

Gender Recognition Act Consultation Guide

July 2018

Foreword from 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Current law is outdated.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.

LGBT Foundation Trans Advisory Panel and Trans community voices

Joanne Mason, Chair of the Board of Trustees, Sparkle – The National Transgender Charity

Aimee Linfield, Pride in Practice Co-ordinator – Trans Inclusion

Liam, Emery, Alexis- Trans community voices

What is in this resource pack?

- Information on the Gender Recognition Act 2004, the Government consultation, and what we believe needs to change
- Information about LGBT Foundation's ENOUGH campaign and pledge
- Resources to help you participate in the consultation, and to lobby your MP to support reform
- Information on getting support if you need it

What is the Gender Recognition Act?

The Gender Recognition Act 2004 (GRA) allows trans people to apply for legal recognition of the gender in which they live without undergoing surgery or other medical treatment related to being trans. However, the process for changing the legal gender on a person's birth certificate is expensive, intrusive and time-consuming. It requires trans people to provide extensive medical evidence about their bodies despite the 2004 Act making no requirement to undergo hormonal or surgical treatments.

In July 2017 the UK Government announced that they would conduct a review of the GRA, with the aim of making the process much more straightforward, less reliant on medical examinations, and removing a lot of the red tape that stops many trans people feeling able to get the legal recognition they deserve.

What is the Gender Recognition Act consultation about?

The GRA consultation is about the process of how a trans person changes the gender on their birth certificate, and about who should be able to change the gender on their birth certificate.

The consultation is **not** about whether or not trans people should be able to legally change their gender.

The consultation is **not** about whether or not trans people should be able to use single sex services, such as women's refuges and rape crisis centres. Trans people's right to use single sex services is already protected by the Equality Act 2010.

How does the current Gender Recognition process work?

Under the Gender Recognition Act 2004, trans people have to submit a very detailed psychiatric report which shows they have been diagnosed with gender dysphoria, how they were diagnosed, and what treatment they have received. This is a violation of trans people's human rights to privacy and to self-determination. It is also invasive, stigmatising and humiliating.

Currently, non-binary people and trans people under 18 are prevented from having their gender legally recognised.

Although the Gender Recognition Act was welcomed when it was introduced in 2004, it is now far behind international best practice.

Why does the Gender Recognition process need to change?

In 2015, Resolution 2048 of the Parliamentary Assembly of the Council of Europe identified 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”*.

Many trans people need legal gender recognition to be appropriately recognised within a marriage or civil partnership or to be appropriately recognised as a parent. This means that the current process also breaches their human right to family life, which is protected under Article 8 of the ECHR.

The World Professional Association of Transgender Health (WPATH) is a body of clinicians who set the standards for the medical care of trans people around the world. WPATH agree that diagnosis should not affect whether a trans person can have their gender legally recognised or not: “No particular medical, surgical, or mental health treatment or diagnosis is an adequate marker for anyone’s gender identity, so these should not be requirements for legal gender change.”

The Gender Recognition Act 2004 only allows a trans person to be recognised as a man or a woman. It does not allow legal gender recognition for non-binary people, who do not identify exclusively as men or women. This means that non-binary people are currently unable to have their rights and identity upheld in all aspects of life, including health services, education, and employment. The current process makes legal gender recognition very difficult or impossible to use for the many trans people who have not had any medical treatment related to being trans.

The Gender Recognition Act prevents young trans people under 18 from having their gender legally recognised, even if they meet the rest of the current requirements. This means that young trans people cannot have their gender accurately reflected on their birth certificate. This makes it more likely that they will experience violations to their right to privacy in education and employment, as well as increasing the risk that they will experience discrimination.

What is self-declaration?

Self-declaration is when a trans person decides their gender for themselves just like everybody else does, rather than having it decided for them by a psychiatrist.

What is the change we want to see?

1. Self-declaration

Trans people should be able to legally change their gender through a simple administrative process in line with international human rights guidance and best practice.

We should get rid of the requirement to provide a psychiatric report or proof of diagnosis.

The process should focus on trans people's human right to decide their gender for themselves and protect all trans and non-binary people's rights to private and to family life.

2. Non-binary inclusion

Non-binary people should be able to legally change their gender to reflect who they are. The new process should include the option for non-binary people to amend their birth certificate and have their gender legally recognised just as other trans people are able to.

3. Inclusion for trans young people

Trans young people who are 16 and older should be able to have their gender legally recognised. This should be done through the same simple administrative process that we recommend introducing for all trans people.

Trans young people under the age of 16 should be able to have their gender legally recognised with the consent of their parents or legal guardians. This process should uphold the right to privacy and to family life for trans young people and their families.

What is international best practice?

Many countries protect trans people's right to have their gender legally recognised based on a simple process of self-declaration, as well as protecting the rights of non-binary people and trans young people.

Denmark, Ireland, Malta and Norway allow people to change their legal gender by completing a self-declaration application form.

Malta, Argentina, New South Wales in Australia and Oregon and California in the United States of America allow non-binary people to have their gender 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 passports and national identity cards.

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.

What is LGBT Foundation doing?

Through our Trans Programme, which is now in its third year, we have already listened to a wide range of trans and non-binary people to inform our position on GRA reform. We are extremely proud to be a part of the local and national work that continues to highlight the needs of trans and non-binary communities and fight against transphobia in all walks of life.

In March 2018, our Trans Programme developed and launched the ENOUGH campaign to send a powerful message of hope, support, and solidarity to trans and non-binary communities. We launched a pledge calling for LGBT communities and our allies to stand up and show their support for LGBT people everywhere, and to support LGBT people's right to express their gender identity and sexual orientation however they choose, including:

- Living without fear of discrimination or hate
- Improved legal gender recognition for trans and non-binary communities
- An inclusive and equal society that celebrates all LGBT identities

To find out more about the ENOUGH campaign and to sign our pledge visit lgbt.foundation/enough. Throughout the GRA consultation, we will put trans and non-binary people's voices front and centre, and also encourage allies of trans and non-binary communities to show their support for reform. Only by working together can we secure the legal changes that trans and non-binary people deserve.



Take Action

There are many ways you can take action during the consultation, from responding to the consultation itself as an individual, or on behalf of an organisation you represent, to writing to your MP to encourage them to publicly support reform. Whether you're trans, non-binary, a member of the wider LGBT community, or an ally who wants to show their support, every single voice will make a difference.

On the following pages you can see a number of resources to help you get involved, including:

- Guidance on responding to the consultation
- Template letter/email to your MP
- Template letter/email to your MP for allies
- Template press release for community LGBT organisations
- Template social media posts

Do you have a suggestion or idea for other resources we can develop and share as part of the consultation? Email us at trans@lgbt.foundation.

Guidance on responding to the consultation

We will shortly be providing more detailed guidance on responding to the full government consultation with advice on answering each specific question. However, below are some of the issues that are likely to be covered in the consultation, along with advice on what you might wish to include in your response.

Experiences of obtaining a Gender Recognition Certificate under the current system

On any questions related to the current legislation, you should give an honest account of your experiences, including any particular barriers you have experienced when trying to obtain a Gender Recognition Certificate (for example cost, length of time taken to acquire, need for a medical diagnosis), and the impact this has had on your life.

Views on self-declaration of gender

We are advocating for a simple administrative process to legally change your gender, without the need for a medical diagnosis, or the need to present evidence, in line with international best practice. The process should focus on trans people's human right to decide their gender for themselves and protect all trans and non-binary people's rights to privacy and to family life.

Views on having to live in 'acquired gender' for at least two years before having to apply for a GRC

Forcing people to prove they have been living for at least two years in their chosen gender before even being able to seek legal recognition for this is outdated and unnecessary. It also reinforces gender stereotypes about what a 'typical' woman or man is that are harmful and stifling to everybody, not just trans and non-binary people.

A simple administrative process for changing gender would eradicate the need to evidence living in your 'acquired gender' for a certain period of time.

Views on legal representation for non-binary people

Quite simply, non-binary people should be able to legally change their gender to reflect who they are. The new process should include the option for non-binary people to amend their birth certificate and have their gender legally recognised just as other trans people are able to.

Views on lowering the age at which you can legally change your gender

Trans young people who are 16 and older should be able to have their gender legally recognised. This should be done through the same simple administrative process that we recommend introducing for all trans people.

We believe that trans young people and their families are best placed to decide what is right for them. Trans young people under the age of 16 should be able to have their gender legally recognised with the consent of their parents or legal guardians. This process should uphold the right to privacy and to family life for trans young people and their families.

Views on the “spousal veto”

The ‘spousal veto’ is the name given to a process written into current legislation which states that when a married trans person seeks gender recognition, their spouse must give permission for the marriage to continue. In practice, this means they actually have the power to consent (or not) to their partner’s gender being legally recognised. Its stated purpose is to “give the spouse a say in the future of the marriage”. However, it is often used to control and limit a trans person’s rights and autonomy. Around 80% of trans people have experienced domestic abuse from a partner (Scottish Transgender Alliance), meaning this legislation can also play a part in preventing trans people from being able to leave unsafe living situations.

We believe that the spousal veto is unnecessary. Divorce and annulment legislation already exists, if either partner decides that they do not wish to remain in the marriage. Discussions around the continuation of a marriage should be between the married couple themselves. A removal of the spousal veto would give equal weight to both partner’s decisions about their relationship, and give trans people full rights over their decisions about their own identity.

Views on access to single sex services and spaces

Trans people can and have been using facilities such as toilets and changing rooms that match their gender for years without issue. Current legislation already states that trans people can access single-sex spaces that match their gender, and should not be discriminated against when using these services.

Exemptions do exist but apply only in the case of sensitive and complex services where services can exclude trans people if they can demonstrate that is absolutely necessary, for example, if inclusion would put that trans person at risk. These exemptions are rarely used and in almost all situations trans people’s right to access single sex spaces is required and protected by the Equality Act 2010.

Views on being trans and identifying under one of the other protected characteristics in the Equality Act 2010 (age, disability, gender, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation)

Just as we are all more than one thing, trans and non-binary communities are incredibly diverse.

Within the category of trans and non-binary people, there are trans and non-binary people of colour, people of faith, disabled people, and people of all ages and backgrounds. People with multiple protected characteristics are more likely to experience marginalisation so it is important to remember that we are not talking about a homogenous group.

The more you feel comfortable sharing about your own experiences, the more complete the picture of what it is like to be trans in the UK today will be. This could have an effect on the drafting of any new legislation and any legislation that interacts with the Gender Recognition Act.

Please note that the list above is unlikely to be complete, and it will be updated as soon as possible with full guidance on responding to each question. Check back at lgbt.foundation/GRA for an updated resource pack.

Template letter/email to your MP (for people with lived experience)

Dear [INSERT NAME]

As my local MP, I am writing to ask for your support in publicly advocating for progressive changes to the Gender Recognition Act 2004, which is currently undergoing a public consultation.

Although the current Gender Recognition Act was welcomed when introduced in 2004, it is now significantly behind international best practice, and trans and non-binary people still face an intrusive, expensive, and bureaucratic process to legally change the gender on their birth certificate.

As a trans/non-binary person *[insert some text here about your personal experiences and why changes to the Act are important to you]*.

In particular, I am writing to ask for your support in advocating for three key areas of reform.

1. Self-declaration

Trans people should be able to legally change their gender through a simple administrative process in line with international human rights guidance and best practice. The requirement to provide a psychiatric report or proof of diagnosis should be removed.

2. Non-binary inclusion

Non-binary people should be able to legally change their gender to reflect who they are. The new process should include the option for non-binary people to amend their birth certificate and have their gender legally recognised just as other trans people are able to.

3. Inclusion for trans young people

Trans young people who are 16 and older should be able to have their gender legally recognised. Trans young people under the age of 16 should be able to have their gender legally recognised with the consent of their parents or legal guardians. This process should uphold the right to privacy and to family life for trans young people and their families.

As one of your constituents, I would be grateful if you could respond outlining your stance on the areas of reform outlined above. I would also be grateful if we could arrange a meeting to discuss my experiences, and the public consultation, further. I can be contacted on XXXXXXXX or XXXXXXXX.

Yours Sincerely,

XXXXXXXX

Template letter/email to your MP (for allies)

Dear [INSERT NAME]

As my local MP, I am writing to ask for your support in publicly advocating for progressive changes to the Gender Recognition Act 2004, which is currently undergoing a public consultation.

Although the current Gender Recognition Act was welcomed when introduced in 2004, it is now significantly behind international best practice, and trans and non-binary people still face an intrusive, expensive, and bureaucratic process to legally change the gender on their birth certificate.

These changes are important to me because trans and non-binary people still face significant inequality and discrimination, despite protections such as the Equality Act 2010. An improved Gender Recognition Act could make a significant impact, by making the process of changing gender more straightforward, less intrusive, and less bureaucratic.

In particular, I am writing to ask for your support in advocating for three key areas of reform.

1. Self-declaration

Trans people should be able to legally change their gender through a simple administrative process in line with international human rights guidance and best practice. The requirement to provide a psychiatric report or proof of diagnosis should be removed.

2. Non-binary inclusion

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As one of your constituents, I would be grateful if you could respond outlining your stance on the areas of reform outlined above.

Yours Sincerely,

XXXXXXXX

Social Media Post Templates

I'm backing changes to the Gender Recognition Act and calling for self-declaration of gender, representation for non-binary people, and inclusion of young trans people. Find out more at lgbt.foundation/GRA

The Gender Recognition Act Consultation is a chance to help build a fair and equal future for trans and non-binary people. Get involved and help shape the future at lgbt.foundation/GRA

It's time to act- changes must be made to the Gender Recognition Act. Join me in campaigning for the legal rights and dignity that trans and non-binary people deserve. lgbt.foundation/GRA

What does Gender Recognition Act reform mean to me? It means that our dignity and rights are respected. 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. Join [@lgbtfdn](https://twitter.com/lgbtfdn)'s campaign for reform at lgbt.foundation/GRA.

Press Release Template (for community trans/non-binary/ LGBT organisations)

(Name of group) calls on local LGBT communities to add voice to calls for Gender Recognition Act reform

(Name of your group) is calling on members of (your location)'s LGBT communities and their allies to add their voices to the recently launched Government consultation around the proposed reforms to the Gender Recognition Act 2004.

Currently members of (your location)'s trans communities can only apply for legal gender recognition if they have been diagnosed with gender dysphoria and can 'prove' they have lived as a woman or man for two years by getting a report from a psychiatrist. Under current legislation, non-binary people cannot have their genders legally recognised at all.

The 12-week consultation is looking to gather views on the plans to simplify the process of legal gender recognition for trans and non-binary communities in England and Wales, to make it less expensive, less intrusive, less time consuming, and more inclusive.

(Name of person) from (Name of your group) said:

"The current Gender Recognition Act lags significantly behind international best practice, and this consultation aims to make the process of changing gender much more straightforward.

"We hope that this will result in a system less reliant on medical examinations and remove a lot of the red tape that stops many trans and non-binary people being able to get the legal recognition they deserve. However it is vital that as many people as possible add their voices to the current consultation, and we are calling on members of our local communities and their allies to take part."

People can add their views by taking part in the consultation at (consultation web address) by (consultation deadline).

ENDS

For further information please contact – Your contact details.

Support for Trans and non-binary people during the consultation

During the consultation, we may see misinformation being promoted in an attempt to de-rail these much-needed reforms.

Although we would encourage as many people as possible to publicly show their support for the reforms, there are some steps you may wish to take particularly when posting online.

1. Check your social media privacy settings and ensure these are at a level you are comfortable with
2. Always report any posts containing abuse or hate to the social media platform
3. Be cautious about giving out any personal information
4. 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.
5. If you experience LGBTphobia, you have the right to report it if you would like to do so. Get advice on reporting here [lgbt.foundation/report](https://www.lgbt.foundation/report)

For more information about our Trans Programme visit [lgbt.foundation/trans](https://www.lgbt.foundation/trans).

What will happen after the consultation?

Right now it's very important that as many people as possible speak up about why reform is needed by responding to the consultation.

After the consultation has closed, all responses will be analysed and considered along with any other available evidence to help inform the Government's decisions on taking the review further.

If the evidence suggests there is a need for reform, the Government will bring forward new legislation on the Gender Recognition Act which will pass through Parliament. At this stage, MPs will have the opportunity to vote on whether or not they want to adopt the new legislation, and well as the possibility of submitting amendments, which could change or alter parts of the new Act.