude them completely, but only where the action taken is a proportionate means of achieving a legitimate aim.¹⁰

There has been recent media attention given to the case of Karen White, who was born Stephen Wood and was sent to prison for raping women. But once in prison Stephen began identifying as Karen, was moved to a woman's prison, and within days of being moved was accused of four sexual assaults against other prisoners and has now been charged for them.¹¹ This incident is extremely distressing and represents a serious failing on the part of the prison service. It should never have happened under current law and it should not happen under any changed law. Under the Equality Act, it is clearly a legitimate aim to ensure women are kept safe from individuals with a history of sexual crime, and it is clearly a proportionate means of achieving that aim to prevent such individuals from interacting with women prisoners. That must remain the case and there must be steps taken to ensure that those responsible for the provision of public services are aware of what the Equality Act says in this area and do not repeat the mistakes that occurred in this case.

We note that this consultation is also not proposing any changes that would affect the minimum age at which a person can apply for a GRC, which stands at 18, nor does it propose to change the age at which a person can seek medical intervention to change their gender, which is 16 for hormonal treatment and 18 for surgical treatment. Therefore, we do not believe removing this requirement will affect children who may not have come to a fully formed determination of their gender. This proposal is aimed only at adults, who are legally deemed capable of making such decisions about their own health.

⁶ See <https://www.legislation.gov.uk/ukpga/2010/15/schedule/3/paragraph/28> which is an exemption from <https://www.legislation.gov.uk/ukpga/2010/15/section/29>

⁷ *Ibid.*

⁸ <https://www.legislation.gov.uk/ukpga/2010/15/schedule/9/paragraph/1>

⁹ <https://www.legislation.gov.uk/ukpga/2010/15/schedule/23/paragraph/3>

¹⁰ As per Equality and Human Rights Commission guidance:

<https://www.equalityhumanrights.com/en/our-work/news/our-statement-sex-and-gender-reassignment-legal-protections-and-language>

¹¹ 'Transgender inmate charged with sex offenses at Wakefield Prison', July 2018. BBC News <https://www.bbc.co.uk/news/uk-england-leeds-44877856>

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

No

Please explain the reasons for your answer.

As with the requirement for a medical diagnosis, we do not believe that a medical report detailing treatment should be mandatory for those wishing to apply for a Gender Recognition Certificate. The process of undergoing such medical treatment can be long, expensive, and highly invasive. Only half of transgender people have or are in the process of undergoing medical intervention. Over half of those seeking medical intervention say that the wait for treatment is preventing them from accessing it and 45 percent say that they do not have the financial means to afford it.¹² Inadequate access to medical intervention is having a negative effect on trans people's experience of transitioning, even for those that do wish to undergo it. Additionally, evidence suggests that trans people find the experience of having to provide details of medical interventions, often including psychiatric tests, to a Gender Recognition Panel to be intrusive. Therefore, to make undergoing such treatments a requirement for legal recognition adds an additional and unnecessary burden upon the process, which can cause delays and prevent people from embarking on the process.

The legality of requiring medical treatment has also been questioned by the Council of Europe Commissioner for Human Rights Nils Muižnieks, who has stated:

*'It is my position that legal recognition of the preferred gender should not require infertility or compulsory medical treatment which may seriously impair the autonomy, health or well-being of the individuals concerned. Any requirement of a medical diagnosis should be reviewed with a view to eliminating obstacles to the effective enjoyment by transgender persons of their human rights, including the right to self-determination'*¹³

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.

The current requirement that a person must provide evidence of having lived in their acquired gender for two years before applying for a Gender Recognition Certificate is unduly burdensome and invasive, and can have negative consequences for the transgender person in the interim. Since the passing of our own Gender Recognition Act in 2004, eight other countries have implemented models that do not require any evidence to be provided to change your legal gender, two of which require a period of reflection of six months. These models have made it easier and less burdensome for transgender people to gain legal recognition of their gender identity and research has suggested that they have

¹² Stonewall, LGBT in Britain: Trans Report, 2018

<https://www.stonewall.org.uk/sites/default/files/lgbt-in-britain-trans.pdf>

¹³ Letter from Council of Europe Commissioner for Human Rights Nils Muižnieks to Ms Joan Burton, Minister for Social Protection in the Republic of Ireland <https://rm.coe.int/16806db7a2>

had no negative consequences either for the transgender person or wider society.¹⁴ Therefore, we see no reason why this requirement should be maintained. In 2016, the House of Commons Women and Equalities Select Committee recommended that moving to such a model should be permitted for all applicants who are 16 years or older.¹⁵

The main argument in support of maintaining a time restriction on applying for legal recognition is the concern that a cisgender person would abuse this system for the purposes of fraud. However, there is no evidence from jurisdictions that have removed such a restriction that this is a problem or that other safeguards against fraud are insufficient. There have to date been no reported cases of cisgender people applying for legal recognition of a new gender identity fraudulently in countries that have changed the rules to a model requiring no evidence, including Argentina, Malta, Denmark, Ireland, Norway, Sweden, Columbia, and Belgium.¹⁶ The European Commission in 2016 found that:

*'Countries that have put in place legal gender recognition measures based on self determination overwhelmingly found that the fears and hesitations surrounding this area of law- and policy-making are unfounded and usually exaggerated. Concerns about security (including an oft-cited theoretical question about a bank robber that would change their identity documents to escape criminal conviction; concerns about prison inmates' security; or about airport security) did not resist rational examination. Discussions highlighted that these concerns are exclusively rhetorical, and pragmatic solutions were always found through discussion.'*¹⁷

We have discussed in our answer to question 3 the serious case of the abuse caused by Karen White. This, unfortunately, was not a rhetorical case but all too real, and occurred in a jurisdiction (i.e. the UK) that does not have self determination. However, as per our answer to question 3, this case should not have occurred under our current laws and should not occur under any reformed laws.

We are content to see some requirement to evidence that an individual has lived in their acquired gender for some period of time, but such a period should be no longer than any period of reflection might be (in line with our response to question 5(D), below), and certainly less than two years. It should also seek to minimise the unduly burdensome and invasive nature of any evidence required to provide such evidence.

This consultation is not proposing any changes that would affect the minimum age at which a person can apply for a GRC, which stands at 18, nor does it propose to

¹⁴ Dunne, Peter, Transgender Rights in the United Kingdom and Ireland: Reviewing Gender Recognition Rules
<https://legalresearch.blogs.bris.ac.uk/2017/11/transgender-rights-in-the-united-kingdom-and-ireland-reviewing-gender-recognition-rules/>

¹⁵ House of Commons Women and Equalities Committee, Transgender Equality: First Report of Session 2015–16
<https://www.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/inquiries/parliament-2015/transgender-equality/>

¹⁶ *Ibid.*

¹⁷ The European Commission, *Legislation and policies on gender identity and sex characteristics*
http://ec.europa.eu/newsroom/document.cfm?doc_id=43059

change the age at which a person can seek medical intervention to change their gender, which is 16 for hormonal treatment and 18 for surgical treatment. Therefore, we do not believe removing this requirement will affect children who may not have come to a fully formed determination of their gender. This proposal is aimed only at adults, who are legally deemed capable of making such decisions about their own health.

Finally, with respect to legal safeguards, section 5 of the Perjury Act 1911 specifies that if a person knowingly and wilfully makes a statement that is false in a statutory declaration - which includes on a gender recognition certificate - then 'that person is guilty of a misdemeanour and shall be liable on conviction thereof on indictment to imprisonment, for any term not exceeding two years, or to a fine or to both such imprisonment and fine.' The Gender Recognition Act also gives the courts the power to quash any such false declarations. This should remain the case.

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

N/A

(C) If you answered yes to (A), what length of time should an applicant have to provide evidence for?

N/A

(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?

A period of reflection that is simply to ensure that a person is certain of their decision seems legitimate so long as it is not substantial enough to cause any significant disruption to the wellbeing of the person. The current two year period seems excessive for this purpose.

6. Currently applicants for a gender recognition certificate must make a statutory declaration as part of the process.

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

Yes

Please explain the reasons for your answer.

We believe that the current provision for a statutory declaration is appropriate. There is no evidence to suggest that this provision is unpopular with transgender people or unduly burdensome. Furthermore, section 5 of the Perjury Act 1911 specifies that if a person knowingly and wilfully makes a statement that is false in a statutory declaration - which includes on a gender recognition certificate - then 'that person is guilty of a misdemeanour and shall be liable on conviction thereof on indictment to imprisonment, for any term not exceeding two years, or to a fine or to both such imprisonment and fine.' The Gender Recognition Act also gives the courts the power to quash any such false declarations. These are sensible safeguards against false declarations.

(B) If you answered yes to (A), do you think that the statutory declaration should state that the applicant intends to 'live permanently in the acquired gender until death'?

Yes. As per our previous answer, that such a declaration is to be made is a sensible safeguard against individuals making false declarations, while the current wording allows individuals some leeway to reverse their declaration should their gender identity genuinely change.

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

N/A

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?

We believe that as far as possible this process should be guided by the individual and reflect their own needs. The current provisions allow spouses to prevent a transgender person from gaining a Gender Recognition Certificate. This takes the decision out of the hands of a married transgender person and gives it to a third party. This provision allows spouses a high level of control over a highly sensitive and important aspect of their partner's life and can be used to perpetuate abuse.

Although we recognise that a marriage is an agreement entered into between two people and that both sides would have views on one party changing their gender, allowing a spouse the power to veto legal recognition entirely until the marriage is dissolved (and we note that no-fault divorces are not provided for in UK law) is not a proportionate means of achieving the aim of allowing both sides to have an input. Rather, it places too much power in the hands of the spouse. Therefore, we would recommend that the spousal consent provision is removed.

However, such a change may (for instance) then leave a spouse in a same-sex marriage when they are heterosexual, and with no grounds for divorce. This is obviously not right, so instead it should become the case that a change of gender recognition by one party to a marriage can be a ground for immediate divorce.

8. Currently, applicants must pay £140 to apply for a Gender Recognition Certificate.

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

N/A (We have no opinion on this question.)

(B) If you answered no to (A), do you think the fee should be reduced?

N/A

The Government is keen to understand more about the financial cost of achieving legal gender recognition, beyond the £140 application fee.

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

N/A

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

Yes

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

N/A

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.**

N/A

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?**

No

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?**

No

Please give reasons for your answer

The changes proposed to the process of gaining a Gender Recognition Certificate will not affect any of the provisions of the Equality Act. The Equality Act makes provision for different treatment of people on the basis of gender reassignment if there is a legitimate reason for doing so, such as maintaining fairness in competitive sport, and if restricting transgender participation is a proportionate means of achieving that aim. Guidance on when such restrictions can be legitimately made is available from the Equality and Human Rights Commission.

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?**

No

Please give reasons for your answer.

The changes proposed to the process of gaining a Gender Recognition Certificate will not affect any of the provisions of the Equality Act. The Equality Act makes provision for different treatment of people on the basis of gender reassignment if there is a legitimate reason for doing so, such as providing single-sex services to rape or domestic abuse victims, or excluding male-to-female trans women who have committed sexual crimes from being able to access women-only spaces; restricting such services is a proportionate means of achieving that aim.

Guidance on when such restrictions can be legitimately made is available from

the Equality and Human Rights Commission. Regardless of the outcome of this consultation, and with reference to the Karen White case discussed above, we recommend that further steps are taken to ensure that all public authorities are aware of the law in this area and do not put women at risk of abuse.

If you provide a single or separate sex service, do you feel confident in interpreting the Equality Act 2010 with regard to these exemptions?

N/A

Please give reasons for your answer.

N/A

If you are a trans person who has experienced domestic abuse or sexual assault, were you able to access support?

N/A

Please give reasons for your answer.

N/A

If you answered 'yes' to (C), was this support adequate?

N/A

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.

The changes proposed to the process of gaining a Gender Recognition Certificate will not affect any of the provisions of the Equality Act. The Equality Act makes provision for different treatment of people on the basis of gender reassignment. These protections guarantee, for example, that single-sex services can be restricted to people of one sex only, or treat people with the protected characteristic of gender reassignment differently, or exclude them completely; if such a restriction is a proportionate means of achieving a legitimate aim. Guidance on when such restrictions can be legitimately made are available from the Equality and Human Rights Commission.

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.

The proposed changes to the process of gaining a Gender Recognition Certificate will not affect any of the provisions of the Equality Act. The Equality Act makes provision for different treatment of people on the basis of gender reassignment if there is a legitimate aim being pursued in doing so and restricting such services is a proportionate means of achieving that aim. Guidance on when such restrictions can be legitimately made are available from the Equality and Human

Rights Commission.

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.

The proposed changes to the process of gaining a Gender Recognition Certificate of itself will not affect any of the provisions of the Equality Act. The Equality Act makes provision for different treatment of people on the basis of gender reassignment if there is a legitimate reason for doing so - in the case of the armed forces this concerns 'combat readiness' - and restricting such services is a proportionate means of achieving that aim. To the best of our understanding all branches of the armed forces are fully inclusive of transgender personnel and have not enacted any restrictions that are possible under the Equality Act. Such decisions, if they were to be made, should be made on an individual basis after the armed force concerned has conducted an Equality Impact Assessment.

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.

We do not believe that the proposed changes to the Gender Recognition Act will affect this provision of the Equality Act.

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.

The proposed changes to the process of gaining a Gender Recognition Certificate will not affect any of the provisions of the Equality Act. The Equality Act makes provision for different treatment of people on the basis of gender reassignment if there is a legitimate aim being pursued in doing so and restricting such services is a proportionate means of achieving that aim. Guidance on when such restrictions can be legitimately made are available from the Equality and Human Rights Commission.

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?**

No

Please give reasons for your answer.

We are not aware of any other areas of law and public services where changes to the Gender Recognition Act would have an impact.

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 non-binary?

We have no opinion on this question.

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

N/A

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

N/A

As outlined in question 3, the Government wants to understand whether there should be any requirement in the future for a report detailing a diagnosis of gender dysphoria and any requirement for a report detailing treatment received.

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

N/A

(C) What other changes do you think are necessary to the GRA in order to benefit intersex people?

N/A

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

No

If you answered yes, please add your comments.