

Written evidence submitted by Mermaids [GRA2027]

Mermaids was grateful to give oral evidence to the Women and Equalities Committee on 17 March 2021.

The panel confirmed during the session that it would find it helpful if Mermaids provided it with a further briefing on international 'best practice'.

This briefing seeks to meet this request and intends to offer an introductory look at various LGR processes around the world.

This paper intends to offer information that may help inform the Committee's review. We would also encourage the Committee to have direct engagement with trans, non-binary and gender diverse young people to further consult on what a process should like for under 18s in England and Wales and we would be happy to offer our networks to help make this happen.

We hope this briefing helps inform the Committee's work.

AN INTRODUCTION: THE YOGYAKARTA PRINCIPLES

A process of legal gender recognition (LGR) based on self-determination, is advocated for within the Yogyakarta Principles on the Application of International Law in Relation to Issues of Sexual Orientation and Gender Identity, which calls for all "[a quick, transparent and accessible](#)" mechanism for recognising people's gender identity and no prerequisite eligibility criteria in order to legally recognise an individual's gender identity:

"State's shall: ... Ensure that no eligibility criteria, such as medical or psychological interventions, a psycho-medical diagnosis, minimum or maximum age, economic status, health, marital or parental status, or any other third party opinion, shall be a prerequisite to change one's name, legal sex or gender" (Principle 31 (YP +10), [Yogyakarta Principles](#)).

As Human Rights Watch [explains](#), the Yogyakarta Principles were adopted by a meeting of experts in international law, and they 'confirm legal standards for how governments and other actors should end violence, abuse, and discrimination against [LGB] and transgender people, and ensure full equality'.

Although the UK is currently far from providing a process of LGR which is in line with the Yogyakarta Principles, there are a number of countries around the world that have introduced processes of self-determination. It is important to consider examples of best practice with regard to LGR around the world, accounting for areas where certain nations have fallen short where others have advanced, in order to determine the best system for the UK going forward.

LEGAL GENDER RECOGNITION (LGR) AROUND THE WORLD

1. A Self-Determinative Process

- 1.1. A process of self-determination would involve a simple administrative process, for example in the form of a statutory declaration, which would remove the current degrading and unnecessary barriers to LGR, and which would recognise that a trans and gender diverse person's gender identity is self-defined, and is not to be determined by anyone other than the individual.
- 1.2. The following countries have mechanisms built from the principle of self-determination:
 - 1.2.1. Belgium ([2017](#)) – an individual can change their gender marker and name in a simple administrative procedure before the registry. The procedure includes a waiting period of three months once the application has been submitted. After this time, the applicant has to confirm their intention to change their officially registered gender marker.

Written evidence submitted by Mermaids [GRA2027]

- 1.2.2. Malta ([2015](#)) – the process involves the individual standing before a notary, and requires a simple declaration based on a person's self-determination. The entire process lasts a maximum of 30 days.
- 1.2.3. The Republic of Ireland ([2015](#)) – Trans people over the age of 18 years old able to self-declare their gender identity by way of statutory declaration. (nb. However, the model for those aged 16 and 17 involves a medical requirement by relying on two certificates from medical professionals. There is no process available to those under the age of 16 currently, although as we understand it this is being reviewed.)
- 1.2.4. Denmark ([2014](#)) – an individual needs only follow a simple administrative procedure, which allows the applicant to receive a new gendered social security number and matching personal documents, such as a passport, driving license and birth certificate in accordance with their 'new' gender.
- 1.2.5. Argentina ([2012](#)) – an individual merely has to submit their request to the National Bureau of Vital Statistic, requesting the amendment of their birth certificate and a new national identity card.
- 1.2.6. Other countries which follow similar processes of LGR based on self-determination as those above are as follows: Iceland ([2019](#)), Luxembourg ([2018](#)), The Netherlands ([2019](#)), Norway ([2016](#)), Pakistan ([2018](#)), Portugal ([2018](#)) and Uruguay ([2018](#)).

2. A process of LGR for those under 18 years' old

- 2.1. We believe the following countries offer the opportunity to reflect on processes around the world that the WESC may take inspiration from when considering current international best practice regarding under 18s access to LGR:
 - 2.1.1. Iceland ([2019](#)) – The Gender Autonomy Act 2019 provides a self-determination process of LGR for both adults and those under 18, with young people able to change their registered gender and name in the National Registry with the consent of their parents/guardian. If parental consent is unavailable, the decision is put before an expert committee.
 - 2.1.2. Norway ([2016](#)) – The process for those over 16 is one of self-determination. For those under 16 years old, if two people have joint 'custody' of the child, both are required to submit the child's application. If the parents have joint custody and one parent does not wish to apply with the child, the legal gender may still be amended if this is what is best for the child. This also applies where people other than the parents have custody. If the parents or legal guardians do not give consent, there is a procedure through which the request of a minor should be assessed.
 - 2.1.3. Argentina ([2012](#)) – Those under 18 can obtain LGR, with the application typically being made by the child's legal guardian, and with the child's explicit consent.

3. A process of LGR for non-binary and other gender diverse individuals

- 3.1. We recommend that all non-binary people (this term is used as an umbrella term for everyone who has a gender identity that is not exclusively male or female) of all ages should also have access to LGR.
- 3.2. For as long as non-binary people are unable to access legal gender recognition, a population of people will have their gender inaccurately recorded as either male or female and unable to contribute to society fully as themselves. Currently, non-binary people are unable to marry, die, travel, retire (non-exhaustive) in their gender. The exclusion of non-binary recognition

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currently creates a system that is incoherent with the principles of autonomy and privacy that underpins the UK's approach to equality.

3.3. Iceland ([2019](#)) can be considered as an example of international best practice - The Gender Autonomy Act 2019 added a third gender option that is neither male nor female. This means that non-binary people will be able to change their legal gender at the National Registry using the new third gender option of 'X', in the same process as binary-trans people.

3.3.1. Other countries which legally recognise non-binary people include: India ([2014](#)), Nepal ([2007](#)), Pakistan ([2009](#)) and Uruguay ([2018](#)).

AN INTRODUCTION: RAINBOW EUROPE

Rainbow Europe has been produced by ILGA-Europe - **the International Lesbian, Gay, Bisexual, Trans and Intersex Association**, a worldwide federation of more than 1,600 organisations from over 150 countries and territories campaigning for LGBTI human rights.

Rainbow Europe brings together both a legal index of LGBTI equality based their [Rainbow Europe Map](#) – which provides an overall score for each European country based on their achievements in LGBTI human rights – and an overview of the social climate for LGBTI people in each country based on their Annual Review of the Human Rights Situation of LGBTI People ([December 2020](#)).

Each of the 49 countries are assigned a percentage point based on its standing in six key areas: equality and non-discrimination; family; hate crime and hate speech; legal gender recognition and bodily integrity; civil society space and asylum.

The UK is now ranked **10th** in Europe, with a score of **66.15%**. It is important to note that over the past five years, the UK has been steadily falling down the Rainbow Europe ranking, having been ranked 8th in 2019, 4th in 2018, with us having been ranked the best place in Europe for LGBTI rights before the year 2015 ([PinkNews 2020](#)). The UK's lowest percentage ranking is 48% for the area of legal gender recognition and bodily integrity.

THE UK FALLEN TO 10TH PLACE ON LGBTI RIGHTS IN EUROPE

The Annual Review [report](#) mentioned above, of which the latest review was published December 2020, provides an overview of every country's progress over the last 12 months, and thus offers insight into the deterioration or stagnation of LGBTI, specifically trans, rights in the UK over the last few years. The lack of progressive reform of the Gender Recognition Act (GRA) 2004 was noted in detail in the report.

A summary of the issues raised around trans rights in the UK are as follows:

- **Legal Gender Recognition.** To quote directly from the report, '*Legal gender recognition (LGR) law reform processes continued in the UK and in Scotland this year, amidst continued hateful discourse against trans people. The consultation processes have heavily weighed on trans people, their basic human rights, dignity, and existence being up for national debate.*' (page 121 of the Annual Review [report](#)). The report refers to the statistic that 70 per cent of the inputs received in the Gender Recognition Act (GRA) 2004 consultation in 2018 pushed for progressive reform, and notes the disappointing response from the Minister of Women and Equalities, Liz Truss MP in September 2020, in which the government announced it was 'dropping a meaningful reform and proposing instead only superficial changes... The proposal fails to respond to the clearly expressed needs of trans people, such as self-determination, the availability of more than two gender markers, and other key issues.'

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- **LGR for non-binary people.** The report mentions the ‘devastating’ [decision](#) by the Court of Appeal in March 2020 against Christie Elan-Cane to have a gender-neutral passport.
- **Bias-motivated speech.** The report acknowledges anti-trans rhetoric in the UK, citing as an example the transphobic attacks made by J.K. Rowling on [Twitter](#). The report has found that some trans individuals have [expressed](#) their wish to leave the UK because of the growing hate towards the trans community within UK society.
- **Bias-motivated violence.** The report refers to the annual Home Office Hate Crime [statistics](#) report, which in October 2020, found that hate crime cases have continued to increase compared to the previous year, with transphobic hate crimes having increased by 16 per cent from the previous year.
- **Bodily integrity.** The report highlights that so-called conversion therapy is still legal in the UK despite the Prime Minister’s [pledge](#) in July 2020 to ban the practice.
- **Health.** The report mentions the recent High Court [ruling](#) in the Bell v Tavistock which ruled that young people under the age of 16 are ‘unlikely to be capable of consenting to hormone blockers’. The report has noted that ‘civil society is extremely concerned about the judgment’.

OTHER USEFUL RESOURCES

Legal Gender Recognition Toolkit, TGEU, November 2016 <https://tgeu.org/wp-content/uploads/2017/02/Toolkit16LR.pdf>

Report on Legal Recognition of Gender Identity and Depathologization, 12 July 2018: <https://undocs.org/A/73/152>

GLOSSARY

Some of the terminology used in this briefing may be new to people. Here are some key definitions:

Transgender - individuals whose gender identity is different from the gender recorded for them at birth.

Non-binary - someone who does not exclusively identify as a man or a woman.

You can find a full glossary of further terms at our website: <https://mermaidsuk.org.uk/glossary/>

ABOUT MERMAIDS

Mermaids has been supporting trans and gender-diverse young people and their families since 1995.

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