

Gender Recognition Act Consultation In-depth Response Guide

Sep 2018

How to use LGBT Foundation's in-depth response guide

The most important questions to answer in the consultation are Questions 3, 5, 7, 10 and 20. If you have limited time to fill in the consultation we recommend concentrating on those.

Below is our in depth guidance to responding to the consultation document. This guidance is intended to make responding to the consultation easier and to give information and guidance on some of the key issues for trans and non-binary communities to help inform your responses.

It's important to remember that the Government want to hear your thoughts and experiences, so be as honest and open about your experiences as you want to be.

This document works best used alongside our [Gender Recognition Act Consultation Response Guide](#).

If you need to speak to someone, the LGBT Foundation helpline is here to help. Call us on 0345 3 30 30 30, 9am until 9pm Monday to Friday, and 10am until 6pm Saturday.

Question 1

If you are a trans person, have you previously applied, or are you currently applying, for a Gender Recognition Certificate?

- Yes
- No

If yes, please tell us about your experience of the process.

If no, please tell us why you have not applied?

If you have applied, you might want to talk about:

- Why you wanted to apply
- If anything made the decision to apply easy or difficult
- How easy or difficult you found it to collect the evidence you needed to submit
- How you felt about having to get psychiatric reports about your gender
- If you felt the £140 cost was right, or if you felt it should be cheaper
- Why you felt the cost was right or why you felt the cost was too expensive
- If you are non-binary, you might want to talk about how you felt about having to apply for legal gender recognition as a man or woman rather than as a non-binary person
- If you are intersex, you might want to talk about how this affected your application or your decision to apply

If you have not applied, you might want to talk about:

- If you wanted to apply
- If anything made the decision not to apply easy or difficult
- What prevented you from applying
- What would make you able to apply in future
- If you are under 18, you might want to talk about whether this affected your decision or prevented you from being able to apply
- If you are non-binary, you might want to talk about whether this affected you or prevented you from being able to apply
- If you are intersex, you might want to talk about whether this affected you or prevented you from being able to apply

Question 2

If you are a trans person, please tell us what having Gender Recognition Certificate means, or would mean, to you.

You might want to talk about the impact of having a gender recognition certificate on different aspects of your life such as:

- Having your identity recognised
- Getting and keeping a job
- Voting
- Having a marriage or civil partnership
- Starting a family
- Buying or renting a home
- Taking out or paying back a mortgage or a loan
- Concerns about your credit history
- Making plans for end of life

Question 3

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

- **Yes**
- **No**

Please explain the reasons for your answer.

You might want to talk about:

- Why it is important that trans people have a right to privacy about their medical and/or surgical history
- Why it is important that a person's medical care is separate from the legal gender recognition process
- Why gender dysphoria doesn't include the experiences of all trans people
- The emotional and psychological impact of having to have your identity diagnosed for others to believe you are who you are
- If you are trans, you might talk about you feel about having to have a diagnosis of gender dysphoria and whether you use the term gender dysphoria to describe yourself and your experiences

Question 4

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

- **Yes**
- **No**

Please explain the reasons for your answer.

You might want to talk about:

- The difference between a person's identity and any transition-related medical treatment they choose to undergo
- Why it is important that a person's trans identity and a person's medical treatment are not conflated
- Why it is easier for some trans people to access transition-related healthcare than others
- The emotional and psychological impact of having to have your identity diagnosed for others to believe you are who you are
- The wider social and cultural impact of having to provide medical evidence to have your gender legally recognised

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?

- Yes
- No

Please explain the reasons for your answer.

Gender is individual for everyone and there is no specific way to 'be a woman', 'be a man' or to 'be a non-binary person'.

As long as trans people are required to submit evidence about their gender, this will perpetuate gender stereotypes that are harmful not just to trans people but to all people.

You might want to talk about:

- If you knew you were trans before you came out as trans, and how long you'd been thinking about whether or not you were trans
- Whether you feel two years is a reasonable time to wait to be able to access legal gender recognition
- If you have been personally affected by having to wait for legal gender recognition

- What you think it means to ‘live in an acquired gender’ and whether people who are not trans have to do this for a specific period of time before being legally recognised
- How non-binary people specifically are affected by this
- If it is difficult or impossible for you to get documents that match your identity

(B) If you answered yes to (A), do you think the current evidential options are appropriate, or could they be amended?

(C) If you answered yes to (A), what length of time should an applicant have to provide evidence for?

- Two years or more;
- Between one year and two years;
- Between six months and one year;
- Six months or less.

(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?

Usually people have already reflected for a long time before seeking legal gender recognition. The current reflection time of two years was decided arbitrarily based on a small amount of anecdotal evidence.

You might want to talk about:

- How supporting self-determination could reduce transphobia and discrimination towards trans and non-binary people
- Trans and non-binary people’s experiences of always being waiting to be allowed to be who they are - waiting to come out, waiting for medical treatment, waiting for legal recognition - and the emotional, psychological and health impacts of this
- The wider social implications of trusting trans and non-binary people about their own identities
- Why transphobia and discrimination might play a part in someone getting a GRC and then later deciding that was not right for them

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?

- Yes
- No

Please explain the reasons for your answer

Currently, before being granted legal gender recognition, a trans person must make a statutory declaration to live as their acquired gender for the rest of their life. However, if a person is already applying for legal gender recognition they are already making clear their intention to have their legal documents match their gender identity, so there is no need for an additional statutory declaration. A trans person could indicate that they understand the significance of legal gender recognition by providing a signature or ticking a box next to some text.

The statutory declaration creates an extra layer of bureaucracy and an additional cost which seems at odds with reducing the administrative and financial burden on those seeking legal gender recognition.

The strongest argument for a statutory declaration is to prevent transphobes and anti-trans activists from abusing the system in order to further marginalise trans people. However, we believe that the best system of legal gender recognition will be built on prioritising the needs of trans communities over the behaviours of those who seek to do harm to trans communities.

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?

- Yes
- No

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

The 'spousal veto' means in that in practice a trans person's spouse has to give their permission for the trans person to be who they are.

The current system gives a spouse an unusual degree of control over a trans person. This can increase the harm caused to a trans person by an abusive spouse and can make it more difficult for a trans person to leave an abusive relationship. Preventing a trans person from accessing legal gender recognition is a specific form of domestic abuse enabled by the current GRA.

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.

A person's right to be who they are should always be determined by the individual.

A marriage is an agreement between two people and both people in the marriage should be able to decide whether they want the relationship to continue or to end at any point. These two issues should not be conflated or confused.

You might want to talk about:

- What you think about the 'spousal veto'
- Whether you are married and have been directly affected by this
- If you think a trans person's spouse should have a right to make decisions about their gender and legal documents
- If you have personal experience of your gender or trans identity being used against you in an abusive relationship
- If you think the current process should change
- How you think the current process should change

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
- No

(B) If you answered no to (A), do you think the fee should be reduced?

- Yes
- No

The Government is keen to understand more about the financial cost of achieving legal gender recognition, beyond the £140 application fee.

(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, 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
Medical report 1 (psychiatrist)	£ 80.00
Medical report 2 (GP)	£ 25.00
Statutory declaration	£ 90.00
Total	£312.00

This means that, including the £140 application fee, it costs the average trans person around **£452.00** 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 (Crossland Employment Solicitors, 2018), we do not believe the high cost is fair or appropriate. We believe a nominal fee, e.g. £15, would be more suitable.

You might want to talk about:

- Whether you feel the current cost of legal gender recognition is right, or whether you think it is too costly
- If the costs have prevented you from applying for legal gender recognition
- If you have applied for legal gender recognition and how much it cost you
- If you have applied for legal recognition and had your application refused
- If you are from a marginalised community or group who are disproportionately affected by the cost of applying

Question 9

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

- Yes
- 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. Currently the penalty for outing a trans person to their employer, college, university or in the local or national press is £5,000.

The guiding principle around disclosing sensitive and personal information such as someone's trans identity or trans history should always be the consent of the trans person in question.

If a disclosure must be made without someone's consent, for example for court proceedings, the person making the disclosure should be responsible for proving that the disclosure is relevant and not for a transphobic reason.

If a health professional discloses someone's trans status or trans history, that health professional should be able to prove that the disclosure was medically relevant and that they obtained consent from the person they made the disclosure about.

You might want to talk about:

- If you are trans and have ever had your trans status or trans history disclosed without your consent
- The impact of someone having their trans status or trans history disclosed without their consent
- The impact of someone having their trans status or trans history disclosed publically, for example in a newspaper
- The impact on someone's family, job, or education if a person's trans status or trans history is disclosed
- Whether health care professionals understand when they should and should not be disclosing that someone is trans, for example in referral letters
- Whether you think a £5,000 fine is proportionate to the distress caused to an individual and their family by disclosing someone's trans identity or trans history
- Whether you agree or disagree with the current [Section 22 exceptions](#)

Question 10

If you are someone who either has, or would want to undergo legal gender transition, and you have one or more of the protected characteristics, which protected characteristics apply to you? You may tick more than one box.

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

Please give us more information about how your protected characteristic has affected your views on the GRC application process.

You might want to talk about:

- Your experiences of being an older or younger trans person and how this affects legal gender recognition
- Your experiences of being a disabled trans person and why this affects legal gender recognition (this includes people living with long term conditions and mental health conditions)
- Your experiences of whether or not you are protected from discrimination by the characteristic of gender reassignment
- Your experiences of being married or having a civil partnership and how this affects legal gender recognition
- Your experience of being trans and pregnant, being trans and giving birth, or being trans and having a child and how this affects legal gender recognition
- Your experience of how being Black, Asian or Minority Ethnic and trans affects legal gender recognition
- Your experience of how your religion or belief affects legal gender recognition
- Your experience of being a woman and trans and how this affects legal gender recognition, or your experience of being a man and trans and how this affects legal gender recognition. If you are non-binary, you might like to talk about specific issues faced by non-binary people and how they affect legal gender recognition

- Your experience of being lesbian, gay, bisexual, asexual or queer and trans and how this affects legal gender recognition
- Your experience of being intersex and trans and how this affects legal gender recognition

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?

We believe that every trans person should have the opportunity to access legal gender recognition.

You might want to talk about:

- **AGE:** What it would mean to trans young people and children to be able to have legal gender recognition and how this links to children and young people's human rights
- **AGE:** What makes it difficult for older trans people to access legal gender recognition and what would make it easier
- **DISABILITY:** What makes it difficult for disabled trans people, those with long term conditions and those with mental health conditions to access legal gender recognition and what would make it easier
- **MARRIAGE AND CIVIL PARTNERSHIP:** What makes it difficult for trans people who are married or in a civil partnership to access legal gender recognition and what would make it easier
- **PREGNANCY AND MATERNITY:** What makes it difficult for trans people who are pregnant or have recently given birth to access legal gender recognition and what would make it easier
- **RACE:** What makes it difficult for Black, Asian and Minority Ethnic trans people to access legal gender recognition and what would make it easier
- **RELIGION AND BELIEF:** What makes it difficult for trans people who have a religion, faith or belief to access legal gender recognition and what would make it easier
- **SEX:** What makes it difficult for women who are also trans and men who are also trans to access legal gender recognition and what would make it easier
- **SEX:** What it would mean to non-binary people to be able to have legal gender recognition

- **SEXUAL ORIENTATION:** What makes it difficult for trans people who are lesbian, gay, bisexual, asexual, or queer to access legal gender recognition and what would make it easier

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?

The Equality Act allows restrictions on trans people's participation in sporting competitions if this is deemed necessary to uphold fair competition or the safety of competitors. Usually, national sporting bodies provide their own guidance on including trans people in sport.

You might want to talk about:

- If you are trans and have been excluded from participating in sport
- If you think that changing the GRA would influence national sporting bodies, who make decisions about including trans people in sport

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?

- Yes
- No

Please give reasons for your answer

The Equality Act allows trans people with a GRC to be excluded from single sex services if the service can justify that excluding trans people is a proportionate means of meeting a legitimate aim. This exclusion has to be judged on a case by case basis.

You might want to talk about:

- The difference between the Equality Act and the Gender Recognition Act
- The fact that currently the Equality Act means that trans people with a Gender Recognition Certificate can still be excluded from single sex services due to being trans if this is believed to be proportionate
- The negative effects that excluding people from services based on whether they 'look trans' have on other gender non-conforming people, such as butch and non-femme cisgender women

- If you believe that women's services should be inclusive of all women and men's services inclusive of all men
- Whether you believe that single sex and separate sex services can be inclusive of non-binary people

(A) If you provide a single or separate sex service, do you feel confident in interpreting the Equality Act 2010 with regard to these exemptions?

- Yes
- No

Please give reasons for your answer

You might want to talk about:

- How single sex services can be inclusive to trans people, with examples from your service
- How sex is just one aspect of an individual and people from the same sex come from a wide variety of backgrounds and experiences which need to be included and accounted for, with examples from your service

(A) If you are a trans person who has experienced domestic abuse and sexual assault, were you able to access support?

- Yes
- No

Please give reasons for your answer

You might want to talk about:

- Whether you found it difficult to find or access support for domestic abuse and sexual assault
- If any services turned you away for being trans
- If any services failed to include you or failed to understand your specific needs and experiences as a trans person
- If you didn't try to find support because you were worried about being turned away for being trans
- If you would prefer to use a single-sex service, or a mixed-sex service, or a trans-only service, and why

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?

- Yes
- No

Please give reasons for your answer

The Equality Act 2010 allows employers to state that a job is only open to someone who is not trans, regardless of whether a trans person has a GRC or not, if the employer can demonstrate that this is crucial to the job role. The employer must justify that excluding trans applicants is a proportionate means of meeting a legitimate aim. The example given in the official consultation guide is that a hospital may decide that a midwife must be a cisgender woman.

You might want to talk about:

- The difference between the Equality Act and the Gender Recognition Act
- Whether you think employers understand what a 'proportionate means of achieving a legitimate aim' is
- Whether you think this exception is used to justify employment discrimination against trans people

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?

- Yes
- No

Please give reasons for your answer

The Equality Act allows communal accommodation, such as shared sleeping accommodation, to be provided for one sex only and for trans people to be provided with separate accommodation or not to be admitted.

You might want to talk about:

- The difference between the Equality Act and the Gender Recognition Act
- Whether you think those providing communal accommodation understand what a 'proportionate means of achieving a legitimate aim' is
- Whether you think this exception is used to justify discrimination against trans people

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?

- Yes
- No

Please give reasons for your answer

The Equality Act 2010 allows people who authorise or solemnise marriages according to religious rites to refuse to marry a person they reasonably believe to have obtained legal recognition of their gender under the GRA.

You might want to talk about:

- The difference between the Equality Act and the Gender Recognition Act

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
- No

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.

Creating a system 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.

You might want to talk about:

- How self-determination might positively influence society's views about trans and non-binary people
- How health and social care services currently treat trans people and how GRA reform might change this
- How GRA reform might encourage people from marginalised groups to seek access to sex-specific awards and bursaries
- How GRA reform could affect the treatment and placement of trans people in offender settings, such as prisons and young offender institutions
- Any personal experiences you have of services or organisations not understanding how the current GRA works, including:
 - not being allowed to update your name and title
 - being refused entry to a changing room or public toilet
 - having your trans identity or trans history disclosed without your consent
 - services or organisations asking whether you've had 'the surgery' as part of asking about your legal gender

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
- No

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

Non-binary people face significant discrimination in society which is amplified by a lack of official recognition and widespread lack of knowledge about non-binary people's specific needs and experiences. Currently in the UK, 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.

Creating another gender category within UK law does present some risks. If people were to have X passports, for example, this could place them at increased risk 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.

You might want to talk about:

- Why legal gender recognition is important for non-binary people
- How non-binary people can be included within legal institutions like marriage and civil partnership
- The specific experiences of non-binary parents
- The impact of removing gender as a category on identity documents, such as passports and driving licenses
- If you are non-binary, what legal gender recognition would mean for you personally

Question 21

(A) Do you have a variation in your sex characteristics?

- **Yes**
- **No**

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.

(B) Would removing these requirements be beneficial to you?

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

You might want to talk about:

- Why it is important that intersex people have a right to privacy about their medical and/or surgical history
- Why it is important that a person's medical care is separate from the legal gender recognition process
- The emotional and psychological impact of having to have your identity diagnosed for others to believe you are who you are
- If you are intersex and have successfully applied for a GRC
- If you are intersex and have had your application for a GRC refused
- If you are intersex and whether you use the term gender dysphoria to describe your experiences