

Gender Recognition Act – Call for Evidence

I am submitting evidence on the Government's response to the GRA reform consultation for England and Wales. I am a queer person who is active in the LGBTQ+ community, which has given me insight into the problems and obstacles that trans people face when trying to have their identities acknowledged and legally recognised. The Government currently has the opportunity to reduce discrimination and improve equality by reforming the Gender Recognition Act, but the proposed changes do not go far enough and should be revised. I strongly advise to take into account the response to the 2018 public consultation on the Gender Recognition Act – an overwhelming number of responses were in favour of making the process of legal transition easier and more accessible, but the Government has not applied enough care to incorporating the guidance resulting from the consultation in their response. This is a serious failure to improve conditions for a disadvantaged and vulnerable group who is protected under the Equality Act. I urge the Government to reconsider their response and make way for further improvements to the process of obtaining a Gender Recognition Certificate.

The Government's response to the GRA consultation:

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

The proposed changes are a step in the right direction.

Moving the process of applying for a Gender Recognition Certificate (GRC) online makes it more straightforward and accessible for many people. However, it would be good to have an alternative route available for those who find it difficult to access online forms and procedures, for whichever reason.

Reducing the fee is a welcome move, and it would be even better if the fee was removed entirely. Since only transgender people are likely to be in a position where they need or wish to obtain a GRC and pay the fee, it means that this is a disadvantage that trans people currently face on the basis of their identity. Some may not be able to access a GRC for financial reasons, and it would be in the spirit of kindness to enable them to do this.

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?

As mentioned above, it would be best and fairest if the fee for obtaining a GRC were removed entirely. It creates further inequality for a group of people who are already facing discrimination. It hasn't been specified what the new fee is intended to be (other than stating that it will be a "nominal amount"), and this is causing uncertainty, especially since a "nominal amount" will mean different things depending on a person's income.

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

The requirement for a diagnosis of gender dysphoria should be removed. It assumes that a person's transition always happens in a particular sequence, when in reality there will be different experiences of which steps are possible and desirable at which point in time. It also assumes that all individuals who wish to obtain a GRC experience gender dysphoria, which is not necessarily the case. Finally, even for those who do experience it, it may be difficult to obtain a formal diagnosis for a number of reasons. The requirement therefore presents an unnecessary obstacle that should be removed. In my opinion, legal gender recognition should not be subject to any medical requirements at all.

Written evidence submitted by Wanitzek [GRA1785]

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

The requirement for individuals to have lived in their acquired gender for at least two years is a barrier for many people who wish to obtain legal recognition of their gender, and I'm in favour of removing this requirement. Not only does it unnecessarily draw out the process of transition, which in many cases is already lengthy and difficult, it also asks transgender people to prove their identity in a way that is never required of cisgender people. That in itself seems like it runs counter to the Equality Act. Furthermore, it can often be difficult for trans people to provide the legal documents that are currently required as evidence, especially for those who may be unemployed, homeless or vulnerably housed, those who don't hold formal qualifications, don't have personal ID documents, or any combination of the above. These groups shouldn't be put at a further disadvantage when they are already vulnerable.

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

I think that the statutory declaration should be removed as a requirement. It's not clear what the exact purpose of the declaration is, and again it's something that isn't asked of cisgender people. The fact that a statutory declaration usually involves paying a fee puts transgender people at a further disadvantage in addition to the fee they currently have to pay for the GRC itself. What is more, it's almost impossible to prove whether a person is "living in their acquired gender". In the worst case, it opens the door to accusations that a person isn't fulfilling this intention, based on arbitrary assumptions about what is expected of a person of a particular gender. The statutory declaration rests on a prescriptive image of gender that should be considered obsolete in the service of gender equality.

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 spousal consent provision should be removed. Nobody except the individual in question should have a say in what their legal gender is recognised as.

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

The current age limit of 18 years of age excludes all young trans people under the age of 18 from obtaining legal recognition of their gender identity, despite the fact that many 16 and 17 year olds can obtain passports and driving licences with the correct gender marker on. This inconsistency should ideally be resolved by making it possible for 16 and 17 year olds to obtain a GRC. These age groups are mature enough to know their own gender, and it will make their lives easier when e.g. starting employment if all of their legal documentation shows their correct gender.

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

As mentioned above, the proposed changes are a step in the right direction and will as such be welcomed by trans people, including those applying for a GRC. However, given the response to the Gender Recognition Act consultation 2018, the changes do not go far enough in making the process of legal gender recognition easier and more straightforward.

Written evidence submitted by Wanitzek [GRA1785]

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

The Government should have made it possible for non-binary people to have their gender legally recognised. Non-binary gender identities are valid, and not recognising them prevents these individuals from participating fully in society, which is not in line with the Equality Act.

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 includes some points that it would be important to take on board for England and Wales. For instance, it proposes to reduce the requirement of 'living in your acquired gender' from 2 years to 3 months, with an additional reflection period of 3 months, so overall reducing the current requirement to 6 months. This would mean a shortening of the often lengthy transition period, which would enable trans people to live their full identity sooner and thus reduce the negative impact on mental health that not being recognised as the correct gender often has. The Bill also lowers the age at which a person can obtain a GRC to 16 years old, which is preferable to 18 years as I've outlined above.

That said, the Scottish Government's Bill still has some shortcomings that could be improved upon for England and Wales. One of these is the fact that non-binary identities are not recognised – a major omission that leaves many trans people without any option of having their true gender legally acknowledged. The Bill also relies on a system of statutory declaration, which is problematic for the reasons I've given above.

The Scottish Government's proposed Bill is thus going somewhat further in the right direction, but we could do even better for England and Wales in order to improve equality and legal gender recognition for trans people.

Wider issues concerning transgender equality and current legislation:

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

Non-binary and gender-fluid people are currently excluded from accessing legal gender recognition in the Gender Recognition Act 2004. There is also only a "male" or "female" option on passports and driving licences. This discriminates against people who don't identify as exclusively male or female, but have a gender identity that is part of the non-binary spectrum. Legal recognition should be achieved for non-binary individuals, and official documents such as passports and driving licences should be changed to either allow for a third gender option, or, even better, to omit the gender marker altogether.

November 2020