

Reform of the Gender Recognition Act – Inquiry

27 November 2020

About Us

The InterLaw Diversity Forum currently has more than 8,500 members and supporters from 300 law firms and chambers, and from 500 corporates and financial institutions. The InterLaw Diversity Forum was established in 2008 by founder & chair Daniel Winterfeldt QC (Hon), originally as an inter-organisational forum for all LGBT+ personnel in the legal sector. Since its founding the InterLaw Diversity Forum has expanded its scope beyond LGBT+ to encompass all strands of diversity and inclusion (including BAME, Disability, Gender, and social mobility), with a particular focus on cultural change in the workplace and 'multiple identities'/intersectionality. Our mission is to foster inclusion for all diverse talent working in the legal sector, and to promote meritocracy in all sectors by working to 'level the playing field' in order to create environments where the best talent can succeed. Events and membership are free and open to anyone working in the legal sector, both lawyers (including private practice and in-house counsel), as well as non-lawyers and business services staff.

Section 1 - The Government's response to the GRA consultation

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

We believe that more can be done to make the process "kinder and more straight forward." While we welcome the Government's actions to lower the fee and to move the process on-line, we believe that more can be done to bring our laws more in line with international best practice in this space.

We also welcome the new gender identity clinics. We believe, however, that it may be helpful to conduct a broader review of NHS medical services for trans and non-binary people to ensure the full spectrum of NHS services are readily available to and meeting the needs of the trans and non-binary community.

For further thoughts on what can be done beyond the Government's proposed changes, it may be helpful to revisit the constructive responses to the previous Government consultation. It may also be helpful to learn from international best practice in this space and to look to the legal developments in Europe for self-identification.

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?

Written evidence submitted by InterLaw Diversity Forum [GRA1792]

We believe that retaining a small fee for the Gender Recognition Certificate especially for statutory declaration is fair. We believe, however, the Government should also reconsider the administrative and financial burden of medical reports and supportive paperwork that accompany the current process.

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

We believe this should be revisited and either removed or, if retained, streamlined.

The current requirement for a medical diagnosis embeds the medicalized approach to trans into the GRA. There have been significant legal and medical developments in this space since the GRA was passed in 2004. These developments include the World Health Organization's declassification of trans from mental health categorization, calling into question the need for a gender dysphoria classification.

To prove gender dysphoria under the current GRA, reports must be submitted from two registered medical practitioners, and at least one of the practitioners must practice in the field of gender dysphoria. Alternatively, a registered psychologist practicing in this field can also submit a report. At the very least this process could be streamlined and simplified to be more efficient, accessible and cost effective.

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

Yes, we believe that a change should be considered. Two years is a very long period of time as most trans individuals will have contemplated these changes long before they "live" them. We think considering a reduction to one year would accomplish the same goal but lower the burden on the individuals seeking such changes. This reduced period along with other evidence which may accompany such applications such as registering for a deed poll, changing passport details, changing bank account details, etc., should be sufficient.

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

Yes, we believe a change should be considered to this process. We can learn from the approach that Ireland has taken in terms of self-identification and statutory declaration. It is important to remove the cost and legal formalities of needing a solicitor in order to make this step accessible to all.

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?

Written evidence submitted by InterLaw Diversity Forum [GRA1792]

We believe that this requirement should be removed. We believe this provision is antiquated and can lead to unnecessary conflict or struggles. We believe that family matters are best handled by the experts at the Family Court UK.

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

We think the age limit is something which should be considered by the Government. Should a GRC be issued to those aged 16 or over? If you look at other legal rights across this age group, at 16 you can work full time, apply for a passport without parental consent, join the Armed Forces with parental consent, change your name and leave home. This is an issue to be considered.

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

We believe that consistent with our answers in the rest of this document, that while the Government has made some progress in this space, there is more work to be done to make this area of law accessible, modern and in line with international best practice.

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

We believe that the Government can learn from the Irish model of Self-Identification and move towards a more efficient, streamlined and equitable system.

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

We do not believe that the Scottish Government's proposals are enough to bring the United Kingdom in line with best practice for law in this space. Again, we believe the Irish model provides a better and well-tested legal path.

Section 2 - Wider issues concerning transgender equality and current legislation:

Q1. Why is the number of people applying for GRCs so low compared to the number of people identifying as transgender?

We believe the small number of GRCs are due to a combination of factors. Firstly, we believe the complex, burdensome requirements and unnecessary costs (as discussed above) are a barrier to trans people seeking GRCs. Secondly, the majority of trans people can live, work and live freely in the United Kingdom without going through the difficult process of changing their birth certificate or government records. Thirdly, the binary approach to gender recognition in the United Kingdom means that people who identify as intersex, non-binary or gender non-conforming do not have an option to seek GRCs.

Written evidence submitted by InterLaw Diversity Forum [GRA1792]

Q2. 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.

We believe that there are challenges in the language used in both the Gender Recognition Act 2004 and the Equality Act 2010 and that both need to be updated and aligned for trans and non-binary. We believe that the language in both Acts should refer to “Gender Identity” as a protected category and we should get rid of outdated language like “Gender Reassignment”, etc.

Q3. 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 the current provisions in the Equality Act are clear although we believe that they should be amended.

Firstly, we believe that anyone with a GRC should be able to use the single-sex and separate-sex spaces and facilities which correspond to their assigned gender. Taking this a step further, we are not aware of any major or systemic issues with individuals using self identification and using the facilities which they are most comfortable with for single-sex and separate-sex spaces.

Secondly, we believe that people should move toward balancing legitimate concerns around the need for single-sex and separate-sex spaces with the need to respect trans and non-binary individuals and ensure that, on balance, we can accommodate everyone. For example, this may include a balance of single-sex and separate-sex spaces and facilities with available options for gender neutral spaces and facilities alongside them. In fact, many businesses and organisations in the United Kingdom and around the globe have already moved to do this with very positive outcomes.

Q4. Does the Equality Act adequately protect trans people? If not, what reforms, if any, are needed?

We don't believe that the Equality Act currently protects trans people adequately and it does not explicitly recognize non-binary individuals at all. Section 7 of the Equality Act is unclear and relies on medicalized language and thinking, while excluding non-binary individuals from its language. We need to recognize that not all trans identifying people undergo surgery and that each individual is on their own journey within the community.

We would encourage the United Kingdom to update the Equality Act to include the protected category of “Gender identity” to include trans and non-binary individuals and to link it to a system of self-identification for the GRC and elsewhere.

Written evidence submitted by InterLaw Diversity Forum [GRA1792]

Q5. What issues do trans people have in accessing support services, including health and social care services, domestic violence and sexual violence services?

We believe that significant reform is needed for trans individuals regarding access to support services, including health and social care services, domestic violence and sexual violence services.

The NHS healthcare system for trans individuals is not working as wait times well exceed the current 18-week target and in some cases can take up to four years for an initial GIC appointment. This puts an additional burden on trans individuals who already have an increased probability of experiencing self-harm, mental health challenges and substance abuse issues. We need to increase the provision of trans-specific services in the NHS, as well as to increase trans-inclusive training for all medical professionals to ensure the same quality of service for all users of these services.

We also need to ensure that all social services and charities are trans inclusive in their approach to providing services given the disproportionate impact on the trans community of issues like violence, domestic violence, homelessness and mental health. This has all be exacerbated by the COVID-19 pandemic. For example, research by the European Union on the impact of COVID-19 in society has shown its increased impact on LGBT+ (especially trans and non-binary) as well as other historically disadvantaged groups. This concern increases when looking through the lens of intersectionality and the ‘multiple identities’ individuals may inhabit.

Q6. Are legal reforms needed to better support the rights of gender-fluid and non-binary people? If so, how?

We believe that legal reforms are needed and that we should implement legal protections for non-binary and gender non-conforming individuals.

As stated above, we believe that we need to update the Equalities Act and the GRA to create “Gender Identity” as a protected category including trans, intersex, non-binary and gender non-conforming individuals and move away from a binary, medicalized approach to this space.

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