

Women and Equalities Committee Inquiry on 'Reform of the Gender Recognition Act'

1. Executive Summary

1	<p>Will the Government's proposed changes meet its aim of making the process "kinder and more straight forward"?</p>	<p>No. The changes the Government has proposed do very little to make the process of applying for a Gender Recognition Certificate any "kinder" or "more straightforward".</p> <p>They do not reach the expectations for meaningful change we as trans communities had read as precursors, nor do they touch the sides of the Government's own original scope of what the end result of the consultative process would entail.</p>
2	<p>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?</p>	<p>In an effort to combat historically low take-up of Gender Recognition Certificates by the communities they exist for, the Government should be removing any fee for application entirely.</p> <p>Trans communities are more often excluded from workplaces than their cis peers (63% trans respondents with a paid job compared to 83% cis respondents, National LGBT Survey p133); it follows that any fee is an unnecessary obstacle to further take-up.</p> <p>Rather than a simplifying process or an act to increase take-up of participation within the process, the retention of any fee, however "nominal", flies in the face of common sense.</p>
3	<p>Should the requirement for a diagnosis of gender dysphoria be removed?</p>	<p>Yes. We believe that any process of legal gender recognition needs to be de-medicalised if it is to be brought into line with what's been happening in other countries, as well as what trans people need. There is no benchmark of what dysphoria looks like for an individual, and as such a diagnosis cannot be held to have universal meaning. It follows that a diagnosis of gender dysphoria should not be a prerequisite for any process of legal gender recognition.</p> <p>We have opposed the retention of this requirement within the gender recognition process, and will continue to do so.</p>
4	<p>Should there be changes to the requirement for individuals to have lived in their acquired gender for at least two years?</p>	<p>Yes. Aside from a discomfort with the idea of an "acquired gender", the requirement of living as yourself for two years is an arbitrary one. It is also difficult to define, or to provide documentary evidence for such a thing.</p>
5	<p>What is your view of the statutory declaration and should any changes have been made to it?</p>	<p>We believe that the statutory declaration should be retained, but the Act itself reframed so that the statutory declaration itself is the vehicle through which legal gender recognition would occur. A statutory declaration, worded in a right and fitting way so as to highlight the seriousness of the intention behind it, could be a useful way to streamline the process.</p>
6	<p>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?</p>	<p>The provision, also referred to as the "spousal veto", should be immediately removed. This is a cruel vestige of compromises needed to get the Gender Recognition Act made into law originally, but is clearly not fit for purpose, with Scotland having removed it from its statute books in 2014.</p>

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7	Should the age limit at which people can apply for a Gender Recognition Certificate (GRC) be lowered?	Yes. It would be a simple and widely-accepted amendment to lower the age at which people can apply for a GRC to 16, the age at which people gain access to comparable legal rights and responsibilities.
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 offer very little to no impact on people applying for a GRC, or on trans more generally. The proposed changes are ultimately inconsequential reforms, and we view the consultative process as degrading in that we were made to waste so much time and effort for such a lack of meaningful change.
9	What else should the Government have included in its proposals, if anything?	<ul style="list-style-type: none"> • Legal recognition of non-binary people in their genders, or at the very least a commitment to meaningfully engaging with non-binary communities for further understanding • The scrapping of the Gender Recognition Register, which entails a centralised list of all people with GRCs in England and Wales • Lowering the age of application to 16
10	Does the Scottish Government's proposed Bill offer a more suitable alternative to reforming the Gender Recognition Act 2004?	Yes. The Scottish Government's proposals are both positive and negative, however. In our view the lowering of the time period of living in an "acquired gender" from 2 years to three months is a positive, and the three month waiting period after applying for a GRC is a negative.
11	Why is the number of people applying for GRCs so low compared to the number of people identifying as transgender?	<p>The overwhelming majority of trans people are non-binary are as such are excluded from any legal gender recognition through a GRC, as the process is set up to recognise only men and women.</p> <p>Trans people are also less likely to be in financially secure situations than cis people, with the fees for application and diagnosis of gender dysphoria an insurmountable financial burden for many.</p>
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.	Yes. We have seen a great deal of confusion, both genuine and feigned, over the ways in which the GRA 2004 and Equality Act 2010 interact. We believe that in the absence of wider understanding of the Acts' interactions, and of inarguable case law outcomes, the opening up of the GRA to consultation has allowed for this confusion to be weaponised and indeed furthered.
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?	See 4.2.1
14	Does the Equality Act adequately protect trans people? If not, what reforms, if any, are needed?	See 4.2.1
15	What issues do trans people have in accessing support services, including health and social care services, domestic violence and sexual violence services?	There are many issues around accessing healthcare services specific to trans people and our needs. Sexual violence services may be presumed to be exclusionary of trans people as a baseline, even where they are not in actuality.
16	Are legal reforms needed to better	Yes. Non-binary people are excluded from legal gender

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support the rights of gender-fluid and non-binary people? If so, how?	recognition entirely, as well as only potentially being protected from discrimination by the Equality Act 2010.
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2. Gendered Intelligence

- 2.1. **Who we are.** Gendered Intelligence is a trans-led charity working within the UK to improve understandings of gender diversity.
- 2.2. **Organisational purpose.** Our vision is of a world where people are no longer constrained by narrow perceptions and expectations of gender, and where diverse gender expressions are visible and valued. We work with the trans community and those who impact on trans lives; we particularly specialise in supporting young trans people aged 8-25. Our work aims to better trans lives through: the delivery of professional services such as trans awareness training; a large trans youth work service; support line; a public engagement and advocacy service; as well as many other projects and services.
- 2.3. **Responding to this inquiry.** We aim to respond to all consultations, inquiries, and other evidence-gathering opportunities where we believe we can add meaningful and constructive information, particularly when we can submit information which may improve the lives of trans people within the UK.

We are submitting evidence to this inquiry as we believe reform to the GRA is long overdue and that other avenues to reform, including the large-scale 2018 consultation, have proven themselves abortive. It is our hope that as a charity staffed primarily by trans people, run for trans people and those who impact on trans lives, our response will go some way in directly highlighting the strength of feeling around the necessity of reform to the Act. Furthermore, we hope that evidence presented to the Women and Equalities Committee to that effect will succeed in bringing to light the Government's perceived abdication of duty to the UK's trans populations through failure to meaningfully reform the GRA.

3. Inquiry response: 'Reform of the Gender Recognition Act'

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

No. The changes the Government has proposed do very little to make the process of applying for a Gender Recognition Certificate any "kinder" or "more straightforward".

The changes do not address the more pernicious aspects of the Act as it will remain, nor do they touch the sides of the Government's own original scope of what the end result of the consultative process would entail. When the consultation on the GRA was originally launched in 2018, then-Prime Minister Theresa May said that she wanted to "see a process that is more streamlined and de-medicalised — because being trans should never be treated as an illness"¹. The proposed reforms that have been carried through by successive Ministers do not address the Government's stated aim of streamlining or of de-medicalising the process through which one applies for a GRC, proving instead to be ultimately inconsequential concessions.

¹ <https://www.gov.uk/government/news/government-announces-plans-to-reform-process-of-changing-legal-gender> - Government Announces Plans to Reform Process of Changing Legal Gender

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Furthermore — as far as we can tell — the roll-out of supposedly new trans healthcare services is an unrelated, pre-determined effort the Minister has tried to shoehorn into the September 2020 Gender Recognition Act announcement², presumably so that the Government can be seen as doing something of worth for trans communities. Sufficient and robust trans healthcare services can and should exist in the UK as well as a properly reformed Gender Recognition Act: one should not be played off on the other.

Making the application process available online is a positive step, but will be universally and correctly recognised as a tiny step nonetheless which does little to assuage trans people that thorough understandings of our actual needs are being met.

3.2. 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?

In an effort to combat historically low take-up of Gender Recognition Certificates by the communities they exist for, the Government should be removing any fee for application entirely, widening accessibility as much as is possible. Trans communities are more often excluded from workplaces than their [cis] peers³ (63% trans respondents with a paid job compared to 83% cis respondents); it follows that any fee is an unnecessary obstacle to further take-up.

Rather than a simplifying process or an act to increase take-up of participation within the process, the retention of any fee, however "nominal" it's due to be, flies in the face of common sense. 6,463 people have applied for a Gender Recognition Certificate⁴ since the Act came into place. We know that the number of applicants for a GRC continues to be considerably smaller than one might suspect, considering the estimated size of the UK's trans populations (200,000-500,000⁵), and we believe cost is but one reason why many do not compelled to apply.

Connected to the continued requirement for a diagnosis of gender dysphoria to successfully apply for a GRC is the requirement of two medical reports detailing such. People waiting to attend a first appointment at Gender Identity Clinics were facing unprecedented waiting times even before the pandemic, with these now ranging anywhere from 27 months (2 years and 3 months)⁶ to a reported 44⁷ months (3 years and 8 months) across the UK. Faced with these unacceptable waiting times for a first appointment at a Gender Identity Clinic, many trans people are forced to seek private transition-related healthcare, including for the required medical reports for GRC application. This will add yet another unnecessary financial burden, ensuring that even fewer trans people have access to the Act.

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

Yes. We believe that any process of legal gender recognition needs to be de-medicalised if it is to be

² <https://www.gov.uk/government/speeches/response-to-gender-recognition-act-2004-consultation> - Written Ministerial Statement: Response to Gender Recognition Act (2004) consultation

³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721704/LGBT-survey-research-report.pdf - National LGBT Survey, p183

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/891353/Main_Tables_Q4_2019_20.ods - Ministry of Justice, Tribunal Statistics Quarterly: January to March 2020

⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721642/GEO-LGBT-factsheet.pdf - Trans People in The UK, Government Equalities Office

⁶ <https://www.lothiansexualhealth.scot/gender-identity-clinic/gic-waiting-times/>

⁷ <https://www.pinknews.co.uk/2020/08/13/nhs-trans-patients-laurels-gender-identity-clinic-south-west-waiting-list-yeovil-pride/>

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brought into line with what's been happening in other countries — learning from so-called “international best practice” — as well as what trans people need.

There is no benchmark of what dysphoria looks like for an individual, and as such a diagnosis cannot be held to have universal meaning. It follows that a diagnosis of gender dysphoria should not be a prerequisite for any process of legal gender recognition. As a simple point of principle, cis people do not have to ‘prove’ their gender identities in any way to be granted legal recognition; the same should hold true for trans people. The demand for a diagnosis of gender dysphoria before being afforded the right to legal recognition is underpinned by a paternalism, of others knowing a person better than they know themselves. This is inherently linked to the supposed need of a gender recognition panel, the existence of which is an expensive act in money-wasting and whose work would no longer be needed under a reformed system, freeing up public funds.

We have opposed the retention of this requirement within the gender recognition process, and will continue to do so.

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

Yes. Aside from a discomfort with the idea of an “acquired gender”, the requirement to live as yourself for two years in an arbitrary one. It is also difficult to define, or to provide documentary evidence for such a thing. In our response to the Government consultation we stated, and would continue to attest, the below:

With many trans people, especially non-binary and gender non-conforming people, a transition may not mean having to necessarily change your name or appearance, nor medicalise yourself. A transition can be a liberation from gendered expectations, rather than a reification, with the current need to prove your gender identity to an external group both unfair and impossible. Our fear is that continued demand to prove living in an “acquired gender” crystallises stereotypes and norms around gender into legal realities.

For many people, the evidential requirements are going to be impossible to reach, for reasons outside of their control. As way of example, young trans people who live at home with their parents are going to have no bills in their names, and so no way of proving they have used their new name officially. There is a similar lack of paper trail for evidentiary requirements for those who have experienced poverty or unemployment (trans people are likelier to be excluded from employment, with 1 in 3 employers unwilling to hire a trans person⁸); and homeless trans people in particular, with 1 in 4 trans people experiencing homelessness at some point in their lives⁹.

In addition to the above, we would reiterate that there is no evidence-based reason for the retention of the requirement of living in your ‘acquired gender’ for two-year. Indeed, the only reason it appears to have

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

We believe that the statutory declaration should be retained, but the Act itself reframed so that the statutory declaration itself is the vehicle through which legal gender recognition would occur. A statutory declaration, worded in a right and fitting way so as to highlight the seriousness of the intention behind it, could be a useful way to streamline the process. Our organisational thinking is

⁸ <https://www.crosslandsolicitors.com/site/hr-hub/transgender-discrimination-in-UK-workplaces>

⁹ <https://www.stonewall.org.uk/sites/default/files/lgbt-in-britain-trans.pdf>

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that a statutory declaration could be the anchor for a reformed GRA process and would effectively vet applicants, ensuring the process is being used only by those who have a genuine need for it, and offering assurances to any potentially concerned external parties that it cannot be used by those with nefarious aims.

The processes through which people change their title, name, and gender on other systems, such as with driving licenses and passports, are such that amendments are already made through what is essentially a process of statutory declaration. Understanding that some people may feel a more stringent process is necessitated with an update to a birth certificate through the GRA, we would advocate for a process of self declaration with clear legal guidance provided.

3.6. 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?

The provision, also referred to as the “spousal veto”, should be immediately removed. This is a cruel vestige of compromises needed to get the Gender Recognition Act made into law originally, but is clearly not fit for purpose, with Scotland having removed it from its statute books in 2014¹⁰.

Research by LGBT Conservatives shows that 44% trans people’s spouses have attempted to block their legal gender recognition, with 29% having made it intentionally difficult for their trans spouse to finalise a divorce as a result of their wish to transition¹¹. Legislation in England Wales should be updated so that trans people’s partners are not able to block an application for a Gender Recognition Certificate.

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

Yes. It would be a simple and widely-accepted amendment to lower the age at which people can apply for a GRC to 16, the age at which people gain access to comparable legal rights and responsibilities.

Gendered Intelligence believes that people are often aware of their gender identity from an early age¹², and that steps should be taken to ensure all children (whether cis or trans) are comfortable, respected and affirmed in their identity, regardless of their trans history or status.

We have advocated for a system of legal gender recognition for under-16s through parental application, with the option of application by a capable child where parental consent can’t or won’t be given. This system would work under the assumption that the young person will have parental consent and support, which is ultimately one of the biggest factors in how successful and happy a transition is for a young person and their family. Conversely, many young people of all gender identities don’t have much or any parental support, and a system needs to be put in place for these young people as a point of urgency. In the Government’s consultation on the GRA, we advocated for a system of ‘application by capable child’, wherein a capable young person can access the GRA process by providing a statutory declaration, to only be used as a fall-back option where parental consent isn’t granted.

¹⁰ https://www.legislation.gov.uk/asp/2014/5/pdfs/asp_20140005_en.pdf, page 31

¹¹

https://www.lgbtconservatives.org.uk/sites/www.lgbtconservatives.org.uk/files/report_to_the_consultation_on_the_spousal_veto.pdf

¹² <https://www.mayoclinic.org/healthy-lifestyle/childrens-health/in-depth/children-and-gender-identity/art-20266811#:~:text=Most%20children%20typically%20develop%20the,gender%20by%20age%203%20years.>

3.8. 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 offer very little to no impact on people applying for a GRC, or on trans more generally. The proposed changes are ultimately inconsequential reforms on a practical level, and we view the consultative process as degrading in that we were made to spend so much time and effort engaging in good faith, for such a lack of meaningful change to be the end result.

It would appear to be very unlikely that many more trans people will apply for a GRC as a result of the proposed changes, with the mooted reforms (and lack thereof) instead widely celebrated by anti-trans campaigners as symbolising the Government's perceived shared lack of caring for trans people.

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

This Committee has already collated and reported on what the Government should have included in its proposals, going so far as to make clear recommendations to make steps towards trans equality in its 2015 report¹³ on the topic.

Those recommendations, made five years ago but still as necessary and relevant as then, include:

- Legal recognition of non-binary people in their genders, or at the very least a commitment to meaningfully engaging with non-binary communities for further understanding ("The Government must look into the need to create a legal category for those people with a gender identity outside that which is binary and the full implications of this"¹⁴)
- Lowering the age of application to 16 ("We recommend that provision should be made to allow 16- and 17-year-olds, with appropriate support, to apply for gender recognition, on the basis of self-declaration"¹⁵)

The Government should have made a commitment to scrapping the Gender Recognition Register, which entails a centralised list of all people with GRCs in England and Wales (see 4.1).

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

Yes. The Scottish Government's proposals are both positive and negative, however.

In our view, the lowering of the time period of living in an "acquired gender" from 2 years to three months is a positive, helping trans people access legal gender recognition more readily. It is imagined that if such a proposal were to become reality, it would strengthen the feeling that applying for a GRC is a worthwhile and entirely plausible thing to do for those who wish to, rather than the current 2 year period acting as a barrier.

The proposed three month mandated waiting period after applying for, but before receiving, a GRC is an unnecessary and negative addition. We imagine this is ostensibly to enforce surety, but in

¹³ <https://publications.parliament.uk/pa/cm201516/cmselect/cmwomeq/390/390.pdf>

¹⁴ Ibid, p11

¹⁵ Ibid, p80

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reality would serve only to further gatekeep what should be a less difficult and less slow application process. There is no need, not any sound reasoning, behind mandating a post-application waiting period, and we would be mindful that no similar system be replicated in England and Wales.

The proposal to lower the age at which one can apply for a GRC to 16 is welcome, and is something that should be amended in the Act in England and Wales. With Scotland having passed legislation in 2015¹⁶ ensuring 16 year olds were allowed to vote in elections, it is assumed either that the country's political thinking is somewhat less paternalistic with regards to age than in England in Wales, or that similar enfranchisement and assumed responsibility needs to match-up across the whole of the UK for 16+ year olds.

4. Wider issues concerning transgender equality and current legislation

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

The overwhelming majority of trans people are non-binary (as in 3.2, above) are as such are excluded from any legal gender recognition through a GRC, as the process is set up to recognise only men and women. An increasing number of global legislatures allow for legal gender recognition of non-binary people, including Canada¹⁷ and New Zealand¹⁸. A recent legal case has been interpreted as having "widened" interpretations¹⁹ of the Equality Act 2010 to include non-binary people in its protections. It would appear that the onus is on the Government to allow for recognition of non-binary people through the GRA as a baseline, in order to keep up-to-date with changing societal and legal understandings of gender.

Trans people are also less likely to be in financially secure situations than their cis peers, with the fees for application and diagnosis of gender dysphoria an insurmountable financial burden for many. As an organisation working for and with trans people, we have been told repeatedly of people feeling the application process as a whole was demeaning and needlessly bureaucratic. For trans people to feel as though it is a worthwhile endeavour to apply for a GRC in the first instance, the process has to be reformed so as to remove aspects which are seen as demeaning.

Another issue as to why people are not flocking to apply for a GRC is that there is a fear and distrust of the existence of a Gender Recognition Register (GRR). Data breaches, including with highly sensitive information such as whether someone is currently or has been under the care of a certain Gender Identity Clinic²⁰, are all too common. The existence itself of the GRR does not take into account the acute harm that would be caused were any of the linking information contained therein were to be shared, either accidentally or maliciously.

Overwhelmingly, we believe people are not applying for GRCs in the numbers one may expect as a result of having different priorities. Whilst a GRC may be useful and important for some trans people, our priorities as larger communities remain "improving our basic healthcare, tackling

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[https://www.parliament.scot/S4_Bills/Scottish%20Elections%20\(Reduction%20of%20Voting%20Age\)%20Bill/SPPB216.pdf](https://www.parliament.scot/S4_Bills/Scottish%20Elections%20(Reduction%20of%20Voting%20Age)%20Bill/SPPB216.pdf)

¹⁷ <https://www.canada.ca/en/immigration-refugees-citizenship/services/canadian-passports/change-sex.html>

¹⁸ <https://www.govt.nz/browse/passports-citizenship-and-identity/changing-your-gender/change-your-gender-on-your-official-id/>

¹⁹ <https://www.jdsupra.com/legalnews/gender-is-a-spectrum-landmark-uk-ruling-61650/>

²⁰ <https://gic.nhs.uk/data-breach/>

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discrimination and hate, and improving our position within society”²¹. Until these issues are meaningfully addressed at a fundamental level, we are unlikely to see much of an increase in take-up.

4.2. 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.

Yes. We have seen a great deal of confusion, both genuine and feigned, over the ways in which the GRA 2004 and Equality Act 2010 interact. We believe that in the absence of wider understanding of the Acts’ interactions, and of inarguable case law outcomes, the opening up of the GRA to consultation has allowed for this confusion to be weaponised and indeed furthered.

Reigning and intentional confusion from anti-trans campaigners — or those who wished to see any positive reform of the GRA quashed — has centred around an imagined delineation between “sex” and “gender” across both acts. Whilst the imagined dichotomy between usage and intent of “sex” and “gender” has flourished in fringe thinking the past few years, it is clear in our understanding that the Equality Act 2010 protects trans people from discrimination across the ‘sex’ protected characteristic *as well as* ‘gender reassignment’. Indeed, anyone who has undergone a social and/or medical transition falls under the auspices of anti-discrimination protection by “reassigning the person’s sex by changing physiological or other attributes of sex”.

A confusion may arise between the Acts’ interchange between ‘sex’ and ‘gender’, but the intent remains that they are and should continue to be inherently interchangeable terms for legal purposes. In practice, and outside of the confines of didactic (mis)interpretations of the Acts’ interplay by anti-trans bad actors, a trans person is protected from discrimination based on what sex they are *perceived* to exist as. For example, a trans woman may be victimised or discriminated against based on an assumption of her womanhood – this discrimination comes from a place of (rightful) perception of her as a woman, and as such she would be protected from discrimination under the Equality Act 2010 through virtue of the protected characteristic of ‘sex’. These protections have nothing to do with, and are in no way affected by, the Gender Recognition Act 2004, despite active campaigning to distort public understanding around this.

4.2.1. Notwithstanding the wilfully falsified nature of these misinterpretations, we believe that at the current time it would be unwise to open the Equality Act 2010, and perhaps even to attempt to produce explanatory guidance. It is our organisational belief that, sadly, anti-trans sentiment in the UK is reaching the crescendo of its fever pitch and that any attempt to improve the situation for trans people would, at the current time, result in unsatisfactory and retrograde actions from anti-trans campaigners. Simply put, trans people and their allies are unsure if any positive movements towards trans equality through either guidance or legislative change would be possible at this point. We, of course, remain optimistically hopeful that it is indeed possible and a priority. Gendered Intelligence is committed to future trans-affirmative guidance and legislative amendments where possible and will remain available for any discussion around these if opportunities arise.

4.3. 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?

²¹ <https://genderedintelligence.wordpress.com/2020/09/22/small-changes-new-direction-following-governments-gra-response/>

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See 4.2.1

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

See 4.2.1

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

As referenced in 3.2, trans people often face great difficulty in accessing trans healthcare services at all, let alone in a timely manner. This was an issue for trans people before the pandemic, but has certainly been exacerbated by it. Partly as a response to the glacial pace in which trans people must travel through the UK's Gender Identity Clinics, and partly due to other access barriers, new models of healthcare services for trans people are opening across the country²². For trans young people (those under 18), the situation is potentially even more dire if we are to consider that there is only one dedicated service for them in the UK, the Gender Identity Development Service. Waiting times for GIDS are now so long that pre-legal action has recently been commenced by the Good Law Project²³, stating that NHS England is breaching its obligations to offer first appointments within 18 weeks of referral.

We know that increasing hostility towards trans people — trans women in particular — in the media has made it appear as though domestic and sexual violence refuges for women are exclusionary of trans people, but that this is not the case in reality. Indeed, a wide-reaching report formed by interviewing those who run such services across the UK stated that “no participants said they have used the Equality Act exemption to deny support to a trans survivor” and that there was a widely-held sectoral “determination that the current debate about trans survivors won’t stop them providing the most effective support they can to them”²⁴. Despite the report’s assurances, trans people have told us as an organisation that there would be an increased reticence on their part to seek refuge as a trans person, as a result of the negative and nefarious reframing.

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

Yes. Non-binary, genderfluid, genderqueer and all gender diverse outside of trans men or women are excluded from legal gender recognition entirely. The binary nature of legal understandings and interpretations of sex and gender means that only those people who comfortably and permanently describe themselves as either a man or woman have the option to access a Gender Recognition Certificate. This needs to be urgently rectified considering, as stated in previous answers, that non-binary people make up the majority of trans people; a refusal to allow legal gender recognition is based on outdated understandings of ‘trans’.

As recent case law shows (as in 4.1), the Equality Act’s protected characteristic of ‘gender reassignment’ seems to extend to covering genderfluidity, but without further precedent or legal amendment, this may be able to be overturned.

Further engagement and discussion with non-binary people and groups may be necessary going forward.

²² <https://www.gtdhealthcare.co.uk/about-us/news/gtd-healthcare-and-lgbt-foundation-launch-new-adult-trans-health-service-greater-manchester>

²³ <https://goodlawproject.org/update/nhs-duty-to-young-people/>

²⁴ https://www.stonewall.org.uk/system/files/stonewall_and_nfpsynergy_report.pdf, p9

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