

ABOUT LGBT HUMANISTS

1. For over 40 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. We also responded to the UK Government's previous consultation on reforming the Gender Recognition Act (GRA), and were broadly supportive of the since-dropped proposals.¹
2. LGBT Humanists is a volunteer-led section of Humanists UK. At Humanists UK, we want a tolerant world where rational thinking and kindness prevail. We work to support lasting change for a better society, championing ideas for the one life we have. Our work helps people be happier and more fulfilled, and by bringing non-religious people together we help them develop their own views and an understanding of the world around them. Founded in 1896, we are trusted to promote humanism by over 85,000 members and supporters and over 100 members of the All Party Parliamentary Humanist Group. Through our ceremonies, pastoral support, education services, and campaigning work, we advance free thinking and freedom of choice so everyone can live in a fair and equal society.
3. 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'.² It is in line with this position and these values that we are responding to this consultation.

EXECUTIVE SUMMARY

- We believe that the requirements for a medical diagnosis, to have lived in the acquired gender for two years, and the power of spousal veto should be removed from the GRA.
- We believe that the relationship between the GRA and the Equality Act 2010 is clear and that the proposed changes to the GRA that will not impact the provision of single-sex and separate-sex services under the Equality Act. Guidance is available by the Equality and Human Rights Commission.

RESPONSE TO CONSULTATION QUESTIONS

Section 1: The Government's response to the GRA consultation:

4. **Will the Government's proposed changes meet its aim of making the process 'kinder and more straight forward'?**

Whilst we support the Government's proposal to place the whole procedure online, reduce the fee from £140 to a 'nominal amount', and open at least three new gender clinics this year to reduce waiting lists, we feel that these changes are insufficient as they do not address the substantive reasons that uptake of Gender Recognition Certificates (GRC) has been small. We believe that the Government's response to the 2018 consultation on reform of the GRA was a missed opportunity to make a real and substantive change to provide a kinder and straightforward system.

5. **Should a fee for obtaining a Gender Recognition Certificate be removed or retained? Are there other financial burdens on applicants that could be removed or retained?**

We support the removal of a fee for obtaining a GRC as a means of removing perceived barriers to trans people throughout this process.

6. **Should the requirement for a diagnosis of gender dysphoria be removed?**

We do not think there should be a requirement, because we believe that such a change would

¹Humanists UK, 'LGBT Humanists responds to Gender Recognition Act consultation' September 2018. <https://humanism.org.uk/2018/09/25/lgbt-humanists-responds-to-gender-recognition-act-consultation/>

²Humanists UK, 'Our Values' <https://humanism.org.uk/about/our-values/>

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 had stated throughout its consideration of this reform over the past two years that it does not intend or see the need to amend the Equality Act.)

7. 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 GRC is outdated, not in keeping with the prevailing evidence base, and should be revised.
8. In 2018, the World Health Organisation (WHO) removed 'gender identity disorder', which was classified under 'mental and behavioural disorders', from its International Classification of Disease, instead classifying 'gender incongruence' under 'conditions related to sexual health'.³ This move was made because 'while evidence is now clear that [gender incongruence] is not a mental disorder, and indeed classifying it as such 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.'⁴ When the variables of social exclusion, violence, and stigma are controlled for, there is no evidence that being transgender causes either distress or impairment.⁵ Therefore, it is not appropriate to require a person seeking a GRC to have a diagnosis which has little to no medical basis.
9. 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.'⁶

10. 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.'⁷ 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.

³World Health Organisation, *ICD-11: Classifying disease to map the way we live and die*, <https://www.afro.who.int/news/icd-11-classifying-disease-map-way-we-live-and-die>

⁴*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>

⁵Robles 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)

⁶United Nations Development Programme, *Implementing Comprehensive HIV and STI Programmes with Transgender People: Practical Guidance for Collaborative Interventions* <http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/implementing-comprehensive-hiv-and-sti-programmes-with-transgend.html>

⁷Robles 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)

11. 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. 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 biological sex only, where such a restriction is a proportionate means of achieving a legitimate aim;⁸
 - that services can continue to be provided separately (whether identically or differently) for people of one biological sex only, where such a restriction is a proportionate means of achieving a legitimate aim;⁹
 - that it will continue to be possible to restrict employment to people of one biological sex only, where such a restriction is a proportionate means of achieving a legitimate aim;¹⁰
 - that communal accommodation can continue to be provided to people of one biological sex only, where such a restriction is a proportionate means of achieving a legitimate aim.¹¹
12. We note there was a lot of media attention given to the case of Karen White in 2018, 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 women's prison, and within days of being moved was accused of four sexual assaults against other prisoners and has now been charged for them.¹² 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.
13. **Should there be changes to the requirement for individuals to have lived in their acquired gender for at least two years?**
Yes. The current requirement that a person must provide evidence of having lived in their acquired gender for two years before applying for a GRA is unduly burdensome and invasive and can have negative consequences for the transgender person in the interim. Since the passing of our GRA 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 had no negative consequences either for the transgender person or wider society.¹³ Therefore, we see no reason why this requirement should be maintained. In 2016, this very committee recommended that moving to such a model should be permitted for all applicants who are 16 years or older.¹⁴

⁸See Equality Act 2010, Schedule 3, Part 7, Gender reassignment, paragraph 28, <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>

⁹*Ibid.*

¹⁰Equality Act 2010, Schedule 9, Part 1, Paragraph 1 <https://www.legislation.gov.uk/ukpga/2010/15/schedule/9/paragraph/1>

¹¹Equality Act 2010, Schedule 23, Communal accommodation, Paragraph 3 <https://www.legislation.gov.uk/ukpga/2010/15/schedule/23/paragraph/3>

¹²BBC News, 'Transgender inmate charged with sex offenses at Wakefield Prison', July 2018. <https://www.bbc.co.uk/news/uk-england-leeds-44877856>

¹³Dunne, 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/>

¹⁴House 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/>

14. 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 little 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 – as far as we are aware – 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.¹⁵ 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.’¹⁶

15. **What is your view of the statutory declaration and should any changes have been made to it?**

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 willfully makes a statement that is false in a statutory declaration – which includes on a GRC – 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.

16. **Does the spousal consent provision in the Act need reforming? If so, how? If it needs reforming or removal, is anything else needed to protect any rights of the spouse or civil partner?**

Yes. We believe that as far as possible this process should be guided by the individual and should reflect their own needs. The current provisions allow spouses to prevent a transgender person from gaining a GRC. 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.

17. 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 currently 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 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 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.

18. **Should the age limit at which people can apply for a Gender Recognition Certificate (GRC) be lowered?**

We do not have enough expertise in this area. In general we are supportive of people acquiring freedom of choice when they are *Gillick*-competent, and we would advocate such an approach be

¹⁵House 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/>

¹⁶The European Commission, ‘Legislation and policies on gender identity and sex characteristics’ http://ec.europa.eu/newsroom/document.cfm?doc_id=43059

taken here, but what that actually means in this case extends beyond our realm of knowledge.

Section two: Wider issues concerning transgender equality and current legislation:

19. Are there challenges in the way the Gender Recognition Act 2004 and the Equality Act 2010 interact? For example, in terms of the different language and terminology used across both pieces of legislation.

No. The changes proposed above to the process of gaining a Gender Recognition Certificate will not affect any of the provisions of the Equality Act or how it interacts with the GRA. The Equality Act makes provision for different treatment of people based on gender reassignment – as with all other characteristics – 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.

20. Are the provisions in the Equality Act for the provision of single-sex and separate-sex spaces and facilities in some circumstances clear and useable for service providers and service users? If not, is reform or further guidance needed?

Yes. 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 based on 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; if 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.

21. Does the Equality Act adequately protect trans people? If not, what reforms, if any, are needed?

Yes. Although the term ‘gender reassignment’ has dated and is seldom used, it's clear from guidance that this covers people who identify as trans whether or not they choose to go through a medical or legal process of reassigning their gender.¹⁷ Therefore, we believe that the Equality Act adequately protects trans people and strikes the right balance between protecting them from discrimination whilst preventing any potential harmful impact on the rights of others.

22. Are legal reforms needed to better support the rights of gender-fluid and non-binary people? If so, how?

We don't have expertise in this area, but in general, we are in favour of anything that respects or enhances freedom of choice so long as it does no harm to others, and the law should follow that.

For more details, information and evidence, contact LGBT Humanists:

LGBT Humanists

Humanists UK

39 Moreland Street

London EC1V 8BB

0207 324 3060

chair@lgbthumanists.org.uk

[humanists.org.uk](https://www.humanists.org.uk)

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¹⁷Equality and Human Rights Commission, ‘Gender reassignment discrimination’

<https://www.equalityhumanrights.com/en/advice-and-guidance/gender-reassignment-discrimination>