

# **LGBT Foundation's Response to the Gender Recognition Act Consultation**

October 2018

### Question 3

**Do you think there should be a requirement in the future for a diagnosis of gender dysphoria?**

No

**Please explain the reasons for your answer.**

There should be no requirement in the future for a diagnosis of gender dysphoria.

In 2015 the Parliamentary Assembly of the Council of Europe passed Resolution 2048 which states that requiring someone to have been medically treated or diagnosed in order to have their gender legally recognised is a breach of their right to respect for their private life under Article 8 of the European Convention on Human Rights (ECHR). The resolution is a call to *“develop quick, transparent and accessible procedures, based on self-determination, for changing the name and registered sex of transgender people on birth certificates, identity cards ... and other similar documents”*.

The right to self-declaration has also been specified by the UN Yogyakarta Principle 3 which states that *“everyone has the right to recognition everywhere as a person before the law”* and *“each person’s self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom”*. Principle 31 specifies that states should *“ensure a quick, transparent, and accessible mechanism that legally recognises and affirms each person’s self-defined gender identity”*. It also specifies that states should *“ensure that no eligibility criteria, such as... a psycho-medical diagnosis... shall be a prerequisite to change one’s name, legal sex or gender”*.<sup>1</sup>

The GRA 2004 infringes upon a trans person’s human right to self-declare and receive legal recognition by requiring them to provide a diagnosis in order to access this right.

The World Professional Association for Transgender Health (WPATH), the body who set the standards for medical care of trans people around the world, are clear that a diagnosis should not affect whether someone can access legal gender recognition.

*“Medical and other barriers to gender recognition for transgender individuals may harm physical and mental health. WPATH opposes all medical requirements that act as barriers to those wishing to change legal sex or gender markers on documents. These include requirements for diagnosis, counseling or therapy, puberty blockers, hormones, any form of surgery (including that which involves sterilization), or any other requirements for any form of clinical treatment or letters from doctors.”<sup>2</sup>*

Requiring a medical diagnosis for legal gender recognition contributes towards the pathologisation of trans people, which in turn has widespread negative effects on trans communities including housing and employment discrimination and significant health inequities.

Forcing trans people to obtain a diagnosis and engage with health care professionals creates an additional series of barriers to legal gender recognition. Trans people often face discrimination and unfair treatment within health services<sup>3</sup>. Many trans people delay or avoid accessing health services due to past negative experiences and perceptions of transphobia within services.

*“I dread any sort of medical appointment, I just know I am going to have to explain myself and my gender. Even if I am really ill, I avoid it at all costs.” - Kam, 21, Manchester<sup>4</sup>*

This requirement also makes the process more time consuming; official waiting times for a first appointment at a UK Gender Identity Clinic (GIC) are currently 12 to 30 months long<sup>5</sup>. Obtaining a diagnosis for gender dysphoria requires an in depth assessment carried out by two or more specialists, this can take several consultations which will be carried out months, if not years, apart<sup>6</sup>.

If someone was diagnosed overseas, or they were diagnosed long ago and their diagnosing doctor has retired or died, trans people may have to pay to be privately re-diagnosed to meet the requirements of the Gender Recognition Panel. This will significantly add to the financial cost of obtaining legal gender recognition; getting a letter from a private gender specialist confirming a diagnosis of gender dysphoria can cost in excess of £300<sup>7</sup>.

*"I had to spend around £450 in consultation fees to see a private doctor in order to get treatment in a timely fashion, which I can just about afford but many others in a similar position could not."* - Daria, 25, Leeds<sup>8</sup>

There are several examples of international best practice that could be used to model a self-declaration process. Denmark, Ireland, Malta and Norway allow people to change their legal gender by completing a self-declaration application form and do not require a diagnosis of gender dysphoria or a report detailing any medical treatment received.

#### **Question 4**

**Do you also think there should be a requirement for a report detailing treatment received?**

No

**Please explain the reasons for your answer.**

There should not be a requirement for a report detailing treatment received.

The Women and Equalities Select Committee (WESC) Transgender Equality Inquiry Report notes that the existing pathologisation of trans people in the GRA 2004 is highly intrusive and can cause significant distress<sup>9</sup>.

According to Resolution 2048 of the Parliamentary Assembly of the Council of Europe, the intrusive nature of such a report is also in breach of trans peoples' right to respect for their private life under Article 8 of the ECHR.

According to the UN Yogyakarta Principles, everyone has the right to recognition everywhere as a person before the law. Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom<sup>10</sup>. Thus the UK GRA should uphold the dignity and freedom of trans people by protecting and upholding their most fundamental of rights; the right to be who they are.

Trans people face significant barriers to accessing transition related healthcare and thus requiring a medical report creates an additional barrier to legal gender recognition. Almost one in four trans people want some form of medical intervention and have not received it<sup>11</sup>. Barriers preventing trans people from accessing transition related healthcare included not having the financial means to afford it<sup>12</sup> and long waiting times of up to 30 months for a first appointment at a GIC<sup>13</sup>. Trans people often face discrimination and unfair treatment within health services<sup>14</sup>, leading many trans people to delay or avoid accessing health services due to past negative experiences and perceptions of transphobia within services.

There is a risk that requiring a medical report may force trans people to seek medical treatment that they do not want in order to access legal gender recognition, placing undue influence on trans people's decision making regarding medical procedures.

If someone was diagnosed overseas, or they were diagnosed long ago and their diagnosing doctor has retired or died, trans people may have to pay to be privately re-diagnosed to meet the requirements of the Gender Recognition Panel. This will significantly add to the financial cost of obtaining legal gender recognition, preventing many trans people from being able to access the process at all.

## Question 5

**Under the current gender recognition system, an applicant has to provide evidence to show that they have lived in their acquired gender for at least two years.**

**(A) Do you agree that an applicant should have to provide evidence that they have lived in their acquired gender for a period of time before applying?**

No

**Please explain the reasons for your answer.**

There should be no requirement for an applicant to provide evidence that they have lived in their gender for a period of time before applying.

WPATH opposes requirements to live in an affirmed gender for a specific period of time before being able to access legal gender recognition on the grounds that these requirements act as barriers to legal gender recognition, a right that should be available to all people.<sup>15</sup>

Forcing trans people to wait for their identity to be recognised can be incredibly distressing for trans people and has been linked to depression, anxiety and suicide ideation<sup>16</sup>.

As long as we force trans people to rely on the testimonies of others to prove that they are trans enough, we refuse to treat trans people with dignity and respect and we refuse to afford trans people the right to be who they are. This consultation presents us with the opportunity to demonstrate what treating trans people with dignity and respect looks like, which has the potential to lay the groundwork for ending the disparities in healthcare, education, housing and employment for trans people.

Making someone prove that they have been living as who they are for two years can significantly delay the process of obtaining legal gender recognition which can already feel long and drawn out. Many trans people told us that they reflected for a long time before finally coming out as trans due to family responsibilities, fear of rejection and discrimination, risk of losing employment and financial and housing instability. Trans people told us they wanted to obtain legal gender recognition at the same time they finally began living as who they are.

The current two-year waiting time was decided arbitrarily based on a tiny amount of anecdotal evidence relating to people who had obtained new passports. There is no evidence to suggest that an arbitrary waiting time has a beneficial impact on the gender recognition process or on trans individuals.

Obtaining the necessary documents to prove someone has been living as who they are for two years creates additional financial barriers. In some circumstances it may not be possible to gather sufficient evidence that would be deemed acceptable by the Gender Recognition Panel due to lack of funds. This means that some trans people with low incomes are currently unable to afford their human right to respect for their private life.

Trans people who came out many years ago may have 20 or 30 years of evidence of living as who they are but very little that is from the past two years, meaning they are unable to obtain legal gender recognition under the current system.

Finally, the requirement for definitive 'proof' of gender reinforces stereotypes as to what it means to be a woman, a man or a non-binary person. It overlooks that gender is individual for everyone, a part of someone's right to be themselves. The assumption here is that there is a specific way to 'be a woman' 'be a man' or 'be a non-binary person', which we know is not the case. Reinforcing outdated gender stereotypes is harmful to everyone, regardless of whether they are trans or not.

The best outcome would be a system of self-determination that builds on international best practice in countries such as Ireland and Malta.

**(D) If you answered no to (A), should there be a period of reflection between making the application and being awarded a Gender Recognition Certificate?**

No. There should be no period of reflection, no mandatory waiting time, and no 'cooling off' period between making an application and being awarded a Gender Recognition Certificate.

**Question 6**

**Currently applicants for a gender recognition certificate must make a statutory declaration as part of the process.**

**(A) Do you think this requirement should be retained, regardless of what other changes are made to the gender recognition system?**

No

**Please explain the reasons for your answer**

Statutory declarations are bureaucratic and potentially costly which seems at odds with the aim of reducing the administrative and financial burden on those seeking legal gender recognition. Requiring one places a legal requirement upon trans people (with a gender recognition certificate) that is not placed upon cis people.<sup>17</sup>

Trans people already need to update relevant legal documents, which prevents fraud. Existing fraud legislation is sufficient to prevent people with transphobic intentions from abusing a self-declaration system to perpetuate transphobia.

A trans person could indicate that they understand the significance of legal gender recognition by providing a signature or ticking a box to say they understand the significance of the decision.

Requiring trans people to agree that they will live as their acquired gender for the rest of their lives potentially reinforces the harmful

stereotype that trans people are likely to 'change their mind' or are just 'going through a phase'. We have an opportunity to counter such misconceptions and show leadership in trusting trans people to be valued and equal members of society.

The requirement for a statutory declaration that states a person will live 'permanently in the acquired gender until death' does not acknowledge non-binary people and those with fluid gender identities. Non-binary and gender-fluid people should also have their human rights protected and upheld.

### **Question 7**

**The Government is keen to understand more about the spousal consent provisions for married persons in the Gender Recognition Act. Do you agree with the current provisions?**

No

**Please explain the reasons for your answer. If you think the provisions should change, how do you think they should be altered?**

Spousal consent provisions, sometimes referred to as 'the spousal veto', must be removed.

The spousal veto infringes on a trans person's right to self-declaration, limiting an applicant's rights and autonomy. In accordance with the UN Yogyakarta Principles, everyone has the right to recognition everywhere as a person before the law. Principle 31 states that *"no eligibility criteria, such as... marital or parental status, or any other third party opinion, shall be a prerequisite to change one's name, legal sex or gender"*.

The current provision seems to conflate two issues; a person's identity, and a person's marriage. A marriage is an agreement between two people but an individual's identity is not. Instead we advise that someone wishing to obtain legal gender recognition should have to inform their spouse, if this is possible and appropriate (with adequate provisions for those whose

spouses may be uncontactable or may lack capacity to acknowledge receipt of information).

Being married does not grant someone the right to control or manipulate their spouse's identity. 80% of trans people report experiencing emotionally, sexually or physically abusive behaviour by a partner or ex-partner.<sup>18</sup> Preventing a trans person from accessing legal gender recognition is a specific form of domestic abuse enabled by the current GRA. Trans people are at high risk of experiencing domestic abuse in 2018; 28% of trans respondents who were in a relationship have experienced domestic abuse in the last year alone<sup>19</sup>. This aspect of the GRA that allows for misuses of power which can form part of a pattern of coercion and control as demonstrated by specialist LGBT domestic abuse organisation Galop.<sup>20</sup>

Additionally requiring spousal consent can make the process even more time consuming, causing further distress to trans people and potentially exacerbating the psychological impact of enforced waiting to have one's identity acknowledged and recognised<sup>21</sup>. This is especially the case if the application for legal gender recognition is used as grounds for an annulment. Additional barriers to the gender recognition process are the financial and emotional burdens that come with the separation of a marriage.

An oft-cited concern is that a civil partnership may have to be converted into a marriage if obtaining legal gender recognition would mean that someone's partnership went from a same gender to a different gender partnership. However this potential issue will be eliminated with the introduction of civil partnerships for people of different genders.

### **Question 8**

**Currently applicants must pay £140 to apply for a Gender Recognition Certificate.**

**(A) Do you think the fee should be removed from the process of applying for legal gender recognition?**

Yes

As supported by the UN Yogyakarta Principles, having the law accurately represent your gender is a fundamental human right. No-one should be prevented from having their human rights protected due to their financial situation.

The fact the fee is high creates an additional barrier to legal gender recognition, especially considering that there are additional financial costs associated with obtaining a GRC such as producing medical reports and updating identity documents. The 2018 National LGBT Survey found that 34% of trans respondents who had heard of the process but had not obtained a GRC cited high costs as a reason.

This inequality in legal recognition of personhood for trans people is particularly stark when considering employment and housing discrimination. The 2018 National LGBT Survey found that just 63% of trans respondents aged 16-64 had been employed at any time in the last 12 months, despite the fact that trans people as a group are significantly more likely to hold a degree or postgraduate qualification compared to the general population.<sup>22</sup> Stonewall's 2018 research indicated that 25% of trans people have experienced homelessness<sup>23</sup>. In Ireland, the gender recognition process is free.

**(C) What other financial costs do trans individuals face when applying for a gender recognition certificate and what is the impact of these costs?**

As well as the £140 application fee, trans people also have to provide a statutory declaration, two medical reports, evidence of diagnosis and a range of identification documents.

A person is likely to need to submit the following for a successful application:

Driving license	£ 17.00
Passport	£ 75.00
Letter from GP for passport	£ 25.00
Diagnosis of Gender Dysphoria	£300.00
Medical report 1 (psychiatrist)	£ 80.00
Medical report 2 (GP)	£ 25.00
Statutory declaration	£ 90.00
<b>Total</b>	<b>£612.00</b>

This means that, including the £140 application fee, it costs the average trans person around **£752.00** to apply for legal gender recognition. Given that trans people face significant employment discrimination, are more likely to live in poverty, and 1 in 3 UK employers say they would not employ a trans person<sup>24</sup>, we do not believe the high cost is fair or appropriate.

In Ireland, the gender recognition process is free.

### **Question 9**

**Do you think the privacy and disclosure of information provisions in section 22 of the Gender Recognition Act are adequate?**

No

**If no, how do you think it should be changed?**

The law needs to protect trans people's human right to privacy and family life.

There are some specific and rare circumstances when it is permissible to disclose someone's gender history. The guiding principle around disclosing this sensitive and personal information should be that it should be done with the consent of the trans person in question and only for the purposes the trans person has consented to. Following the principles of GDPR and the Data Protection Act 1998 can help inform this process.

Broadly speaking, Section 22 of the GRA is beneficial for trans people, but has drawbacks for trans people attempting to access their own records through the Department of Work and Pensions due to access restrictions.

Current evidence suggests that Section 22 is not working as it should be; the WESC Trans Equality Inquiry Report found that while Section 22 breaches themselves are common, enforcement actions are not being taken. At present, enforcement can only be taken within 6 months of the breach, even if the trans person does not become aware of the breach until after 6 months has passed.

If someone's trans identity must be disclosed without their consent, for example for court proceedings, the person making the disclosure should be responsible for proving that the disclosure is relevant and for justifiable reasons. Unjustifiable disclosures can be made in settings where disclosures may sometimes be permitted; GIRES submission to the WESC Trans Equality Inquiry notes that trans people are often unnecessarily outed in court proceedings in an attempt to use existing negative attitudes towards trans people to discredit them or present them in a negative way.<sup>25</sup>

LGBT people are less likely to report crimes due to fears they will be treated negatively by police or concerns they will not be taken seriously. Due to these barriers, four in five anti-LGBT crimes go unreported<sup>26</sup>. If trans people do report, police may not understand how harmful it can be to a trans person to have their trans identity disclosed and therefore may be reluctant to take enforcement action<sup>27</sup>.

Currently the penalty for outing a trans person to their employer, college, university or in the local or national press is £5,000. However, the effects of disclosing a person's trans identity can be devastating for that individual and their family, causing loss of employment, risks to safety and even loss of life. In 2013 primary school teacher Lucy Meadows took her own life after having her trans identity disclosed by the press and being subsequently hounded by journalists. The journalists in question offered no apology and received no repercussions.

A longer enforcement period and clearer procedures on responding to a breach of confidentiality would afford trans people greater protection.

### **Question 11**

**Is there anything you want to tell us about how the current process of applying for a GRC affects those who have a protected characteristic?**

#### **Age**

##### **Younger people:**

All trans people regardless of their age deserve respect and recognition. Trans people aged 16 and over should have their gender recognised through a process of self-declaration. Those under the age of 16 should be able to do the same but with a parent or guardian's consent.

Refusal from a parent or guardian to give consent for a trans child or young person to be who they are should be seen as a safeguarding issue. Trans children and young people who are in unsupportive and transphobic homes are at risk of harm. A parent or guardian refusing to let a child express their identity is often a form of coercion and control, which in turn has long-term impacts on the health and wellbeing of that child.

A child or young person who does not have consent from a parent or guardian but has been certified Gillick competent should be able to apply for legal gender recognition through a process of self-declaration. There should be a process for those who are not certified Gillick competent and those who are deemed to lack mental capacity to access legal gender recognition, in order to protect the human rights of all trans people.

Denying trans children and young people the possibility of a birth certificate that aligns with their gender places them at risk of unnecessary disclosure within educational institutions. Disclosure puts trans children and young people, who are already marginalised, at increased risk of transphobia and discrimination, exclusion by their peers, and violence.

Currently, the lack of provision for trans children and young people is in breach of the UN Convention of the Rights of the Child. Legal gender recognition for children and young people ensures that the following rights are protected:

- Prohibition from Discrimination
- The Right to Autonomy and Self Determination
- The Right to be Heard (the right for children to play a role in all administrative and judicial procedures that concern them)
- The Right to Private and to Family Life
- The Right to Freedom of Expression
- The Right to Education
- The Right to be Safe from Violence

In Malta, Germany, Switzerland, Austria and Argentina, there is no lower age limit for applying for legal gender recognition. Norway has a lower age limit of 6 years old. In Ireland, the Gender Recognition (Amendment) Bill to allow young people under 16 to change their legal gender is progressing through the Irish Seanad. It passed the second stage with full support of the house on 10 May 2017.

### **Older people:**

Older trans people have lived through times that have been actively hostile to LGBT people. They may have had their trans identity treated as a criminal act or may have been made to undergo aversion therapy for being LGBT.

Older trans people are disproportionately likely to rely on formal services and paid help as they are less likely to receive informal support from family and friends. This means that older trans people may be at greater risk of having their access to legal gender recognition impeded by the opinions and beliefs of carers, support services, and residential home staff.

The rights of older trans people, especially those living in residential homes or in receipt of domiciliary services, must be protected. The process of legal gender recognition must be accessible to those who may have limits on their ability to independently use computers and phones. There should be a process for those who are deemed to lack mental capacity to access legal gender recognition, in order to protect the human rights of all trans people.

We also recommend that older trans people are formally apologised to for the way they have previously been treated in policy and law.

### **Disability:**

Any changes to the process of obtaining legal gender recognition must include provisions for all disabled trans people. Evidence suggests that disabled trans people find the current process of legal gender recognition inaccessible<sup>28</sup>.

The 2018 National LGBT Survey found that trans respondents were more likely to be disabled compared to cis respondents (32.5% compared to 14.1%). Any reform to the GRA should consider this. The simple administrative process must be accessible to neurodivergent and learning disabled people. Guidance to completing the process must be available in Plain English and Easy Read formats. There should be a process for those who are deemed to lack mental capacity to access legal gender recognition, in order to protect the human rights of all trans people.

Those who are reliant on carers and/or living in residential homes are at increased risk of transphobia, discrimination and abuse. They may have their access to information, the internet, or legal rights limited by carers or by organisations who have discriminatory notions about trans people. Trans people who are reliant on carers and/or living in residential homes must have their human rights protected and must be able to access the process.

## **Pregnancy and maternity:**

Currently trans parents are not accurately recognised on birth certificates and legal documents. This means that even if a trans man has legal gender recognition, if he gives birth to a baby he has to be legally recognised as that baby's mother. This is outlined in Section 12 of the GRA, which states that *'the fact that a person's gender has become the acquired gender under this Act does not affect the status of the person as the mother or father or the child'*.

Article 8 of the UK Human Rights Act protects people's right to privacy, family life and home. A trans person should be able to be appropriately and accurately recognised on their child's birth certificate and should have their right to start a family without having the additional pressure of having to worry about being misgendered and having the legitimacy of their identity called into question while they are pregnant, giving birth, or have just given birth.

The current provision puts unusual strain on the relationship between that parent and child. A child may grow up rightly calling the trans man who gave birth to them Dad but also potentially having to be aware of the legal specifics of that parent's gender history and make decisions about when it is or is not appropriate to disclose it, potentially placing that child at risk of enforcement proceedings under the current Gender Recognition Act.

Trans men with the protected characteristic of pregnancy and maternity may be left in legal limbo due to existing contradictions between the GRA and laws relating to fertility, childbirth, maternity and paternity.<sup>29</sup>

## **Race:**

Trans people from cultural backgrounds that recognise more than two genders are currently often prevented from accessing the legal gender recognition process by the lack of recognition for non-binary genders.

Trans people who have updated their birth certificates in countries outside of the European Economic Area (EEA) need to reapply at full cost to gain legal gender recognition in the UK. Under the current process this would include a wait of up to 30 months for a diagnosis under the NHS<sup>30</sup> or a cost of around £300<sup>31</sup> to access a private diagnosis, then compiling two years of evidence of living as who they are that is deemed suitable by the Gender Recognition Panel. Following Brexit, there is a risk that more trans people may be placed in a legal grey area. The wording of the EEA provisions means what will happen after the UK leaves the EU is currently ambiguous.

Societal discrimination towards Black, Asian and Ethnic Minority (BAME) trans people exacerbates existing barriers to healthcare, housing and employment that are experienced by trans communities, which in turn creates additional barriers to the gender recognition process. LGBT Foundation's 2018 LGBT Primary Care Report found that people with multiple protected characteristics were more likely to experience discrimination from their GP compared to LGBT people with no other protected characteristics in the last 12 months.

*"I'm a black queer disabled migrant, my GP treats me badly but I don't ask them which of my identities they're against."* Genderqueer person, Liverpool<sup>32</sup>

### **Religion and Belief:**

Trans people from religious and faith backgrounds that recognise more than two genders are currently often prevented from accessing the legal gender recognition process by the lack of recognition for non-binary genders.

### **Question 12**

**Do you think that the participation of trans people in Sport, as governed by the Equality Act 2010, will be affected by changing the Gender Recognition Act?**

At present the participation of trans people in sport is governed by the Equality Act 2010 and relevant sporting bodies, and this should continue to be the case.

The emphasis should be placed on inclusion rather than exclusion and more work needs to be done to make trans people feel more included in sport. A 2017 Stonewall survey of LGBT people in school found that 29% of trans respondents had been bullied during sport at school and 64% say were not able to play for the sports team they feel comfortable in.<sup>33</sup>

There is potential that changes to the GRA may positively impact on sports bodies' attitudes towards trans participants, for instance the introduction of non-binary recognition where non-binary people are not currently recognised.

### **Question 13**

**(A) Do you think the operation of the single-sex and separate-sex service exceptions in relation to gender reassignment in the Equality Act 2010 will be affected by changing the Gender Recognition Act?**

No

#### **Please give reasons for your answer**

If changes are made to the Gender Recognition Act single and separate sex services will maintain the right to exclude trans people if it can be shown to be a 'proportionate means of achieving a legitimate aim', as stated by Section 19 of the Equality Act 2010. There may be rare occasions when there are sufficient reasons to exclude a trans person from a single sex service and these exclusions will continue to be made on a case by case basis.

There is no distinction made under the Equality Act 2010 between trans people who have GRCs and trans people who do not. Therefore there is no way that GRA reform could impact how the Equality Act is implemented.

Domestic abuse services approach the issue of who to allow into their refuges on a case by case basis performing a risk assessment for each individual who accesses the service to ensure safety and wellbeing.<sup>34</sup>

There are a number of potential risks that arise when allowing someone to have access to a refuge, whether they are trans or cis. For example a lesbian or bisexual women's abusive partner may be able to enter their women's only refuge. This does not mean that lesbian and bisexual women should not be able to access refuges but demonstrates the need for case by case assessment and shows that blanket bans are not a suitable tool for eliminating risk, something acknowledged by professionals working in this sector<sup>35</sup>. It is inhumane for a situation to arise where a vulnerable trans person fleeing domestic violence may not be able to easily access a safe and accepting refuge.

Furthermore the suggested reforms to GRA are primarily focused on the process of changing gender on birth certificates. It is incredibly rare that someone would use their birth certificate as a form of ID when using single-sex or separate-sex services. Passports and ID cards such as driving licences are much more likely to be used. Therefore these suggested reforms to the GRA will be unlikely to have an impact on the operation of single-sex and separate-sex services.

There is no evidence to suggest that trans people pose a greater risk to others compared to the general population. However, evidence does suggest that trans people, particularly trans women, are more likely to be sexually assaulted, experience domestic abuse, and be the target of violence compared to cisgender women.<sup>363738</sup>

#### **Question 14**

**Do you think that the operation of the occupational requirement exception in relation to gender reassignment in the Equality Act 2010 will be affected by changing the Gender Recognition Act?**

No

**Please give reasons for your answer**

Changes to the Gender Recognition Act will not affect the occupational requirement exception and it will continue to apply. There is no distinction made under the Equality Act 2010 between trans people who have GRCs and trans people who do not. Therefore there is no way that GRA reform could impact how the Equality Act is implemented.

**Question 15**

**Do you think that the operation of the communal accommodation exception in relation to gender reassignment in the Equality Act 2010 will be affected by changing the Gender Recognition Act?**

No

**Please give reasons for your answer**

Changes to the Gender Recognition Act will not affect the operation of the communal accommodation exception. There is no distinction made under the Equality Act 2010 between trans people who have GRCs and trans people who do not. Therefore there is no way that GRA reform could impact how the Equality Act is implemented.

**Question 17**

**Do you think that the operation of the marriage exception as it relates to trans people in the Equality Act 2010 will be affected by changing the Gender Recognition Act?**

No

**Please give reasons for your answer**

There is no distinction made under the Equality Act 2010 between trans people who have GRCs and trans people who do not. Therefore there is no way that GRA reform could impact how the Equality Act is implemented.

## **Question 19**

**Do you think that changes to the Gender Recognition Act will impact on areas of law and public services other than the Equality Act 2010?**

Yes

**Please give reasons for your answer**

We hope that reform of the Gender Recognition Act will bring about positive and lasting changes for trans and non-binary communities. GRA reform provides an opportunity for us to think about how to meaningfully include trans people within law and public services in a way that has not been done before. It may help improve public perceptions of trans people.

Creating a system of recognition based on self-determination gives a clear indication that trans and non-binary people do not need to be patronised or infantilised. It sends the message that trans and non-binary people's identities are real and valid and offers an alternative to the historical pathologisation of trans people.

Significantly, GRA reform could also offer legal recognition to non-binary people for the first time, and by extension, wider social recognition.

## **Question 20**

**Currently UK law does not recognise any gender other than male or female.**

**Do you think there needs to be changes to the Gender Recognition Act to accommodate individuals who identify as non-binary?**

Yes

**If you would like to, please expand more upon your answer**

A 2015 survey of trans people identified non-binary recognition as a key issue for GRA reform.<sup>39</sup>

The 2018 National LGBT Survey found that 51.7% of trans respondents identified as non-binary. This survey also highlighted the level of discrimination faced by non-binary people; 76% of non-binary respondents said they avoided being open about their gender identity for fear of negative reaction from others.

Non-binary people have the right to have their personhood recognised in law. Not having one's personhood recognised can be distressing and may have a range of negative psychological and emotional implications for non-binary people.

Under current provisions, non-binary people are excluded from marriage and civil partnerships, from being appropriately recognised as a parent, and from being appropriately recognised and respected in death. Non-binary people face barriers to employment, healthcare, housing and crime reporting due to not being properly represented or protected in law.<sup>40</sup>

The UK government should recognise the right of all people to identity documents that are consistent with their gender identity, regardless of whether or not that identity conforms to the expectations of others.

There are multiple examples of international best practice. Malta, Argentina, New South Wales in Australia and Oregon and California in the USA all allow non-binary people to have their gender fully legally recognised through self-declaration.

Denmark, New Zealand, Bangladesh, India and Nepal allow non-binary people to be recognised on legal identity documents, such as national identity cards.

At present there are no provisions for the legal recognition of non-binary migrants from these countries who settle in the UK.

Creating another gender category within UK law does present some risks for non-binary people themselves. If people were to have X passports, for example, this could place them at increased risk of discrimination when travelling. Therefore, it is important that non-binary people are appropriately recognised within legislation so that their human right to respect for private life is upheld and they can access marriage, buy or rent a home, and have the choice of starting a family. However, legislation must also protect non-binary people from discrimination, for example by removing gender as a category on forms of identification such as passports and driving licenses.

### **Question 21**

**The Government wants to understand whether there should be a requirement in the future for a report detailing a diagnosis of gender dysphoria and any requirements for a report detailing treatment received.**

**(A) What other changes do you think are necessary to the GRA in order to benefit intersex people?**

There should not be a requirement in future for intersex people to provide a report detailing a diagnosis of gender dysphoria or any requirements for a report detailing treatment received.

In the 2018 National LGBT Survey 2% of respondents identified as intersex. Although there is no robust figure of the number of intersex people living in the UK, the UN estimates that between 0.05% and 1.7% of children are intersex<sup>41</sup>.

Intersex is not a gender identity, and therefore intersex people can have any gender identity and may describe themselves as either cis or trans. Evidence suggests that a significant proportion of intersex people in the UK are non-binary; 23% of intersex respondents to the 2018 National LGBT Survey identified as non-binary. GRA reform presents an opportunity to improve life in the UK for both intersex and non-binary people.

The 2018 National LGBT Survey Report demonstrates that intersex people face mistreatment, misunderstanding, discrimination and hostility from medical professionals. Many intersex people have undergone unnecessary or inappropriate surgeries at a very young age while they were unable to give consent<sup>42</sup>. Therefore being asked to provide details of medical treatment may be traumatic to intersex people. Furthermore, whether someone has received any kind of medical treatment has no impact on a person's gender identity.

Intersex people's right to respect for their private life under Article 8 of the ECHR should be protected and upheld by the GRA.

We also recommend that the government undertake further research into the specific needs and experiences of intersex people living in the UK in order to better uphold and protect the rights of this population group.

## **Question 22**

**Do you have any further comments about the Gender Recognition Act 2004?**

Yes

In the words of LGBT Foundation's Trans Advisory Panel:

Reform of the Gender Recognition Act (GRA) is potentially massive for trans and non-binary communities. The idea that someone has to prove their gender is ludicrous in itself. When you consider that trans people are asked for such evidence while cis people are not then an obvious double standard is clear.

If done right, GRA reform will do much to remove the stigma experienced by many trans and non-binary people. Reform will put decision making in the hands of those who know best who we are – trans and non-binary people ourselves.

The current GRA reinforces the idea that trans and non-binary people's right to exist is something which can be open to 'debate'.

In reality, being trans is no more a mental health condition in need of clinical diagnosis than being cis is. We need to move away from the medicalised understanding we currently have.

Current law is outdated. We've come pretty far as a community since it was established and the law should be updated to reflect that. This change has the potential to enshrine in law non-binary peoples' rights to participate in all areas of public life, including equal access to health services and employment.

We are hopeful that GRA reform will remove the indignity, cost and frustrating wait associated with the current process, all issues which an already burdened trans and non-binary community can do without.

It is common sense that a person knows best what their own gender is, and this is increasingly recognised by countries around the world. The idea that in the UK, people must collect evidence in order to persuade a panel of people who they never meet to conclude what their gender 'really is' is not only anachronistic but really rather farcical.

If we change the law to allow changes to trans and non-binary people's birth certificates without the judgement panel, high fees, doctors letters and evidence, the biggest change is that our dignity and rights are respected. We get access to better rights to privacy. We get the comfort of knowing we will not be outed by our death certificates. We know that our future families will be legally recognised. We do not have to worry about what might be turning up in our credit history. It's all those things that most people get to take for granted.

GRA reform is our opportunity to get it right. Not only to follow the excellent examples set by our international neighbours but to lead the way in helping to shape a progressive society with legislation shaped by reason, understanding, fairness and equality.

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