

## **Introduction**

The Trades Union Congress (TUC) is the voice of Britain at work. We represent more than 5.6 million working people in 48 unions across the economy. We campaign for more and better jobs and a better working life for everyone, and we support trade unions to grow and thrive.

We have a long and proud history of promoting equality for all our members. We strive to end all forms of discrimination, bigotry and stereotyping. We oppose any violence or intimidation, bullying or disrespect, towards any group that faces discrimination, and from whatever quarter. The TUC's commitment to equality is written into our constitution and into that of our member unions.

We welcome the Women and Equalities Committee's inquiry into Gender Recognition Act (GRA) reform and see it as an opportunity to highlight the importance of reforming the Gender Recognition Act. Key to our response is the belief that one group's gain need not, and should not, be another's loss.

The TUC is a democratic organisation. Policy is set at our annual Congress which considers, debates and votes on motions submitted by our member unions. At our 2018 Congress a motion calling for the Gender Recognition Act 2004 to be amended was approved with a statement of explanation, both of which are set out in Appendix A, this policy position was reaffirmed at our 2020 Congress in a motion which is set out in Appendix B.

## **Background**

The government first announced its intention to reform the Gender Recognition Act 2004 (GRA) in 2017, opening its consultation on the issue in July 2018.

In our response to this consultation the TUC set out that the government should introduce a simplified, free, statutory gender-recognition process based on self-declaration, while maintaining the Equality Act 2010 as it stands. And that the government must support the rights of gender non-binary people at work and in wider society.

During the two years the government took to announce its response to the consultation trans people have been forced to continue with a lengthy, humiliating, and expensive process to change their gender. The government's handling of the whole process has had a negative impact. The length of time it took the government to respond to the consultation left a massive vacuum. And during that time, some of the debate around gender recognition, in some quarters, became bitterly divisive.

The lengthy wait for the government's response has yielded proposed changes which are insufficient. The government must make good on its promise to reform the GRA and remove the negative impacts of the current gender recognition process.

We do not believe the governments proposed reforms will make the process of acquiring a gender recognition certificate 'kinder and more straight forward' for the trans community.

Trans people face physical and verbal abuse, prejudice and discrimination, marginalisation and misrepresentation. Unions have worked hard in recent years to provide practical support and guidance for reps and trans members, and unions' commitment to this work will continue.

The TUC does not believe the current system for acquiring a Gender Recognition Certificate (GRC) is fit for purpose and we do not believe the governments proposed changes are sufficient to address the issues brought to our attention by our trans members who have highlighted concerns that the current process for changing one's gender is often lengthy, humiliating, intrusive and expensive.

This is borne out not only by the experiences of our trans members but also by the low number of trans people who have legally changed their gender. The GEO evidence available in 2018 showed that only a fraction of trans people have undertaken the process. Currently only around 4,910 people out of an estimated 300,000 to 500,000 trans people within the UK have received a GRC.

We believe the government must do more to make the process simpler for trans people to obtain a gender recognition certificate.

The TUC supports a simplified, free, statutory gender-recognition process based on self declaration.

The government should move the current process to one that is more in line with recognised good practice and less lengthy, intrusive and humiliating for trans people.

The TUC unequivocally supports the provisions and exceptions within the Equality Act 2010 (EA2010) that allow for the provision of single sex spaces and services and for proportional exclusions. We were reassured by the government's guarantee that it did not plan to make changes to the EA2010. We recognise the absolute right of women to safe spaces and support the Equality Act as it stands. Our response is predicated on these rights and exceptions remaining in place. More broadly, we support the EA2010 provisions which allow for steps to be taken to address disadvantage and under-representation among protected groups in employment and in the provision of services and public functions. We believe the Equality Act 2010 is, and should remain, outside of the scope of any steps taken to amend the GRA.

The exemptions and occupational requirements set out in the Equality Act 2010 should be maintained. As EHRC, the body responsible for regulation in relation to the Equality Act, set out in their response to the Government's 2018 consultation, 'any use of the exceptions permitting different treatment must be objectively justified and must be a proportionate means of achieving a legitimate aim.'<sup>1</sup>

The exemptions as they stand should be accompanied by clear guidance. We would like to see practical guidance for commissioners and funders on the single sex exemptions and genuine occupational requirements and support for organisations which need to make use of them, drawn up in consultation with these organisations.

## Potential areas for reform

The current system for acquiring a Gender Recognition Certificate is not fit for purpose. The government's proposed reforms to place the whole procedure online and to reduce the associated fee from £140 to a 'nominal amount' do not go far enough in addressing the issues with the process.

Even with the proposed changes the process remains intrusive and humiliating. This section of the TUC's response briefly sets out those concerns and some potential areas of focus for reform.

Further reform is required and should be underpinned by principles of simplicity and humanity for those going through the process, at no cost to avoid disadvantaging those on low pay.

Our trans members have raised concerns about the nature, quantity and intrusiveness of the current evidence requirements needed to obtain a Gender Recognition Certificate, and the impact that meeting these requirements can have on their mental health.

The current process for getting a GRC requires a medical diagnosis of gender dysphoria. We do not believe being trans is an illness. The TUC believes the Gender Recognition Act should be amended so the process of getting a GRC does not require such a diagnosis. The current gender recognition system also requires an applicant to provide evidence that they have lived in their acquired gender for two years. Our members have told us they are unclear what evidence they are required to provide during this period and that the experience can be demeaning. Trans members have highlighted concerns that the 'lived experience test' could lead to reinforcing gender stereotypes in general, and to leaving trans people feeling they must conform to stereotypes.

The TUC believes that the government should remove the requirement to live in the acquired gender for two years. There should, however, be a built-in requirement to show seriousness of intent. This could, for instance, include a specified period of time for reflection before or after a GRC application has been made.

The current process requires a GRC applicant to make a statutory declaration confirming they understand the consequences of obtaining legal gender recognition, do so of their own free will and intend to live permanently in their acquired gender. This is an important element of the current system, which should be retained.

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<sup>1</sup> <https://www.equalityhumanrights.com/sites/default/files/consultation-response-gender-recognition-act-18-october-2018.pdf>

The current GRA process carries a £140 fee to apply for a Gender Recognition Certificate. This discriminates against people on low incomes and adds to a sense of injustice felt by trans members about the process. Although the government have said this will move to be a 'nominal amount' we do not believe there should be any fee associated with getting a GRC.

Members have also highlighted additional costs associated with obtaining a GRC under the current approach, which will remain unchanged by the proposed reforms. These include costs that can be associated with getting a diagnosis of gender dysphoria and gathering evidence for gender recognition panels - not only in procuring the reports but with knock-on costs including travel, subsistence and hotels. There can also be additional costs for those who have changed their legal gender in other countries and want this to be recognised in the UK. These costs add up and can put obtaining a GRC outside of the reach of people on low incomes or lengthen the time the process takes.

The provisions within the Gender Recognition Act 2004 which prevent the unauthorised disclosure of a person's trans status have, as yet, not been used in a court of law. A TUC report, 'The Cost of Being Out at Work' (based on a survey of over 5000 people), found that 30 per cent of trans respondents had had their trans status disclosed against their will at work<sup>2</sup>. Any changes to the GRA must include measures or accompanying guidance about how best to prevent such unauthorised disclosures.

## **GRA and its interactions with other laws**

The TUC recognises the absolute right of women to safe spaces, and we unequivocally support the exemptions and genuine occupational requirements within the Equality Act 2010 (EA2010). Our response is predicated on those rights and exceptions remaining in place. We were reassured by the government's guarantee that EA2010 was outside the remit of its 2018 consultation and that there are no plans to amend the act. We strongly recommend that this remains the case.

We do have concerns, however, that some providers have had difficulty applying the exemptions as set out in the EA2010. The TUC recognise that across a range of occupations and workplaces single sex services, accommodation or occupations can be required for purposes of dignity, safeguarding, or safety for instance.

We are also aware that many public services face desperate underfunding and cuts. We believe that government has a role not just in funding services but in providing clearer guidance to commissioners about the value specialist single sex services can have and the exemptions within the Equality Act that allow for services to be provided on this basis.

## **Other issues**

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<sup>2</sup> <https://www.tuc.org.uk/sites/default/files/LGBTreport17.pdf>

Equality monitoring: the TUC and our member unions are committed to good quality, robust equality monitoring, with accurate data needed across all equality strands. We would like to see a renewed commitment to the importance of equality monitoring and equality impact assessment from government and employers and will seek to build the confidence of members to take part.

Non-binary: the TUC supports rights for gender non-binary people at work and in wider society.

We were encouraged by the Employment Tribunal ruling against Jaguar Land Rover which clarified that non-binary and gender fluid people are protected under section 7 of the Equality Act 2010 - the section of the act that covers gender reassignment as a protected characteristic.

We believe more must be done to understand non-binary people's experience at work and to protect their rights. We have recently produced materials to assist trade union reps in providing support to their non-binary members.<sup>3</sup>

## **Appendix A – TUC Motion to Congress 2018**

Motion number 41: Support for gender self-declaration

General Council decision: Support with explanation

Congress decisions: Motion Carried

### **Motion 41**

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<sup>3</sup> <https://learning.elucidat.com/course/5e6a40e5eb0a4-5f5b57844da1b>

Congress notes the announcement on 3 July by the government that it will, finally, be holding a consultation on changes to the Gender Recognition Act (GRA) 2004. As trade unionists we support trans workers rights, and as champions of equality we welcome the increased visibility and empowerment of transgendered and non-binary people in our society.

Congress calls on the government to take note of global best practice on gender recognition and to change the current processes for gender recognition that are lengthy, intrusive, humiliating and not fit for purpose.

Congress calls on the General Council to campaign for a simplified, free, statutory gender recognition process based on self-declaration and to support rights for gender non-binary people at work and in wider society.

Congress welcomes the government's commitment that the provisions in the Equality Act 2010 will remain. We support the right of all women (including trans women) to safe spaces and the continuation of monitoring that can help identify discrimination against women and men. Congress looks forward to the introduction of a social rather than medical model of gender recognition that will help challenge repressive gender stereotypes in the workplace and in society.

## **LGBT+ Conference**

### **Explanation accompanying motion 41**

Unions draw our power from our members' strength in workplaces.

But our members' lives do not stop at the workplace door. The campaign for justice in wider society is also at the heart of this movement.

Our responsibility to promote equality is written into the TUC's rules. That guides everything we do. So we must strive to end all forms of discrimination, bigotry and stereotyping.

This motion, from the TUC's LGBT+ conference, addresses the government's consultation on possible changes to the Gender Recognition Act.

The motion sets out the trade union movement's role as champions of equality, including equality for trans and non-binary people. It recognises the need to change the process for gender recognition, which is often lengthy, humiliating and expensive.

The motion also recognises the absolute right of women to safe spaces and reaffirms the TUC's support for the Equality Act 2010.

But, as is so often with this government, the handling of this consultation has been one almighty mess. Ministers first announced potential changes to the GRA back in 2017. There

was a big media fanfare but precious little detail about the government's thinking on proposals for change.

Publication of the consultation was delayed until this summer. So, that left a massive vacuum. And during that time, some of the debate around gender recognition, in some quarters, became bitterly divisive.

Our strength as a trade union movement depends on bringing people together to share experiences and to build bridges, rooted in our values of equality and the real experiences of working people's lives.

And, let me say very clearly, the trade union movement opposes any violence or intimidation, bullying or disrespect, towards any group that faces discrimination, and from whatever quarter.

Trans people face physical and verbal abuse, prejudice and discrimination, marginalisation and misrepresentation. Unions have worked hard in recent years to provide practical support and guidance for reps and trans members, and I know unions' commitment to this work will continue.

The fight for women's rights is far from won. For too many women sexual harassment and domestic violence is a daily reality, alongside unequal pay and other forms of discrimination at work and in society. Unions will always campaign to protect the rights of working women.

I'm proud that that ethos of respect has guided our discussions on this issue through our TUC equality structures. I want to record the General Council's thanks to our advisory committees for their hard work, advice and guidance.

We all agree that reform of the GRA has the potential to make progressive change to benefit all workers. One group's gain need not be another's loss. On the contrary, we must resist attempts to turn people against one another, and instead find common cause. I look forward to a debate in that spirit.

**The General Council is recommending support for this motion with this explanation.**

## **Appendix B – TUC Motion to Congress 2020**

Motion number 30: Gender Recognition Act reform, trans people's rights and solidarity across the trade union movement

General Council decision: Support

Congress decision: Motion Carried

### **Motion 30**

Congress recognises:

- i. that transgender and non-binary members are entitled to be treated with respect and dignity in the workplace
- ii. the continuing attacks on trans people within mainstream and social media largely led by groups who argue against the proposed reforms to the GRA seeking to roll back the existing rights of trans people
- iii. the importance of standing up for the rights of trans and non-binary workers: a majority Conservative government is using trans rights as a wedge issue to divide working class people – myths and tropes about trans and non-binary people are regularly being promoted in the Murdoch papers
- iv. the need to widely promote the message that trans women are women, trans men are men and that non-binary identities are valid – we must also encourage others to be trans allies and provide training to give them confidence to stand up for trans colleagues
- v. transgender and non-binary people should be addressed by their correct pronouns and wilfully mis-gendering individuals is unacceptable
- vi. that using sex and gender binary monitoring questions are discriminatory against non-binary people – non-binary people are thereby mis-gendered.

Congress notes:

- a) Transphobia is continuing during lockdown and beyond, clinic waiting times are increasing, and gender recognition reform is again delayed.
- b) Global campaigns by reactionary organisations including the 'Alliance Defending Freedom' are supported by powerful Evangelical and other conservative Christian institutions.
- c) These organisations are also homophobic, biphobic and against women's rights and they have financial resources to support legal cases.
- d) In the UK, anti-trans campaigners are deliberately stoking dissension between LGB and T sections of our communities, including the founding of the anti-trans LGB Alliance. These groups continue to campaign against the proposed reforms to the 2004 Gender Recognition Act (GRA) and are seeking to roll back the existing rights of trans people.
- e) The rise in anti-trans sentiment. Many conservatives have tried to portray trans rights as a danger to women and also children. This is reminiscent of homophobic lies of the past and we reject this.
- f) These issues have been made more contentious by our society's deep gender segregation. We should fight for all public places to be safe spaces.

Congress reconfirms its support for the TUC policy:

- 1. All trans identities should be believed and respected, and that for all social purposes, trans women should be treated as women and trans men treated as men.
- 2. Other gender identities (non-binary etc) are equally authentic. This is a social question rather than a scientific one. Past attempts to categorise human beings by purely scientific methods have often led to barbaric outcomes.

Congress notes and affirms 2018 Congress proposed reforms to the GRA.

Congress therefore calls on the TUC, the incoming TUC LGBT+ Committee and affiliates to:

- I. restate wholehearted commitment to trans rights
- II. promote the truth that trans rights are human rights
- III. continue work to counteract the transphobic myths being perpetuated, including the insidious myths that trans rights threaten women's safety or equality
- IV. continue the campaign for progressive reform of the GRA across all trade union LGBT+ groups
- V. campaign for the Westminster government and Scottish Parliament to progress GRA reforms
- VI. promote trans ally training, information and educational materials to all affiliates on how to be a trans ally
- VII. ensure that appropriate gender-based training and trans/non-binary awareness training is made available across the trade union movement to train all workplace reps and officers to ensure that all members are treated equally regardless of gender identity
- VIII. lobby for long-term change in monitoring questions and an end to transphobia
- IX. encourage greater awareness of the issues for non-binary workers
- X. support our trans and non-binary members and make clear the links between transphobia, homophobia and biphobia in society.

**TUC LGBT+ Conference**

**November 2020**