

Written evidence submitted by Birmingham LGBT [GRA1540]

Birmingham LGBT is a registered charity (1141568), and company Limited by Guarantee (07203554). Our vision is a vibrant, diverse lesbian, gay, bisexual and trans community in Birmingham, UK in which individuals can realise their full potential and have equal access to what the city has to offer.

Our objectives are:

- To raise awareness of the needs of lesbian, gay, bisexual and trans (LGBT) people in Birmingham and beyond, to advocate for their needs to the wider community and to promote opportunities to LGBT people in Birmingham and beyond to enable them to fully participate in the lives of their community.*
- To act as the voice of the LGBT third sector in Birmingham, based on a knowledge and evidence of real need, creating a positive and visible LGBT community.*
- Create a highly skilled LGBT third sector that has opportunities for volunteering and service development.*
- To raise awareness of the needs of the LGBT community in the city and develop appropriate services where needs exist.*
- To challenge negative stereotypes about LGBT people and combat homophobia, biphobia and transphobia.*

Our reason for this submission, is to work to achieve these aforementioned objectives.

1: Will the Government's proposed changes meet its aim of making the process "kinder and more straightforward"?

The government's proposals (reduction in fees and online application process) are only a small step in the right direction; and are far from the true reform that trans and non-binary people need. The proposed changes have fallen far short of making the process "kinder and more straightforward".

Additionally, the inclusion in the Government's response, of the announcement of the rollout of new trans healthcare services appears to take credit for a pre-existing and unrelated initiative pioneered by the NHS.

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?

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The fee should be removed. There is an extremely low take up of gender recognition certificates by those who might wish to access them, and the financial burden of applying is a significant part of why this is the case. The government announced the fee for applications is to be reduced from £140 to a “nominal fee”.

As seen in The National LGBT Survey pg133 (2018), trans people experience significantly more unemployment than their cis counterparts (63% trans respondents had payed employment in past 12 months compared to 83% of their cis counterparts). Continuing to have even a nominal fee places an unnecessary barrier to trans people acquiring a GRC and related protections and will result in a number of economically disadvantaged trans people being excluded from achieving legal recognition of their gender identity.

Furthermore, fees such as those incurred in replacing documents such as birth certificates or passports should be abolished, and fees such as those incurred in making a statutory declaration should supported by grants.

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

Requiring a diagnosis of gender dysphoria to be able to access gender recognition further reinforces a historic pathologisation of trans identities. By continuing to frame trans identities as a medical “problem” rather than a natural variance, the current Gender Recognition Act has contributed to a stigmatisation of trans people.

Additionally, for most trans people to acquire this diagnosis, they would need to be seen by an NHS Gender Identity Clinic. Given the historic and current lengthy wait times for GIC appointments, this can delay the process significantly. Trans people should not have to wait years to access gender recognition and associated legal protections.

The requirement for a diagnosis of gender dysphoria should be removed. Trans people should not have to be diagnosed with a health condition to access gender recognition and associated legal protections.

A simple administrative process based on self-determination does not need a medical diagnosis. This is in line with international best practice, for example in Ireland, Malta, Argentina, and Norway.

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

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What constitutes evidence of living as any gender is culturally, socially, and historically specific. It is also subject to individual interpretation and preference. Requiring a trans individual to live in their acquired gender for at least two years not only polices the gender expression of a trans person, and leads to trans people feeling they must conform to gendered norms, but is also harmful for cisgender people too. For example, forcing a transgender woman to “live in her acquired gender” not only puts pressure on her to conform to gendered norms, but more generally reinforces antiquated and harmful ideas about what a woman “should be like”. Indeed, what does the government consider living as a woman to be, and does this rely on sexist stereotypes?

Furthermore this requirement creates a situation whereby a trans person would be at an increased risk of outing, and subsequent discrimination and associated risk of violence; as they must “live in their acquired gender” for 2 whole years without the protection of the privacy measures a gender recognition certificate would offer them.

This process is also exclusionary of non-binary people, as we are not confident that a gender recognition panel would be able to assess what constitutes “living as a nonbinary person”. This requirement seems to be an unnecessary exercise in gatekeeping.

Finally, the term “acquired gender” implies that gender identity is something that is “picked up”, The term “affirmed gender” is preferable and recognises that being trans is a natural variance that one recognises and comes to accept at one point or another in your life.

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

Though many trans people have issues with the current wording of the statutory declaration, a “reformed” declaration would be acceptable. Continuing to include the statutory declaration as a part of a system of self-identification whereby it is the only requirement is a sensible approach.

While it is perhaps desirable that individuals looking to change their legal gender intend their declaration to be permanent, we believe that the inclusion of an ‘until death’ clause is unnecessary.

By moving to a simple self-declaration system, we would be following best practice as seen in several countries internationally.

Finally, we believe that a reformed Gender Recognition Act must recognise non-binary and fluid identities.

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?

We believe that spousal consent provisions, sometimes referred to as ‘the spousal veto’, must be removed. The system must enable a trans person to obtain GRC without needing the permission of their spouse.

We should be following the lead of Scotland who have already removed this requirement.

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

At a bare minimum, reducing the age limit to 16, whereby equally autonomous rights and commitments become available to a young person seems sensible. Trans people, regardless of their age deserve respect and recognition. Legal recognition would ensure that no more would young trans people suffer due to discrepancies between their legal and social identities.

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

Very little. Moving the process online does nothing to address the truly significant barriers that trans people face to achieving gender recognition. The reduction in fee whilst welcome, is vague. It is impossible to assess the potential impact without knowing what this “nominal” fee would be, and we are not confident that sufficient concern for the economic disadvantage facing the trans community would be given during the setting of this fee.

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

We would say that the GRA needs to be reformed in the following ways:

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- the £140 fee to be removed;
- the requirement of a diagnosis of gender dysphoria to be removed;
- The Gender Recognition Panel to be removed;
- the spousal veto to be removed;
- the two-year waiting time to be removed;
- the statutory declaration to be removed (unless it is the only requirement);
- the age limit to be lowered;
- legal recognition for non-binary people to be introduced.

We believe, intersex people should also be appropriately recognised and included in the reformed Act, offering a specific pathway to them.

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 overall appears more favourable than the English and Welsh proposed Bill. It intends to lower the age a person can obtain a GRC from 18 to 16 years old, abolish the current requirements for medical evidence to be submitted to a Gender Recognition Panel and reduce the requirement of 'living in your acquired gender' for 2 years.

That said, see our response to question 9 for the full changes truly needed by trans people, which extend beyond the scope of the Scottish governments proposed bill.

Wider issues concerning transgender equality and current legislation:

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

Obtaining a GRC is difficult, costly, time consuming and intrusive. The National LGBT Survey revealed why so few trans people have a GRC.

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.

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There should not be any challenges in the way that the Equalities Act 2010 interacts with the Gender Recognition Act 2004; however, there is widespread misunderstanding about what rights trans people have and which piece of legislation would cover said rights. This is not least in part because of widespread misinformation caused by inaccurate reporting surrounding the 2018 consultation on GRA reform. Part of our service delivery includes transgender awareness training (including covering both the EA 2010 and GRA 2004), and we have found this confusion extends to both cisgender and transgender participants alike.

It is clear to us that to have the protected characteristic of gender reassignment, and therefore to be protected under the Equality Act 2010 a trans person does not need to have a gender recognition certificate. Unfortunately, a large number of organisations and individuals are not aware of this. As such, the Government must do more to clarify with organisations and the public alike that the EA 2010 and GRA 2004 do not interact; and what rights trans people are afforded under each.

Additionally, we currently do not recommend for any changes to the EA 2010 to be made, as opening up this discussion in the current climate of hostility towards trans people in the UK could lead to a rollback of trans rights. The risk of this happening outweighs any potential benefit of positive change.

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?

We believe, guidance should make it clearer that, single-sex and separate-sex spaces must be inclusive of anyone identifying in line with the gender/ genders they are provided for. Where there are exemptions (and these should be rare), clear guidance should be given to service providers to prevent discrimination.

Trans people frequently experience being disallowed from accessing services/ facilities illegally, in situations that could not be considered a “proportionate means of achieving a legitimate aim”. This could range to anything from being blocked from entry to a changing room to being thrown out of a pub for using a bathroom.

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

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The Equality Act protects all trans people regardless of whether they have taken steps such as obtaining a GRC, having medical interventions or legally changing their name. All non-binary people should be also protected against discrimination on the basis of their non-binary or fluid identity. The landmark Taylor v Land Rover case appears to establish that non-binary people are indeed covered, but this should be enshrined in the wording of the act itself.

However, as we have said in previous questions we currently do not recommend for any changes to the EA 2010 to be made, as opening up this discussion in the current climate of hostility towards trans people in the UK could lead to a rollback of trans rights. The risk of this happening outweighs any potential benefit of positive change.

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

Trans people face a multitude of barriers and issues when accessing or trying to access support services.

Trans people accessing mental health services have reported experiencing negative events including but not limited to; the incorrect usage of a previous legal name on correspondence, outing them to housemates; being asked inappropriate questions about their gender history by counsellors; and being housed in psychiatric inpatient facilities of the inappropriate gender.

Trans women often experience difficulty accessing domestic violence services and refuge provision even when they are a significant risk of harm

More needs to be done across the public sector, private sector and VCSE sector to ensure that trans people can access services that are free from discrimination and that meet their needs.

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

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GRA reform should provide legal recognition for non-binary identities.

Changes to identity documents and records to include non-binary gender identities would strengthen the legal recognition of people with non-binary genders in the UK.

You may wish to discuss how having to use binary genders on legal documentation affects non-binary people, and how it affects your clients or group members.

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