

University and College Union (UCU)

Reform of the Gender Recognition Act

University and College Union (UCU) evidence to the Women and Equalities Committee Inquiry on the Government's response to the GRA consultation

27 November 2020

Introduction: About UCU

The University and College Union (UCU) represents over 110,000 academics, lecturers, trainers, instructors, researchers, managers, administrators, computer staff, librarians and postgraduates in universities, colleges, prisons, adult education and training organisations across the UK. UCU is a democratic organisation with its annual congress being the policy making body. UCU is an affiliate to the UK Trade Union Congress (TUC) and supports the TUC response to the Gender Recognition Act consultation.

Background

UCU has long history (from predecessor unions, Association of University Teachers – AUT and the national Association of Teachers in Further and Higher Education - NATFHE) of supporting and lobbying for the rights of trans and non-binary identifying people.

UCU routinely provides more options than binary genders on forms. UCU uses the acronym LGBT+ to ensure an inclusive approach to gender identities which is different to that assigned at birth. UCU has policy supporting provision of gender-neutral toilets and facilities, supporting campaigns to remove the requirement and practice of gender assignment at birth, and promotion of non-heteronormative and non-binary identities. UCU policy is made at our annual Congress to which the local branches, regions, and national members' committees can send delegates. These policies are the basis for this response to the Government consultation on reforming the Gender Recognition Act (GRA). The response is, thereby, founded on member involvement throughout the union's democratic procedure for policy making.

The Government's response to the GRA consultation:

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

The Government's proposed change is very limited and still situates obtaining a gender recognition certificate within a medical model which continues to deny a trans person's agency and authority. Reform of the process should be about rights for a trans person to be recognised in their self-identified gender rather than undergoing a process stipulated by medical professionals that can be intrusive, costly and humiliating. UCU advocates that gender should be recognised from the time a person declares their gender as different to the one that matches the sex assigned at birth and that this does not need to have undergone any specific treatment or surgery to reassign sex.

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?

There should be no financial burdens put on being recognised for who we are. It is unacceptable to UCU that a person should have to pay to have their gender fully legally recognised. Access to legal rights should not be contingent on an individual's financial resources.

The cost of obtaining the certificate is added to by the need to travel for any medical appointments a person may have, as well as the fact that most doctors charge a fee to produce the required medical reports. Cost has been reported as putting people off obtaining gender recognition on all their papers. Gaining full legal recognition of one's self-identified gender should not, we believe, be based on an ability to pay. This needs to be removed immediately.

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

Yes.

A diagnosis of gender dysphoria works within a medical model where trans identity is presented as a pathology as opposed to a person affirming their identity. This pathologising leads to the negative experiences found by the 2016 UK Government LGBT survey, such as discrimination, violence, and poor mental health.

While many trans people do experience gender dysphoria, not all do. The requirement to have a diagnosis of gender dysphoria means that some trans people are, therefore, prohibited from obtaining full legal recognition for who they are.

UCU does not believe being trans is an illness. Therefore, there should be no need for such a diagnosis. This requirement should be removed.

Requiring a medical diagnosis also creates an incongruence between a legal change of gender and other types of legal status change, e.g. name, marital status, or nationality, which are of course not contingent upon medical evidence.

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

Yes, this requirement should be removed for several reasons.

First, setting any period of time during which trans people are being asked to 'prove' their identity before they can have it legally confirmed is exhausting and harmful.

Second, many trans people will have already given a significant period of thought to living in the confirmed gender before starting their transition. Therefore, any period of further waiting appears arbitrary - even the shorter 3-month period proposed by the Scottish government.

Furthermore, evidence from existing research including the Government 2018 GRA consultation indicates that the two-year requirement often creates a particular barrier for vulnerable prospective applicants, as people in insecure housing or without a stable income generally have trouble producing the relevant documents.

The requirement for people to live in their 'acquired' gender before having access to a full change of their legal documents, can also lead to people being outed as trans against their will and as a consequence facing discrimination and harassment.

Evidence of living in the 'acquired' gender may give power to organisations to define what is legitimate evidence, which means people will be subject to uneven access to employment and services and face a greater risk of discrimination. During the time of living in the 'acquired' gender some trans people may feel it is safer for them to choose a certain clothing option at work to prevent transphobia from colleagues or members of the public. This may be particularly the case when a workplace stipulates clear binary gendered clothing instructions. What constitutes evidence of living in a gender is open to personal choice and preference. It is also culturally, socially, and historically specific. This is one barrier, amongst many, for non-binary

people whose gender may not be recognised by employers or service providers.

Finally, the term 'acquired' is challenged by many trans people who see the process as one of confirming gender rather than conforming to the one that corresponds with the sex assigned at birth. The term 'confirmed gender' is often used by trans people and legislation should reflect this terminology.

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

A statutory declaration to live in the acquired gender permanently has a number of problems. Firstly, completing a form and getting it approved leading to certification should be evidence enough to demonstrate intent. Also, intention to 'continue to live in the acquired gender permanently' is set within a binary framework and provides a barrier for those for whom gender is not regarded as static. The requirement for statutory declaration also creates legal uncertainty as it is at present unclear how, if at all, this requirement would be enforced.

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?

Spousal consent dates to before same sex marriage and was, to some extent, initially introduced to prevent 'inadvertent' same-sex marriages. Therefore, it is out-dated as legal recognition of the partnership remains in place as opposed to being ruptured. Retaining this requirement also means trans people in England & Wales have

different rights to those in Scotland where the requirement does not exist.

The condition of the spouse being needed to support the transition also creates a potential site for some forms of tension that could include trans people experiencing bullying and / or abuse. This creates legal inconsistencies and a lack of clarity for applicants. The spousal consent provision is further redundant as all parties to a marriage are able to request a dissolution of the marriage if they wish.

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

The UK should consider the approach of some other countries, such as Norway, where children between 6 and 16 can change legal gender with parental consent.

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

It is devastating to trans people that the Government has walked away from the findings of the previous select committee report (2016) and the previous consultation on GRA reform (2018). The current proposal denies trans people the right to self-define and instead continues to place trans people in the hands of the medical profession. This opens trans people up to facing further discrimination, barriers to their identity and negative impact on mental health.

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

The Government should have ensured that GRA can be obtained by a process of self-definition, as well as creating suitable provision for non-binary people who are currently excluded from legal recognition of their gender.

There should be opportunity for people to self-identify in another way to the binary gender categories of man and woman. Some UK Universities are updating their personnel systems to enable staff to be recognised as non-binary in the workplace. However, this is only a social recognition and not a legal one. HMRC still only allows binary gender options, so these employees still have to select an incorrect gender marker to receive their salary, which also violates employees' rights to privacy. UCU recognises there is considerable work to do to enable this to become a widespread reality but that there is clear indication that there is currently increasing need.

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

Yes, although with some limitations and an acknowledged inaction relating to non-binary people.

Wider issues concerning transgender equality and current legislation:

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

It is low because the medical requirements are inappropriate and do not relate to trans people's lives. Further, the process is perceived by trans people as very onerous and unduly invasive, which tends to deter applicants. It is also becoming increasingly redundant as other documents which serve as quasi legal identification, such as passports and driving licenses, can be obtained without a GRC. Many more people would take the legal step of acquiring a gender recognition certificate if it was simplified and not reliant on a medical approach.

Uptake is also low because going through the process is lengthy, and costly both materially and in terms of the negative effects it has on one's mental health due to it being a process of having to 'prove' who you are.

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.

No, as there is minimal interaction between the two legal frameworks.

The Equality Act does not, for example, touch on allowing a person to change their birth certificate. Enabling a person to change their birth certificate to reflect their confirmed gender is why appropriate update of the GRA should happen now.

Furthermore, the protections afforded to trans people by the Equality Act do not rest on the completion of any medical process; they apply from the time a trans or non-binary person identifies their gender as different to the one that matches the sex assigned at birth.

13. 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?

These have been developed well by some service providers though a statutory code of practice document could be developed to sit alongside the EA provisions for the purposes of clarity. If there is a time issue in getting statutory code of practice, non-statutory guidance could provide a useful stopgap.

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

Yes. The recent inclusion of non-binary people under s.7 of the Equality Act in case law is a welcome development, but one that should ideally be confirmed through the explanatory notes for the Act or suitable statutory guidance.

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

The Government LGBT survey has information about this, as does the 2016 Women and Equalities select committee report. There are numerous other reports available too that detail the many issues faced by trans, and non-binary, people today.

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

UCU welcomes the employment tribunal finding that the EA 2010 covers gender-fluid, genderqueer and other non-binary people through the gender reassignment provisions. This protection could benefit from clarity, perhaps in the form of a code of practice where reference to the existence of non-binary people would be welcome. Inclusive provision of facilities, inclusive language / terminology, inclusion on monitoring forms, and generally greater clarity on inclusion are required.

In addition to the aspects mentioned above, UCU has a long-standing commitment to recognise, support and increase the chances for non-binary people to self-identify within the Union and within the post-school education sector more widely. For example, UCU has made consistent calls over the past 5 years for monitoring forms to break the gender binary and for non-binary gender and trans identities to be recognised within the education curriculum. UCU has also called for gendered prefixes, such as Mr, Mrs, Miss, to be dropped, and for more

promotional and awareness raising work to be done to break the gender binary.

UCU was not surprised to find that when given the opportunity to self-identify as non-binary within the Government LGBT survey, 7% of respondents did so. There is a lot of work to be done to enable this significant number of people in our society to be more visible. This is something that is given more weight with the generational increase in numbers identifying as non-binary in the national LGBT survey. UCU has produced a guide to non-binary gender and is working to distinguish between trans identifying and non-binary identifying people as these are often not the same.

Many countries already provide a third legal gender option so that non-binary people can be recognised. As a union with many international members, we consider it a failing of the UK government that people with legal recognition of their non-binary gender in their home country must give this up in order to be able to work in the UK. We thrive on the diversity of international talent in our higher and further education institutions and it is essential that legislation support that diversity and not hinder it. Adding, at least, a third non-binary gender option on all forms in the UK would enable non-binary recognition.

UCU is interested to be involved in further dialogue on this issue as government thinking develops.

November 2020