

1. INTRODUCTION

1.1. The Law Society of England and Wales is the independent professional body that works globally to support and represent 200,000 solicitors, promoting the highest professional standards and the rule of law.

1.2. The Law Society has a LGBT+ Lawyers Division made up of those identifying as LGBT+ and their supporters, and this has a committee of volunteers from that community which helps ensure the Society properly supports LGBT+ solicitors. The committee, and in particular those with experience and knowledge of trans issues and the Gender Recognition Act (GRA), have contributed to this response.

1.3. We have responded to the questions from the call for evidence that are most relevant to the Law Society's work.

1.4. The Law Society recommends that:

- The process for obtaining a Gender Recognition Certificate (GRC) should be de-medicalised to remove the suggestion that being trans is a mental health issue, and that this should be a matter of self-declaration, as is already the case in some other countries.
- The spousal provision in the current GRA should be removed. No one else should have power over a person's own gender identity, and the current provisions substantially add to the administrative and emotional burden.
- There should be no arbitrary time test on how long an individual has lived in their acquired gender, self-declaration should apply.

2. THE GOVERNMENT'S RESPONSE TO THE GRA CONSULTATION

a) Will the Government's proposed changes meet its aim of making the process "kinder and more straight forward"?

2.1. The Government's proposed changes focus on digitising and streamlining the application process and reducing the fee. This is in line with other administrative proceedings and is a welcomed development.

2.2. The Law Society would welcome assurances that an overly complex paper system will not become an overly complex digital system. The process should be simplified before it is digitised.

2.3. This review was an opportunity to remove intrusive and unnecessarily detailed medical reports which could cause distress.

b) 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?

2.4. The position should be in line with registering a birth or death. As with those, there should be a nominal charge for a copy of the GRC if required.

2.5. Other financial burdens that applicants incur are related to the application process (such as two statutory declarations, two medical reports and the costs of contacting any spouse) which further discourage applicants.

c) Should the requirement for a diagnosis of gender dysphoria be removed?

2.6. Yes. The requirement for a diagnosis of gender dysphoria should be removed. This should be a matter of self-declaration rather than medicalised – as is the case in other countries.

2.7. Requiring such a diagnosis incorrectly suggests that being trans is a mental health issue, and not everyone experiences gender dysphoria (as defined). This is reflected in the change to World Health Organisation guidance¹ on redefining gender identity related health. By ‘replacing diagnostic categories like “transsexualism” and “gender identity disorder of children” with “gender incongruence of adolescence and adulthood” and “gender incongruence of childhood”, respectively. This reflects evidence that trans-related and gender diverse identities are not conditions of mental ill health, and classifying them as such can cause enormous stigma.’

2.8. In particular, intersex people do not satisfy the definition. It is inappropriate for there to be an external ‘test’ of whether someone is ‘trans enough’.

¹ <https://www.euro.who.int/en/health-topics/health-determinants/gender/gender-definitions/whoeurope-brief-transgender-health-in-the-context-of-icd-11>

d) Should there be changes to the requirement for individuals to have lived in their acquired gender for at least two years?

2.9. Yes. Self-declaration should apply – without any arbitrary time test. Requiring two years adversely affects young people, who are unlikely to have all necessary documentation when they turn 18.

2.10. No one knows their gender identity better than the person concerned – applications for a Gender Recognition Certificate come much later in the journey for many trans people.

e) What is your view of the statutory declaration and should any changes have been made to it?

2.11. Requiring a statutory declaration is positive. It formalises the process and demonstrates to dissenters that it is legal. For the applicant it is relatively cheap and simple to provide a statutory declaration.

f) 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?

2.12. Yes, spousal consent provision in the Act does need reforming. No one else should have power over a person's own gender identity, and the current provisions substantially add to the administrative and emotional burden. The process for termination of a marriage or indeed a civil partnership should be independent of the GRC process.

2.13. The necessity for a dissolution of the civil partnership, or its conversion to a marriage, so as to seek spousal consent is an unduly onerous and expensive hurdle for civil partners. Dissolution or conversion of the civil partnership is necessary, plus consent, even if the other civil partner is totally supportive of their civil partner's decision to obtain a GRC - but unless they jump through these hoops there can be no GRC.

2.14. The Law Society would urge that (whatever the reformed process for obtaining a GRC may be) these onerous and unnecessary requirements for civil partners seeking a GRC should be removed forthwith. As civil partnerships for opposite sex couples are now permitted in law there can be no conceivable reason for these to persist in any event.

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

2.15. Yes. The current process discriminates against young people. It should be open to 16/17 year olds, with a process for under 16s too (with parent/guardian consent).

3. WIDER ISSUES CONCERNING TRANSGENDER EQUALITY AND CURRENT LEGISLATION

a) 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?

3.1 Service providers have generally welcomed trans people and trans people have been able to use facilities that fit with their gender identity. The very rare exception rule will still apply i.e. that it is possible to exclude a trans person from a single-sex space or facility only where it is a proportionate means of achieving a legitimate aim. This protection is clearly laid out in the Equality Act. The GRA process should not be related at all.

3.2 We agree with the Equality and Human Rights Commission (EHRC) ² that it would be helpful to have guidance providing more clarity on how single-sex services should work in practice to make sure the law is understood by service users and service providers without ambiguity. We also believe that it would be beneficial to have clearer guidance from the EHRC to cover single-sex facilities in places of employment.

² <https://www.equalityhumanrights.com/en/our-work/blogs/reform-gender-recognition-act>

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

3.3 Non-binary people should have the same rights as everyone. They do not whilst only male and female are legally recognised genders.

November 2020