

Written evidence National AIDS Trust [GRA1603]

1. National AIDS Trust (NAT) welcomes the opportunity to respond to this consultation on reform of the Gender Recognition Act 2004 (GRA). While it was a ground breaking piece of legislation when it was first implemented, understanding and practice has evolved since 2004 and it is vital that legislation keeps pace with current thinking to ensure protection of the rights of trans and non-binary people in the UK.
2. NAT is the UK's HIV rights charity. We work to stop HIV from standing in the way of health, dignity and equality, and to end new HIV transmissions. Our expertise, research and advocacy secure lasting change to the lives of people living with and at risk of HIV.
3. In 2017, NAT published the evidence review *Trans people and HIV: How can policy work improve HIV prevention, treatment and care for trans people in the UK?*¹ based on published literature and interviews with key informants concerned with the health and wellbeing of trans people. The interviewees were almost exclusively trans and non-binary people, although some interviews were also held with those providing services for trans people.
4. This response draws from the published report, further information gained during these interviews, and subsequent discussion with trans and non-binary people and their advocates concerning their health and wellbeing. Given our remit, our responses pertain to the impact of the processes involved in gaining gender recognition on the health and wellbeing of trans and non-binary people, especially in relation to the risk of HIV acquisition and to accessing treatment following an HIV diagnosis.

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

5. The Government's response to its 2018 consultation on GRA reform involved minor, non-legislative changes. It has done very little to make the process of claiming gender identity kinder or more straight forward.
6. NAT believes that all people, including those who are trans and non-binary, should be able to determine and declare their own gender identity.
7. The absence of legal equality for trans and non-binary people is part of the institutional marginalisation that exacerbates and legitimises transphobias, both inter-personal (e.g. rejection or partner violence) and structural (e.g. stigmatising media representations or barriers to appropriate healthcare). These intersecting scales of transphobia establish the context for trans and non-binary peoples' daily lives, limiting their socio-cultural choices and opportunities and affecting their health (including sexual health) and psychological wellbeing.
8. The Government should make good on their promise to make gender recognition easier by implementing measures that will genuinely have a positive impact on the lives of trans and non-binary people, rather than simply paying lip service to equality as they have done thus far with their proposed response to the 2018 consultation.

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?

9. NAT believes that there should be no fee for obtaining a Gender Recognition Certificate.

¹<https://www.nat.org.uk/sites/default/files/publications/NAT%20Trans%20Evidence%20Review%20V3%20Digital.pdf>

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10. Further, the requirement to provide medical reports also places a cost burden on trans and non-binary people that should be removed.
11. The process of legal gender recognition must be made as easy as possible for all people who wish to formally change their gender. This includes self-declaration for legal gender recognition, rather than the unnecessarily intrusive, logistically demanding, and sometimes financially prohibitive process for gaining gender recognition that is currently in place.

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

12. The requirement for a gender dysphoria diagnosis creates logistical and psychological barriers to gender recognition.
13. In terms of accessing clinicians to provide gender dysphoria reports, trans and non-binary people have to endure either lengthy waits to access NHS gender identity clinics or high costs attached to accessing private clinics.
14. Moreover, it is entirely wrong for the legal recognition of gender identity to depend on a diagnosis of gender dysphoria. This requirement rests on negative, outdated and discredited understandings that gender transition represents mental illness. Our research indicates that having to accept a diagnosis of gender dysphoria either makes the process of acquiring a Gender Recognition Certificate more emotionally difficult than it needs to be, or that it prevents people from going through the process at all.

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

15. Any decision to retain measures that make the acquisition of a Gender Recognition Certificate more difficult must only derive from robust evidence that they are necessary, not from hypothetical assumptions. To the best of our knowledge there is no such evidence available that justifies the necessity to demonstrate having lived in a specific gender identity for a period of time. Therefore this requirement should be removed.
16. Quite apart from the demeaning nature of this process, an external, subjective decision on what constitutes living in an 'acquired gender' can only ever be a rough proxy for a person's understanding of their own gender identity. It would be a strong, positive move for the Government to formally indicate that they trust the decisions of trans and non-binary people and to recognise that they understand their own gender identity.

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

17. We understand the Government's position that having a statutory declaration reflects the seriousness and legal significance of gender recognition.
18. We are concerned, however, that establishing a system that can impose legal penalties is more likely to have unintended consequences for people who have entered with all seriousness into the process of obtaining a Gender Recognition Certificate than it will penalise anyone who intentionally abuses the system.
19. We suggest, therefore, that the Government removes the 'until death' clause from the statutory declaration.

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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?

20. Trans and non-binary people must be able to acquire a gender recognition certificate without their spouse's permission.
21. It is not appropriate for anyone to have a greater control over an individual's gender identity than the person themselves. Therefore, allowing spousal veto of a person's application for gender recognition is not reasonable.
22. NAT recognises that a person's gender transition may be a difficult experience for their spouse. However, the capacity to prevent formal recognition is unlikely to alleviate these difficulties. Rather, we are concerned that spousal veto could be used as retribution or as a control mechanism. Given the disproportionate experience of intimate partner violence among trans and non-binary people, it is vital that no measures are in place that might exacerbate this trend.

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

23. NAT believes that the protected characteristic of age should be applied to the process of gender recognition. 16 and 17 year-olds should have the same access to gender recognition as other adults. Under 16s should have a comparable recognition process based on parental consent.
24. It is especially vital that those starting to engage with the formal practices of adulthood, such as entering full-time work or further education, are able to do so in their chosen gender identity. To deny young adults this possibility risks them being misgendered or outed at a time when they are most likely to be emotionally vulnerable.

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

25. Our research found disproportionately high levels of depression, anxiety, suicidal ideation, experience of violence and drug use among trans people. For some, these factors lead to a lack of concern for their general health and sexual health and, for those who are living with HIV, they can undermine treatment adherence leading to poor HIV-related health outcomes.
26. Making legal gender recognition easier for trans and non-binary people is not an immediate solution for health-related matters, but it is a vital step in the process. Reducing the financial, logistical and emotional burdens to a minimum is a positive institutional measure. It can play a part in supporting positive gender affirmation among trans and non-binary individuals; developing public legitimacy for gender diversity and requests for access to appropriate education, healthcare, employment and so forth; and supporting the empowerment of trans and non-binary communities with consequent benefits across a range of factors related to health and wellbeing and beyond.

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

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27. Across the piece, the rights afforded to trans people should also be afforded to non-binary people. Failing to include the rights of non-binary people undermines them legally and in terms of societal legitimacy, and rests on an outdated notion of gender identity.

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

28. The Scottish Government's proposed Bill bases gender recognition on the principle of self-determination, in line with many other countries. NAT believes this is appropriate.
29. However, significant issues remain with the Bill, including the obligation to live for three months in an 'acquired gender' and the lack of recognition for non-binary people.

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?

30. The Equality Act 2010 does not require people to have a Gender Recognition Certificate to access single sex services. This is important and, rightly, it was not proposed as an area for change in the 2018 consultation.
31. Earlier this year, NAT was alarmed to hear suggestions that the Government were considering reneging on this decision. There is no evidenced reasoning that would justify a change and it would represent a significant erosion to the rights of trans people. We were pleased to hear that this was not the Government's intention and also to see the Government's subsequent commitment to the rights of trans people.

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

32. Trans and non-binary people experience a range of stigmas and discriminations that affect their capacity to engage in public life as equal citizens.
33. NAT would be pleased to see the Government lead on a series of positive measures to challenge these discriminations, to follow on from their commitments in the 2018 LGBT Action Plan. Given our remit, our answer below focuses on access to health services.

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

34. In our research we found that stigma and other structural barriers mean that trans people do not have adequate access to the services that can support HIV prevention, or provide care for those who are living with HIV.
35. Where they are not adequately supported, gender affirming behaviours can increase the risk of acquiring HIV. For example, delayed access to gender identity services may result in unregulated use of hormones which can be detrimental to a person's health and wellbeing and, specifically, can increase HIV risk if people resort to sharing needles.
36. The experience of stigma and transphobia is destructive, and is especially detrimental to those without access to good support services. One respondent in our research explained that where transphobia undermines gender identity, sex can be a powerful element of gender affirmation, especially among younger people. Where sex takes place

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within an unequal power relationship – and this is evidenced by high levels of violence, including intimate partner violence, against trans people – vulnerability can lead to difficulties in negotiating safe sex practices.

37. Accessible health and wellbeing services, including HIV related treatment and prevention services, are vital for supporting HIV prevention and treatment. However, trans people routinely report difficulties accessing treatment including overt stigma; misgendering and poor trans awareness; and lack of appropriate medical knowledge among healthcare professionals.
38. A positive solution to inadequate service provision is to facilitate access to trans-led health and wellbeing facilities, such as those provided by CliniQ, based at King's College Hospital. However, funding for services such as CliniQ is woefully inadequate. Adequate healthcare is a basic right, and this is an area that must be addressed if the Government is serious about equality for trans people.
39. The teenage years are a critical time for HIV prevention and treatment. We know that the transition to adulthood can be difficult for children living with HIV, and that it is a time of increased risk for non-adherence to treatment regimes with consequences for health outcomes. For young people living with HIV, measures should be taken to support their general health and wellbeing, and for trans and non-binary young people this will include supporting their decisions around gender identity. Therefore, adequate gender identity service provision for children and young people is vital.

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

40. Current UK law determines gender as either male or female, which does not allow self-determination of gender identity for anyone whose experience sits outside this binary description. This has both psychosocial consequences for the individual and the broader social, economic and cultural inequalities associated with not having a gender identity that is recognised in law.
41. Although NAT recognises that gender-fluid and non-binary people are protected under the Equality Act 2010, NAT strongly believes that this should be explicitly enshrined in equality legislation.
42. Moreover, a system must be established to allow formal recognition of non-binary gender in formal documentation.

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