

The Gender Recognition Act 2004: Questions on reform

Question 1

- Q. **If you are a trans person, have you previously applied, or are you currently applying, for a Gender Recognition Certificate? Yes/ No**
- **If yes, please tell us about your experience of the process.**
 - **If no, please tell us why you have not applied?**
 - **If you have applied, were you successful in obtaining a Gender Recognition Certificate? Yes/No/Awaiting Decision**
- A. This question is directed at trans respondents only.

Question 2

- Q. **If you are a trans person, please tell us what having Gender Recognition Certificate means, or would mean, to you. Information provided in response to this question will be protected under the existing provisions in Section 22 of the Gender Recognition Act, as relevant. Examples given may be published in the consultation response, but these will be fully anonymised.**
- A This question is directed at trans respondents only.

Question 3

- Q. **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**
- A. No.
Currently trans people are required to subject themselves to an intrusive psychiatric assessment and submit a final report confirming that the individual has a diagnosis of gender dysphoria. The resulting assessment also outlines personal information about medical interventions undertaken during transition. If a trans person currently decides that they wish to legally acquire their gender, they are by default embarking on a process whereby they are admitting that they have a mental health problem before a Gender Recognition Certificate is granted. This process is degrading and is a huge barrier to trans people wishing to achieve legal recognition of their gender.

The World Health Organisation no longer classifies gender dysphoria as a mental health condition. One of the main reasons for the reclassification was that the WHO recognises the stigma experienced by trans people and that this proposed change supports trans people's right to self-determine their gender identity, promote greater acceptance of trans people in wider society, and open the door to better access to appropriate medical interventions which are not based on mental health or clinical assessments. The current process is also complex, complicated and costly.

Question 4

- Q. **Do you also think there should be a requirement for a report detailing treatment received? No - Please explain the reasons for your answer.**

- A. No.
This current process is deeply intrusive, complex, lengthy, and potentially extremely costly process to complete. It puts a great deal of additional emotional and psychological pressure on an applicant that may already be under a great deal of stress as they begin their transition.

To apply for a Gender Recognition Certificate trans applicants must currently provide a comprehensive medical report outlining that they are fully committed to the process of transitioning and must include proof that they have been living in their acquired gender for at least two years. Evidence required as proof includes that they have applied to amend official documentation containing their birth name, such as passport, driving licence etc, and that these documents have been officially changed to reflect their chosen gender and name and dated before the official amount of time specified to acquire legal recognition, or a minimum of two years. The report submitted must be from a medical professional and outline intimate details of any treatment to change their sexual characteristics, hormone treatments or surgery, and details of their formal diagnosis of gender dysphoria.

This report is then presented to a Gender Recognition Panel (GRC) that have the final say over whether or not legal recognition is granted. The applicant never gets to meet the GRC Panel and there is no right to appeal if the application fails.

Question 5

- Q. **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. NO – Please explain the reasons for your answer.**

(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?

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

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

- **Two years or more;**
- **Between one year and two years;**
- **Between six months and one year;**
- **Six months or less.**

(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. No.
One of the greatest barriers to acquiring gender is the requirement of current legislation that applicants that want their gender legally recognised must wait two years (or as appropriate depending of which route is taken). This also involves significant cost to the individual of providing the satisfactory supporting evidence to the Gender Recognition Panel.

There is a significant disparity between the number of trans people that report they would be interested in applying for a GRC, and the number that successfully do so. Since the provisions of the GRA came into force in April 2005, just 4,010 people have successfully applied for a GRC - between 0.8% and 2% of an estimated trans population of 200,000 – 500,000 people. However, in the government's LGBT survey, only a small minority of trans respondents indicated they had no interest in obtaining legal recognition of their gender identity. The most frequently given reasons for not applying for a GRC were not satisfying the requirements (44%), finding the process too bureaucratic (38%), and the process being too expensive (34%). Just 7% of respondents said they would not be interested in going through the process. This suggests that many trans people would like to acquire legal recognition of their gender but are not applying.

This time scale involved when providing evidence to meet the requirements of a Gender Recognition Panel leaves applicants in limbo for a considerable period of time. Including a period of reflection following submitting an application perpetuates the stereotype that trans people may have taken the decision to acquire legal recognition of their gender lightly, may change their mind, or cannot be trusted to make decisions about their lives without the intervention of a medical professional. It is for these reasons that we would answer NO to this question.

Question 6

Q. 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

(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'? NO

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

A. A Yes & B No

While the current process to acquire legal recognition is bureaucratic, complex and costly we would support the retention of the statutory declaration as part of the process. While there are many issues with the current legislation, and it is now somewhat out of date, we recognise that living in an acquired gender is an important life decision and making a declaration would legitimise the process.

However, we do not support any statutory declaration that states that the applicant intends to 'live permanently in the acquired gender until death'. We recognise that an individual's gender may change over their lifetime and they should not be limited by a statutory declaration until death. The statutory declaration should declare that they

intend to live in their acquired gender permanently, giving applicants the right to self-determination and control over future life choices.

In addition, The Yogyakarta Principles¹ were created by international human rights experts as a guide for UN member states on international legal human rights standards on sexual orientation and gender identity. Principle 31 states that everyone, regardless of their sex, gender, sexual orientation, gender identity or sex characteristics, has the right to legal recognition and access to identity documents that are true to their self. It calls on member states to ensure access to a quick, transparent and accessible mechanism to change names and gender identity.

Question 7

Q. 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?

A. No.

The current spousal consent provisions for married couples currently allow a spouse to block an application by their married partner to apply to acquire their gender and restricts self-determination. If permission is not granted by the applicant's partner and the application is vetoed, this can cause considerable distress for both parties in the marriage and delay the process of acquiring legal gender recognition as the couple will have to go through the legal process of dissolving the marriage. If dissolution is difficult, or complicated by additional financial or child care matters, the process could take a considerable period of time.

If spousal consent is not forthcoming, this can substantially delay the legal gender recognition process whilst the dissolution of the marriage takes place. This can be particularly time-consuming and costly if the dissolution is difficult, perhaps because it involves complicated financial or child contact arrangements. Complicated dissolution arrangements can also be very costly. This may be further complicated if the married couple had been separated, estranged, or living apart and the spouse cannot be located to seek or agree consent. Currently applicants wishing to acquire their gender can only be granted an interim Gender Recognition Certificate until their partner confirms in writing that permission is granted for the marriage to be dissolved.

We do recognise that there are two parties in a legally binding marriage, both of whom should be considered as part of any reforms to the Act. A possible way forward would be to include a clause that the person that wishes to acquire legal recognition of their acquired gender must inform their married partner that they intend to apply to change their gender and that it may be granted on that basis.

¹ <https://www.hrw.org/news/2007/03/26/yogyakarta-principles-milestone-lesbian-gay-bisexual-and-transgender-rights>

Question 8

Q. 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? Yes

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

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?

A. A Yes

The cost of £140 is seen as excessive when compared to the cost of other official documentation. For example, the cost of ordering a copy of a birth, adoption, death, marriage or civil partnership certificate in England and Wales is £9.25. The current process of acquiring gender under the Act incurs considerable cost to the individual during the transition process including living in their acquired gender for a minimum of two years, paying to update official documentation including passports, driving licence, and name changes.

Although medical treatment is not legally required to obtain a GRC, any treatment will be accepted as supportive evidence. If a trans person has not undergone any medical treatment, the Gender Recognition Panel may ask why they have not started medical treatment and require evidence to support the answer.

The cost associated with physical transition and social realignment, additional healthcare and aftercare costs, supply of medical reports, medical assessments, psychiatric assessments and reports to secure a diagnosis of gender dysphoria, and potentially mental health support, can run into many thousands of pounds. Additionally, the costs associated with the process of transitioning will be beyond the reach of many trans people in lower socioeconomic groups, who are less able to pay for treatment.

Question 9

Q. 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?

A. Yes.

The privacy of people that have successfully obtained a Gender Recognition Certificate is extremely important.

Section 22 of the GRA is intended to protect the privacy of people who have a GRC or who have applied for one. It is an offence, punishable by a fine of up to £5,000, for a person who has acquired 'protected information' in an official capacity to disclose it.

We believe that that privacy and disclosure of information provisions contained in Section 22 of the Gender Recognition Act, and the circumstances where disclosure of protected information does not constitute an offence, are adequate and cover all reasonable eventualities.

Question 10

Q. 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.

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

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

A. This question is directed at trans respondents only

Question 11

Q. 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?

A. This question is directed at trans respondents only

Question 12

Q. 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?

Please give reasons for your answer.

A. Restrictions on the participation of trans people in some sporting competitions is a matter for the Sports Council's Equality Group and Sport England to consider and issue appropriate guidance.

Question 13

Q. (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

(B) If you provide a single or separate sex service, do you feel confident in interpreting the Equality Act 2010 with regard to these exemptions? Yes/No - Please give reasons for your answer.

(C) If you are a trans person who has experienced domestic abuse or sexual assault, were you able to access support? Yes/No - Please give reasons for your answer.

(D) If you answered 'yes' to (C), was this support adequate? Yes/No

- A. Making it easier to acquire a gender recognition certificate to legally recognise an acquired gender will not have an impact on or alter the existing exceptions contained within the Equality Act 2010 in relation to gender reassignment and trans people.

Question 14

Q. 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

- A. Making it easier to acquire a gender recognition certificate to legally recognise an acquired gender will not have an impact on or alter the existing exceptions contained within the Equality Act 2010 in relation to gender reassignment and trans people.

Question 15

Q. 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

- A. Making it easier to acquire a gender recognition certificate to legally recognise an acquired gender will not have an impact on or alter the existing exceptions contained within the Equality Act 2010 in relation to gender reassignment and trans people.

Question 16

Q. 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

- A. Making it easier to acquire a gender recognition certificate to legally recognise an acquired gender will not have an impact on or alter the existing exceptions contained within the Equality Act 2010 in relation to gender reassignment and trans people.

Question 17

Q. 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

- A. Making it easier to acquire a gender recognition certificate to legally recognise an acquired gender will not have an impact on or alter the existing exceptions contained within the Equality Act 2010 in relation to gender reassignment and trans people.

Question 18

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- Q. **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**

- A. Making it easier to acquire a gender recognition certificate to legally recognise an acquired gender will not have an impact on or alter the existing exceptions contained within the Equality Act 2010 in relation to gender reassignment and trans people.

Question 19

- Q. **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/No – Please give reasons for your answer**

It is difficult to say at this stage in the process. We would need to consider the results of the consultation process and any areas of proposed reform in further detail.

Question 20

- Q. **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? Yes - If you would like to, please expand more upon your answer.**

- A. Yes.
Those that identify as non-binary currently face inequalities and discrimination as their identity is not recognised by law. We would like to see legal recognition for non-binary people and support the government's intention to issue a 'call for evidence' on non-binary gender identities and their commitment to further advance equality for non-binary people.

Question 21

- Q. **(A) Do you have a variation in your sex characteristics? Yes/No**

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?

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

- A. This question is directed at non-binary respondents only.

Question 22

**Q. Do you have any further comments about the Gender Recognition Act 2004?
No - If you answered yes, please add your comments**

A. We have no further comments about the Gender Recognition Act 2004.

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