

# Stonewall response: *Reform of the Gender Recognition Act*

## Introduction

1. Stonewall welcomes the opportunity to respond to this inquiry. The Gender Recognition Act 2004 made Britain a global leader in trans equality, but it has become increasingly outdated, and a [growing number of countries](#) have since introduced far more straightforward and practical systems of legal gender recognition.
2. Stonewall is Britain's largest organisation campaigning for LGBT+ equality. Stonewall conducts and commissions original and innovative research into LGBT+ people's needs and experiences, such as our [LGBT in Britain: Trans Report \(2017\)](#) which analysed the experiences of more than 800 trans and non-binary people.
3. This submission will focus on the UK Government's response to the 2018 consultation into Gender Recognition Act, particularly in light of the [Women's and Equality Select Committee's 2015](#) recommendation for GRA reform "in line with the principles of gender self-declaration that have been developed in other jurisdictions." Where "in place of the present medicalised, quasi-judicial application process, an administrative process must be developed, centred on the wishes of the individual applicant, rather than on intensive analysis by doctors and lawyers."
4. Summary of points raised:
  - The results of the 2018 GRA consultation set out a clear mandate for the UK Government to reform the GRA in line with public opinion and international best practice, and yet the UK Government's response proposes only minimal non-legislative updates to the application process.
  - Stonewall calls on the UK Government to move to a de-medicalised and straightforward legal gender recognition process, alongside making wider investment in key areas of trans equality such as healthcare.
  - Regarding the commitments made by the UK Government, there must be a clear timeline for the process of streamlining and digitising the GRC application process.
  - Stonewall welcomes the move to a nominal fee but calls for it be removed entirely; as well as the removal of the requirement for a gender dysphoria diagnosis, of the two year waiting period, and of the additional requirement to provide two medical reports.
  - Stonewall believes a system of self-determination is a sensible approach to gender recognition, including a statutory declaration as the only legal requirement.
  - Stonewall believes that 16 and 17-year-olds should be able to achieve legal gender recognition using the same process as trans people aged 18+, with a system based on parental consent available to under-16s.
  - Stonewall strongly believes that non-binary identities should be accommodated in a reformed GRA.
  - Stonewall notes that the [UK Government's 2018 GRA consultation document](#), stated clearly that they did not plan to amend the Equality Act, and that changes to the Equality Act were outside of the scope of the GRA consultation, a point echoed by the [Equality and Human Rights Commission](#). We concur with those positions in recommending that this inquiry does not call for changes to the Equality Act or Statutory Guidance.

## The UK Government's response to the GRA consultation:

### Q1: Will the UK Government's proposed changes meet its aim of making the process "kinder and more straight forward"?

5. The Gender Recognition Act 2004 enables trans people to change their legal gender (from female to male, or male to female) by applying for a Gender Recognition Certificate. This changes the name and gender on their birth certificate and is required for someone to be recognised as male or female, legally and officially. It is not possible for a non-binary person to obtain legal recognition under the current GRA.
6. Obtaining a Gender Recognition Certificate is important for many trans people because:
  - It ensures they can get a marriage or civil partnership in the right gender, have their gender recorded correctly when they die, and have their pension and insurance policies administered in the correct gender.
  - It helps protect their privacy by ensuring their birth certificate is consistent with their other records (such as medical records, bank accounts, passports and driving licences, which are usually straightforward to update), which protects them from discrimination from employers and service providers, as is common when a person's trans status becomes known.
7. The [National LGBT Survey \(2018\)](#) found that 44 per cent of trans respondents wanted a GRC but didn't satisfy the requirements.
8. While ground-breaking for its time, the Gender Recognition Act 2004 is bureaucratic, intrusive, and demeaning, and as a result, most trans people don't engage in the process.
9. This was noted in the [2015 WESC inquiry response](#) which stated that  
"The Gender Recognition Act 2004 was pioneering but is now dated. Its medicalised approach pathologises trans identities and runs contrary to the dignity and personal autonomy of applicants."
10. [Six European countries](#) currently offer legal gender recognition processes based on the principle of self-determination and which comply with the [Yogyakarta Principles](#): Denmark, Norway, Ireland, Luxembourg, Malta, and Iceland. The UK's lack of progress in reforming our legal gender recognition process has been cited as a key requirement for the UK to improve its position in the [OECD LGBTI inclusion framework](#), and as a reason for the UK's worsening position in [ILGA-Europe's annual Rainbow Map](#) rankings.
11. At the British Medical Association's 2020 ARM, the BMA passed a motion on the rights [of transgender and non-binary individuals](#) which resolved to:  
"allow transgender and nonbinary individuals to gain legal recognition of their gender by witnessed, sworn statement".
12. In response to its consultation on GRA reform in 2018, in September 2020 the UK Government [stated](#) that while it would make small non-legislative improvements to the process of legal recognition, including reducing the application fee to a nominal amount, and digitising the application process. These reforms do not, by themselves, make the process "kinder or more straightforward."
13. This is despite a large majority of the 100,000 respondents to the 2018 GRA consultation calling for meaningful reform to the Act, including removing the gender dysphoria diagnosis requirement (64.1 per cent), the medical report requirement (80.3 per cent), and the spousal consent requirement (84.9 per cent).

14. **Stonewall believes the UK Government’s proposed reforms fall far short of the aim to make the process “kinder and more straightforward”, and that this Committee should look to identify routes toward legislative reform in the medium-term. We continue to recommend that significant legislative improvements are made to introduce a self-determination process of legal gender recognition, in line with international best practice, alongside a wider programme of work to ensure that trans people can fully participate in British society.**
15. **In the meantime, within the scope of non-legislative GRA reform, Stonewall recommends that the UK Government uses this opportunity to:**
  - Streamline the medical elements required by the gender recognition panel for a GRC application;
  - commit to a clear timeline for application process digitisation;
  - clarify what the ‘nominal’ fee would be and its timeline for launch.

**Q2. 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?**

16. **Stonewall welcomes the move to reduce the fee for obtaining a Gender Recognition Certificate but we believe it should be removed entirely.** This would make access to legal gender recognition available to all trans people who wish to apply, including those whose material circumstances do not allow for additional expenses. This is supported by the consultation response in which 58.5 per cent of respondents called for the fee to be removed.
17. The [National LGBT Survey \(2018\)](#) found that, of trans respondents who were aware of the application process but didn’t have a GRC, 34 per cent gave the process being too expensive as a reason.
18. The current £140 application fee for a GRC is greater than that for a marriage certificate (£10), provisional driving license (£34), or passport application (£75).
19. Applicants face additional costs in submitting two medical reports. The NHS standard recommended charge for these reports is £80 but, as the [UK Government acknowledges](#), “we do not know the size of these costs in practice or how often they are charged.” These letters are time sensitive which can create additional barriers if an applicant reappplies after a rejected application.
20. **Stonewall recommends that to remove this barrier, letters from medical professionals should not be required within the GRA process.** This was supported by 80.3 per cent of respondents to the GRA consultation.

**Q3. Should the requirement for a diagnosis of gender dysphoria be removed?**

21. An applicant for a GRC must demonstrate that they have received a gender dysphoria diagnosis from a registered medical practitioner or registered psychologist. The [GEO’s GRA consultation document](#) notes there are only 96 such practitioners in the UK.
22. The requirement for a gender dysphoria diagnosis adds significant barriers to access legal gender recognition, as to receive a diagnosis a person must either navigate a long waiting list for NHS Gender Identity Clinic appointments or incur high costs for private gender clinicians.
23. **Stonewall believes that GRA reform must remove the requirement for a diagnosis of gender dysphoria.** This medical requirement stigmatises trans people because it reinforces

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the false and outdated belief that being trans is a mental illness, and it discourages trans people from applying for a Gender Recognition Certificate.

24. This position is supported by the World Professional Association for Transgender Health (WPATH), an international organisation made up of medical experts, which set the International Standards of Care for transition-related healthcare. WPATH have stated in their Identity Recognition Statement that “medical and other barriers to gender recognition for transgender individuals may harm physical and mental health”. They define these barriers as including “requirements for diagnosis”.

25. **Stonewall calls on the UK Government to honour their commitment, as [stated by Theresa May](#) in 2017 to:**

“reform the Gender Recognition Act and streamline and de-medicalise the process for changing gender, because being trans is not an illness and it shouldn't be treated as such.”

### Q4. Should there be changes to the requirement for individuals to have lived in their acquired gender for at least two years?

26. In the 2018 consultation, nearly four in five respondents (78.6 per cent) called for the removal of the requirement for individuals to provide evidence of having lived in their ‘acquired gender’ for at least two years.

27. This waiting period is seen as “arbitrary and unreasonable” ([WESC, 2015](#)), and leaves many trans people in a risky legal limbo, with their birth certificate not matching other identity documents (such as passports and driving licences, which do not require this evidence) and contradicting how they live.

28. It also risks forcing people to reveal their trans history, and risk discrimination from employers and service providers if they need to show their birth certificate – for example, when proving their right to work in the UK, joining a pension scheme, applying for college or university, or registering a marriage or civil partnership.

29. It can be especially hard for trans people who have been unemployed, experienced homelessness, or are without a permanent address to provide evidence of having lived in their acquired gender, even if they've been doing so for many years.

30. **Stonewall calls on the UK Government to remove the current requirement for applicants to demonstrate having lived in their acquired gender for at least two years.**

### Q5. What is your view of the statutory declaration and should any changes have been made to it?

31. **Stonewall believes including a statutory declaration as part of a system of self-determination is a sensible approach, as long as it's the only requirement to obtain a GRC**, in line with the wishes shared by the vast majority of respondents to the GRA consultation, where 83.5 per cent stated they were in favour of retaining the statutory declaration element of the gender recognition process.

32. A straightforward system of legal gender recognition based on the principle of self-determination – underpinned by a statutory declaration – would create a system in line with international human rights frameworks, such as the Yogyakarta Principles, and it would bring Britain in line with international best practice as demonstrated by countries like Norway, Argentina and Malta.

33. In 2015, the [WESC Inquiry](#) recommended that,

“the Government must bring forward proposals to update the Gender Recognition Act, in line with the principles of gender self-declaration that have been developed in other jurisdictions.”

34. For example, in the Republic of Ireland, the Gender Recognition Act 2015 enables trans men and trans women over the age of 18 to have their gender legally recognised through a straightforward administrative process based on the principle of self-determination, with a statutory declaration witnessed by an official.
35. **Stonewall believes that the statutory declaration presents an appropriate deterrent in the unlikely situation that someone would want to make a fraudulent GRC application.**
36. **However, Stonewall believes the ‘until death’ clause is unnecessary** as fraudulent applications are already illegal, and people seeking legal recognition of their gender do so with an understanding of the implications of their decision. It’s also important to note that this requirement doesn’t reflect that some trans identities fall outside of ‘male’ and ‘female’ classifications, and where gender identity can be more fluid.

**Q6. 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?**

37. **Stonewall strongly urges the UK Government to remove the requirement for spousal consent in a reformed Gender Recognition Act.** Often referred to as the ‘spousal veto’, this provision gives significant power to a married trans person’s partner to block them from having their gender legally recognised. Stonewall is concerned that the provision suggests a married trans person has somehow violated this contract (either by deceiving or harming their spouse) by seeking legal gender recognition. It also implies that same-sex marriage may be automatically undesirable for a spouse.
38. As [Safelives ‘Free to be Safe’ Report \(2018\)](#) notes, the spousal consent provision is “of particular relevance to trans people in abusive relationships, trans people who are married before they transition must either divorce or ask their partner for consent before being able to change their legal gender via a GRC. This can put trans people who are experiencing abuse under further power and control of their abusive partner.”
39. **Stonewall believes that the UK Government should listen to the views of respondents to the GRA consultation**, 84.9 per cent of whom did not agree with the current spousal consent provisions.

**Q7. Should the age limit at which people can apply for a Gender Recognition Certificate (GRC) be lowered?**

40. **Stonewall believes that 16 and 17-year-olds should be able to achieve legal gender recognition using the same process as trans people over the age of 18, with a system based on parental consent available to under-16s.**
41. Lowering the age limit at which people can apply for a GRC through a self-determination process, would bring legal gender recognition in line with the other rights and responsibilities of 16 and 17-year-olds, such as entering the workforce, consenting to sex, and getting married / entering a civil partnership.
42. 16 and 17-year olds can update other documentation without parental consent, such as changing their legal names by deed poll. This means that trans young people can experience challenges when their legal name reflects their gender identity, but not their legal gender.
43. For instance, trans young people may experience issues caused by lack of legal gender recognition when receiving qualification certificates from exam boards with the wrong gender marker and being outed to potential employers or when applying to college or university.
44. Stonewall notes that the [2015 WESC Inquiry report](#) states that they, “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.”

**Q8. What impact will these proposed changes have on those people applying for a Gender Recognition Certificate, and on trans people more generally?**

45. The National LGBT Survey (2018) found that 93 per cent of trans people who did not have a Gender Recognition Certificate, would be interested in getting one. **Stonewall believes that streamlining the process of applying for and obtaining a GRC would increase the number of trans people who benefit from the protections guaranteed by legal gender recognition.**
46. Reforming the process of obtaining a GRC would make it more straightforward for trans people to do things the rest of the population take for granted – for example, getting a marriage or civil partnership in the right gender, have their gender recorded correctly when they die, and have their pension and insurance policies administered in the correct gender.
47. It would also send a significant and powerful message for the UK Government to recognise the validity of trans people's identities, particularly non-binary people, if legal gender recognition were made more available and accessible as a legislative foundation for legal and lived equality.
48. However, reform of the GRA is only one part of the broader work required to ensure that trans people can fully participate in British society.

**Q9. What else should the UK Government have included in its proposals, if anything?**

49. **Stonewall strongly believes that non-binary identities should be accommodated in a reformed GRA**, in line with the 64.7 per cent of respondents who stated so to the consultation. The lack of legal recognition for non-binary people compounds the discrimination and abuse non-binary people face, as it reinforces the idea that non-binary people's identities aren't valid, grounded in reality or worth respecting. Changing the GRA so that the law explicitly recognises non-binary identities, would make it clear that non-binary people have a protected characteristic ('gender reassignment') under the Equality Act 2010.
50. This is particularly important given the size of the non-binary population in the UK. Of the trans respondents to the National LGBT Survey, 52 per cent of trans people in the survey identified as non-binary - more than the number of people who identified as trans men or trans women put together.
51. **Stonewall also believes that the UK Government's proposed reforms should remove the intrusive, demeaning, and unnecessary requirements for a report detailing medical treatment**, which reinforces the implication that being trans is a mental illness, in line with the views of 80.3 per cent of respondents to the GRA consultation who agreed that the requirement for a medical report of all treatment history should be removed.

**Q10. Does the Scottish Government's proposed Bill offer a more suitable alternative to reforming the Gender Recognition Act 2004?**

52. Stonewall believes that the Scottish Government's draft Gender Recognition Reform (Scotland) Bill, which was consulted upon in early 2020, offers a significantly more suitable alternative to reforming the Gender Recognition Act 2004.
53. We strongly support that the Scottish Government's draft Bill proposes to de-medicalise and streamline the current process to apply for legal gender recognition, and replace this with a more straightforward, administrative process of statutory declaration, based on the principle of self-determination. As noted in the [2015 WESC GRA reform recommendations](#), this is much more appropriate than the UK Government's proposed reforms.
54. However, Stonewall opposes the proposals that applicants must live in their 'acquired gender' for at least three months before applying for a gender recognition certificate, and then go through a period of reflection for at least three months following application before

obtaining a gender recognition certificate. These proposals undermine the principle of self-determination of trans people which the reforms are based upon.

55. The draft Bill also would not enable non-binary people to access legal gender recognition. To ensure reforms to the GRA best meet the needs of the trans community at large, non-binary people should be able to access legal recognition of their non-binary gender, and this should be through the same self-determination process with statutory declaration that trans men and trans women would be able to access.
56. Furthermore, we strongly support the proposal to reduce the minimum age at which a person can apply for legal gender recognition from 18 to 16, ensuring there is consistency with other rights. However, we encourage the Scottish Government to extend legal gender recognition to young people under 16 based on parental or guardian consent.

### **Wider issues concerning transgender equality and current legislation:**

**Q11. Why is the number of people applying for GRCs so low compared to the number of people identifying as transgender?**

57. In 2018, 4,910 trans people had successfully acquired a GRC – a tiny proportion of the [Government Equality Office's tentative estimate](#) of 200,000-500,000 trans people in the UK.
58. The [National LGBT Survey \(2018\)](#) found that of the trans respondents who were aware of the process but did not have a GRC, the most frequently given reasons were not satisfying the requirements (44 per cent), finding the process too bureaucratic (38 per cent), and the process being too expensive (34 per cent). Only 7 per cent said they were not interested in getting a GRC.
59. If 52 per cent of the trans population in the UK identifies as non-binary (according to the National LGBT survey), then over half of trans people in the UK cannot achieve legal recognition as their gender under the current GRA process.
60. Stonewall's LGBT in Britain research (2018) found that many trans people experience the process as traumatic and demeaning:
  - *"The gender recognition panel is an archaic, sexist and a deeply offensive, unnecessary gatekeeper."* Ivy, 21 (Yorkshire and the Humber)
  - *"The Gender Recognition Act allowed me to change my birth certificate, however, the process to do so felt invasive and judged me for not being "trans enough"."* Isaac, 24 (West Midlands)

**Q12. 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.**

**Q13. 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?**

61. Under the Equality Act 2010, the protected characteristic of 'gender reassignment' ensures most trans people can access single-sex services in line with their gender, and are not required to obtain a Gender Recognition Certificate (GRC), or have undergone any form of medical intervention, to be eligible for support in these services.
62. The [UK Government's 2018 GRA consultation document](#), stated the Government's intention clearly that they did not plan to amend the Equality Act, and that Equality Act exemption reform was outside of the scope of the GRA consultation.

63. Stonewall welcomes the [UK government's commitment](#) this summer that it will not be “rolling back the rights of transgender people”.
64. The Equality Act and the accompanying [Statutory Code of Practice](#) also makes provision for single-sex services to provide a different service, or refuse their services, to someone who is undergoing, has undergone or is proposing to undergo ‘gender reassignment’ (regardless of whether or not they have a GRC), in exceptional individual circumstances where they can demonstrate that doing so constitutes a ‘proportionate means of achieving a legitimate aim’.
65. The [Equality and Human Rights Commission \(EHRC\) state](#) that:  
‘There is no reason why simplifying the process for obtaining a GRC should have an effect on ‘[women]-only spaces and services’, which are covered separately under the Equality Act 2010’.
66. Stonewall has been very concerned to see media coverage suggest that GRA reform would impact women-only spaces and services, despite the EHRC’s statement. **Stonewall hopes that the Committee and UK Government can play an important role in clarifying the relative remits of the two Acts.**

**Q14. Does the Equality Act adequately protect trans people? If not, what reforms, if any, are needed?**

67. The protected characteristic of ‘gender reassignment’ in the Equality Act 2010 covers most binary-identified trans men and women, with or without a gender recognition certificate. However, non-binary people are not currently explicitly protected by the Equality Act.
68. Stonewall is encouraged by the [recent employment tribunal](#) which found in its ruling against Jaguar Land Rover that non-binary and gender fluid people are protected by the Equality Act. The Tribunal held up the principle that “gender is a spectrum”, thereby broadening the scope of who could be covered by the Equality Act to those whose gender identities are “complex”, non-binary, or not the same as they were assigned at birth.
69. **Stonewall recommends that the UK Government acknowledges the Tribunal’s ruling, and clarifies that non-binary, gender-fluid, and gender-diverse people are covered by the Equality Act under the protected characteristic of ‘gender reassignment’.**
70. While [Stonewall has advocated for reform to the Equality Act](#) (due to concerns about the terminology used, whether the Act sufficiently covered all trans people, and if Equality Act exemptions could be used to exclude trans people from a wide range of settings), we are concerned that, given the dramatic growth of the anti-trans movement and the concerted [attacks on the rights of LGBTI people](#) across Europe over the last 5 years, any move to review the Equality Act at this moment holds a significant risk of regressive change.
71. We believe this [global context](#) negatively influenced the GRA consultation process, and has contributed to the modest proposed reforms when this Committee stated five years ago that it supported [a legal gender recognition system based on self-determination](#).
72. **In this context, Stonewall strongly recommends that the Committee does not use this inquiry to recommend changes to the Equality Act or the accompanying Statutory Codes of Practice.**
73. Despite their Equality Act protections, [Stonewall’s research](#) has found that trans people face huge discrimination in many areas of their lives which prevents them participating in public life. **The UK Government must take steps to end prejudice against trans people through giving employers, public bodies, and the service providers the training they need to understand their responsibilities under the Equality Act.**

**Q15. What issues do trans people have in accessing support services, including health and social care services, domestic violence and sexual violence services?**

74. Trans people experience significant barriers to accessing transition-related healthcare, with an average wait of 18 months, and [recorded wait times of over three years](#), for a first appointment at a Gender Identity Clinic. While Stonewall welcomes the UK Government's announcement of three new GICs this year, we are concerned that this commitment includes clinics already in development.
75. Trans people experience particularly high rates of domestic and sexual violence. Stonewall's LGBT in Britain survey (2018), which included the experiences of over 733 trans respondents, found that one in five trans people (19 per cent) suffered domestic abuse from a partner in the previous year. This includes 21 per cent of trans men and 16 per cent of trans women. In comparison, the Office for National Statistics states six per cent of women and three per cent of men in the general population have experienced domestic abuse from a partner in the last year.
76. Safelives' ['Free to be Safe' report](#) (2018) found that LGBT+ people experience additional barriers to accessing appropriate support services, specifically around availability of specialist provision.
77. Galop's ['Recognise & Respond' research](#) (2019) highlights the paucity of LGBT+ specific domestic violence and sexual violence services, and notes that in June 2019 there were only 6 voluntary sector providers in England and Wales.

**Q16. Are legal reforms needed to better support the rights of gender-fluid and non-binary people? If so, how?**

78. Stonewall is encouraged by the [recent employment tribunal](#) which ruled that non-binary and gender fluid people are protected by the Equality Act. Stonewall hopes this judgment creates the potential for even more non-binary and gender-diverse people to be protected from harassment and discrimination in all areas of their lives.
79. Currently, there is no mechanism for non-binary people to have their gender legally/officially recognised (both through the gender recognition process, and when updating identification documents like passports and driving licences). **Stonewall believes non-binary, agender, and gender fluid people would be served by an 'X' marker option on identity documents.**

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