

Women and Equalities Committee:
Call for Evidence on Proposed Changes to the Gender
Recognition Act 2004
EqualiTeach Submission

About EqualiTeach

EqualiTeach is a not-for-profit equality and diversity training organisation providing high quality, interactive training and support on issues of equality, diversity and inclusion for education settings. Our vision is an equal, inclusive and diverse society where everyone is valued and able to achieve. We are working with organisations England-wide including the Home Office, Government Equalities Office, the National Education Union and the NASUWT. For more information please see:

www.equaliteach.co.uk and www.equalitiesaward.co.uk

EqualiTeach believes that there must be comprehensive and meaningful change to the Gender Recognition Act 2004 in order to ensure all trans people are able to easily and affordably have their gender legal recognised. EqualiTeach stands in solidarity with all trans people in the fight for true equality.

1. Will the government's proposed changes meet its aims of making the process 'kinder and more straight forward'?

EqualiTeach believes that the government's proposed changes to the gender recognition process do not go far enough in making the process 'kinder and more straight forward.' The changes proposed feel minor and piecemeal, rather than being meaningful changes which move the process away from bureaucracy and medicalisation towards self-determination for trans people. The lack of significant progress in overhauling the process is disappointing and has seen a rise in abuse towards trans people on social media, in person, in the media and from prominent figures in recent years. We believe it is therefore important that government takes a strong stance against misinformation and hate towards the trans community, so that trans people's trust in the government can begin to be restored and the harms created by the delays in the initial consultation and subsequent watering-down of reforms can be begin to be undone.

2. 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?

EqualiTeach believes that a fee, however nominal, is another barrier which should be removed in order to combat the historically low take up of Gender Recognition Certificates by trans people. According to the National LGBT Survey, trans people are more often excluded from workplaces than their cis counterparts, with 63% of trans respondents aged 16-64 in paid employment compared to 83% of cis respondents (GEO, 2018). Research from Crossland Employment Solicitors found that 1 in 3 employers said that they would be 'less likely' to hire a trans person (Crossland Employment Solicitors, 2018). Therefore, a nominal fee for a GRC is yet another financial penalty which trans people may endure. In Ireland, the gender recognition process is free, England and Wales should follow this example of international best practice.

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

Yes, there should be no requirement in the future for a diagnosis of gender dysphoria.

Requiring a GRC applicant to rely on medical authorities to confirm their trans identity denies trans individuals the right to self-determination. Maintaining this requirement would imply that the government does not see trans people as credible authorities over their own gender identities. It would frame medical and political bodies as the gatekeepers of legal access to trans status. The diagnostic requirement pathologises trans identities. This practice echoes the deeply regrettable period of UK history in which LGB identities were legally conceptualised as mental disorders to be 'cured' by inhumane medical interventions. EqualiTeach would encourage the government to learn the lessons of the past. Removing any diagnostic requirements from the gender recognition process would go a long way towards deconstructing the dangerous notion that being trans is a mental illness.

Retaining any element of medicalisation runs in opposition to current global medical best practice, as the WHO no longer regards gender dysphoria as a pathology.

In addition, international rulings and guidance state that trans people should not have to have a diagnosis of gender dysphoria to have their gender legally recognised:

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In 2015, the Parliamentary Assembly of the Council of Europe passed Resolution 2048 which states that requiring someone to have been medically treated or diagnosed in order to have their gender legally recognised is a breach of their right to respect for their private life under Article 8 of the European Convention on Human Rights. The World Professional Association for Transgender Health are clear that a diagnosis should not affect whether someone can access legal gender recognition (WPATH, 2017). The right to self-declaration has also been specified by the UN Yogyakarta Principle 3, which outlines that states should 'ensure that no eligibility criteria, such as... a psycho-medical diagnosis...shall be a prerequisite to change one's name, legal sex or gender' (UN, 2017).

The right to personal and communal self-determination is fundamental in the move towards trans equality, and would bring the UK up-to-date and in line with best practice in other countries, such as Ireland, Denmark, Malta and Norway.

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

Yes. There should be no period of reflection, no mandatory waiting time and no waiting period between making an application and receiving a Gender Recognition Certificate. Currently not only do applicants need to have lived in their acquired gender for at least two years, but this must also be evidenced comprehensively. Collecting two years' worth of evidence can rightly be charged as an overly burdensome, intrusive and expensive requirement. In addition, there are questions over what 'living in a gender' entails. The process is also exclusionary of non-binary people.

In addition, this criterion undermines the current minimum age limit for applicants. Younger trans individuals who have begun socially transitioning before the age of 18 will likely not be able to prove this via documentation such as bank statements, driving licenses etc. In these cases, the minimum age limit in practice would rise to 20 years of age – an incongruously high limit compared to other legal thresholds in the UK, and one that interferes with young trans individuals' ability to confidently launch their adult lives as their acquired gender.

Removing the two-year requirement could make it easier for trans people to more quickly become accepted in society. The requirement currently needlessly prolongs applicants' socio-legal transition. EqualiTeach would argue that this enforced limbo

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leaves applicants unnecessarily vulnerable to discrimination. A streamlined, shortened gender recognition process would allow an applicant's socio-legal transition to be less gradual and more immediate, as well as reducing people's vulnerability to discrimination by wider society.

5. What is your view of the statutory declaration and should any changes be made to it?

If the statutory declaration became the main vehicle through which legal gender recognition would occur, EqualiTeach believes that this could be an acceptable way forward for the process. However, the wording of the statutory declaration should be adapted. Requiring trans people to agree that they will live as their acquired gender for the rest of their lives reinforces the stereotype that trans people are likely to 'change their mind' or that they are 'just going through a phase.' The requirement also states a person will live 'permanently in the acquired gender until death', which does not acknowledge non-binary people and those with fluid gender identities. Non-binary and gender-fluid people should also have their human rights protected and upheld.

6. 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, this should be removed completely. The list of plausible situations in which the spousal consent provision could either significantly delay a GRC application, force an applicant into an extremely unpleasant situation, or be used by a spouse to entrap, blackmail or abuse a GRC applicant is far too lengthy to be ignored.

Requiring spousal consent can make the process even more time consuming, causing further distress to trans people and potentially exacerbating the psychological impact of enforced waiting to waiting one's identity acknowledged and recognised. This is especially the case if the application for legal gender recognition is used as grounds for an annulment.

EqualiTeach does not agree that the encounter between a GRC applicant and their spouse should be subjected to general legislation at all. That encounter is for each couple to work out privately.

7. Should the age limit at which people can apply for a Gender Recognition Certificate be lowered?

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We believe that the age limit could be lowered to 16, an age where other equally autonomous rights responsibilities are enabled by law. This would alleviate some of the delays in being able to apply for a GRC that younger trans people may face in having to provide evidence of living in their acquired gender for two years. Trans people aged 16 and over should have their gender recognised through a process of self-declaration. Those under the age of 16 should be able to do the same but with a parent or guardian's consent. Refusal from a parent or guardian to give consent for a trans child or young people to be who they are should be seen as a safeguarding issue. A child or young person who does not have consent from a parent or guardian but has been certified Gillick competent should be able to apply for legal gender recognition through a process of self-declaration. There should be a process for those who are not certificated Gillick competent and those who are deemed to lack mental capacity to access legal gender recognition, in order to protect the human rights of all trans people.

8. What impact will these proposed changes have on those people applying for a Gender Recognition Certificate, and on trans people more generally?

The proposed changes will be of very limited impact to trans people, as the changes are only slight and piecemeal as opposed to larger in scale and more meaningful. The changes are not large enough to encourage more trans people to apply for a GRC and the larger, more damaging barriers to applying for a GRC, such as the medicalised and intrusive nature of the process, still remain in place. The handling of the consultation and the government's reluctance to take a strong stance for trans rights has allowed toxic 'debate' about trans people's identities to go unchecked and undeterred, which has created a hostile environment for trans people to live their lives.

9. What else should the government have included in its proposals, if anything?

The reforms the government should have included are:

- Removal of the £140 fee
- Removal of the requirement for a diagnosis of gender dysphoria
- Removal of the spousal veto
- Removal of the statutory declaration
- Removal of the requirement for a trans person to live in their acquired gender for two years and provide documentary evidence of this to a panel
- Lowering of the age limit
- The Introduction of legal recognition for non-binary people

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The process needs to be reformed so that is based on a system of self-declaration.

10. Does the Scottish government's proposed bill offer a more suitable alternative to reforming the Gender Recognition Act 2004?

The Scottish Government's proposed Bill is more favourable than the English and Welsh proposed changes and is more in line with what trans people have been asking for. EqualiTeach welcomes the removal of current medical requirements and the removal of the need to apply to the Gender Recognition Panel. However, there are still some changes which need to be made to the Scottish Bill. Although the time that someone has to live in their acquired gender has been reduced from two years to six months, a waiting time should be removed altogether, in line with other countries who have introduced statutory self-declaration of gender. In addition, the requirement to submit a statutory declaration should be removed and the age limit should be reduced to 16 years of age. The proposed Bill should also provide legal recognition of non-binary people.

11. Why is the number of people applying for GRCs so low compared to the number of people identifying as transgender?

The National LGBT Survey of 2018 highlights many of the reasons why so few trans people apply for a Gender Recognition Certificate. Among the trans men and women who were aware of the process, who responded to the survey and who didn't have a GRC, 44% said this was because they did not satisfy the requirements, 38% said it was because the process was too bureaucratic and 34% because it was too expensive. 21% of trans men and 16% of trans women said it was because they couldn't access the support needed to compile a successful application. Only 7% of respondents said that this was because they didn't want a GRC (GEO, 2018).

In addition, the survey also highlighted some misconceptions about what the process entails: 43% of respondents thought that the process involved an interview with a Gender Recognition Panel and 15% thought having surgery was a requirement (GEO, 2018).

The process is not inclusive of non-binary people, so some trans people are automatically excluded from applying for a GRC.

12. 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

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No, these are separate pieces of legislation. A person does not need to have a GRC under the Gender Recognition Act 2004 to be protected from discrimination, harassment and victimisation because of gender reassignment under the Equality Act 2010. There is a significant amount of misinformation about the way the GRA and the Equality Act interact, so EqualiTeach feels that the government should clarify how these pieces of legislation operate. The terms 'sex' and 'gender' are used interchangeably throughout UK law, however, EqualiTeach does not recommend opening the Equality Act up to scrutiny in this current climate, when people are fighting against a rollback of trans rights.

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

Guidance should make it clearer that as a default single-sex spaces must be inclusive of anyone identifying in line with the gender(s) they are provided for. The Equality Act states that services are exempt from liability for unlawful discrimination against trans people providing it is a 'proportionate means of achieving a legitimate aim', which applies regardless of whether someone possesses a GRC. However, it should be made clear that instances where exclusion is lawful are very rare and instead work on the basis that trans people should be included unless there is a legal reason not to do so. Under the Public Sector Equality Duty, public services must proactively ensure that trans people feel comfortable to access their space and can do so without facing discrimination.

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

The Equality Act adequately protects trans men and women from discrimination, harassment and victimisation and this protection is necessarily broad in that it protects people who are 'proposing to undergo, are undergoing or have undergone a process or part of a process.' This means that trans men and women are provided vital protections from discrimination throughout what can be a lengthy transition process.

There needs to be clearer guidance on single-sex space exemptions so that they cannot be misinterpreted or used to justify transphobia by organisations.

15. What issues do trans people have in accessing support services, including health and social care activities, domestic violence and sexual violence services?

Trans people face a number of barriers to accessing domestic violence and sexual violence services. Discussion is largely based on the assumption that targets will be heterosexual cisgender women and perpetrators heterosexual cisgender men, which creates the impression that such services are not for trans people. Shelters are often single-sex and policies regarding the acceptance of trans people into single-sex spaces are often unclear, causing trans people to fear rejection and transphobia if they attempt to access a service. A lack of understanding of single-sex exemptions and when they can be legally invoked is a barrier trans people face in accessing many other local and national support services, just not domestic violence and sexual violence services.

NHS Guidelines currently say that 18 weeks is the limit from referral to treatment at a Gender Identity Clinic, however, in reality the average waiting time for a first appointment is 18 months (BBC, 2020). The care pathways involved in transition are complex and difficult to navigate, and there is little understanding of non-binary gender identities in mainstream healthcare services, causing an extra barrier for some trans people. In 2018, a Stonewall survey found that 62% of trans respondents had experienced a lack of understanding of specific trans health needs by healthcare staff (Stonewall, 2018). 37% of trans people have avoided seeking treatment for fear of discrimination because they are trans (Stonewall, 2018).

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

Since the Equality Act came into force, it has been unclear as to whether it protects non-binary people. Currently non-binary people are protected under the Act if they have or are perceived to have the protected characteristic of gender reassignment. However, EqualiTeach believes that this needs strengthening so that non-binary people are protected from discrimination, harassment and victimisation because of their non-binary identity.

The Gender Recognition Act 2004 reforms must include non-binary people.

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