

# Gender Recognition Act Consultation

The government is holding a consultation on the process by which you can legally change your gender in England and Wales. This is an important opportunity to improve the rights and experiences of trans people in the UK.

We've put together this guide to support students' unions to respond.

## Introduction

The UK government are currently holding a consultation on the process by which you can legally change your gender in England and Wales. This is an important opportunity to improve the rights and day to day experiences of trans people.

We are particularly encouraging women's officers, activists and societies to submit a response.

It is important that the government receive as many responses as possible which support our key asks. NUS will be submitting a response in full, however in this document we have included some of the key questions of relevance to students and have included suggested answers. You can answer as many or as few questions as you want, see full details of the consultation [here](#).

Responses must be submitted by 11pm on Friday 19 October 2018 via the [online survey](#).

## Question 3

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

Answer: No

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

It is important to remember that not all trans people experience dysphoria, or feel the need to access healthcare treatment for their dysphoria. Those trans people should still be able to access gender recognition should they want to.

Requiring trans people to have a diagnosis of gender dysphoria before having their gender legally recognised pathologises trans identity by placing emphasis on medical treatment. This in turn perpetuates the myth that being trans is a 'mental disorder' which is damaging for trans people. This has been widely discredited including, as recognised by the government in their consultation document, by the World Health Organisation.

What is more, many trans people may be prevented from getting a diagnosis

because of the multiple barriers that exist to trans people accessing suitable healthcare. Gender identity clinics have extensive waiting lists for example which, as noted by the government's own Trans Equality Report, negatively define access to transition related healthcare in the UK<sup>1</sup>. Waiting lists dramatically vary by clinic, creating a postcode lottery in relation to healthcare, therefore legal gender recognition. This is unfair, meaning that different people in different parts of the country will get different levels of access to legal gender recognition.

Disabled trans people face additional barriers, in particular neuroatypical trans people are assumed to be 'confused' cisgender people and are subject to additional gatekeeping. As a result, a gender recognition process which continues to have an official diagnosis of gender dysphoria will continue to discriminate against disabled people.

We also know that trans people are more likely to be homeless or of no fixed address which can make registering with a GP challenging as many practices expect to see ID or proof of address. This also disproportionately impacts refugees and sex workers, who we know are less likely to have access to a GP. Furthermore, transphobia on the part of medical staff can again discourage trans people from accessing medical treatment, if they desire it.

There may also be medical reasons as to why an individual is unable to access treatment, such as having a liver condition which may rule out possibilities of receiving hormone treatment, but this doesn't mean that that individual's gender is any less legitimate.

We support a non-assessment based model which would eliminate the need for a diagnosis of gender dysphoria.

#### **Question 4**

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

Answer: No

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

Again, requiring a medical report further pathologises trans identity by paying undue attention to medical aspects of transition over other aspects such as social transition, which trans people themselves have more control over. A report detailing the medical treatment an individual has received does not tell you the truth of their gender.

Requiring a report detailing medical treatment received may reinforce harmful narratives that there are particular ways to be trans and that there exists a "real" way to transition based on following a strict medical pathway. It is important to remember that not all trans people desire medical treatment and those who do not should not be deemed to be any less deserving of legal gender recognition than those who do. The reality of trans experience is much broader than the treatments an individual may or may not receive, and those treatments do not impact the truth of who they are.

We support a non-assessment based model which would eliminate the need for a report detailing treatment received.

#### **Question 5**

**Under the current gender recognition system, an applicant has to provide evidence to show that they have lived**

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<https://publications.parliament.uk/pa/cm201516/cmselect/cmwomeq/390/390.pdf>

**in their acquired gender for at least two years.**

**5a: 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?**

Answer: No

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

Some trans people may not, whether through fear of discrimination or personal choice, have wanted to live as their gender identity before applying for legal gender recognition. This is their right and we believe that they should not be prevented from changing their legal gender because of it.

Furthermore, living in any particular way does not necessarily indicate or reflect a person's gender identity; there is no universal way of 'proving' a person's gender upon observing the way they choose to live. In order to 'prove' something requires some universal metrics by which a thing can be verified, however we believe that there are no universal experiences of living as any gender.

If the requirement be that a trans person provides some form of official documentation, this again may present a barrier to many trans people legally changing their gender. Trans people are more likely to be estranged without a fixed address, be unemployed or struggle to access employment because of transphobia on the part of employers<sup>2</sup>. This makes official records difficult to obtain and similarly, changing documentation might have associated costs which can present a significant barrier.

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<https://radar.brookes.ac.uk/radar/items/517779d1-f95f-7b7b-e2b9-368c9c1fc784/1/>

For most trans people, transitioning looks like changing the way that you live your life, potentially changing your clothes, changing pronouns and how others refer to you informally. This is the reality of transition for most trans people and the process by which trans people can legally change their gender must reflect this reality.

It is important to remember that transitioning can be difficult and sometimes dangerous for trans people; the burden of requiring evidence to prove their gender would be overly invasive and would add yet another burden to an already sometimes difficult process.

We support a non-assessment based model which would eliminate the need for an applicant to provide evidence that they have lived in their acquired gender for a period of time before applying.

**5d: If you answered no to (5a), should there be a period of reflection between making the application and being awarded a Gender Recognition Certificate?**

Answer: No

Periods of reflection are not required for other similar changes such as name changes, meaning that this requirement singles trans people out as somehow less competent to make these decisions.

Moreover, people coming out as trans do not do so lightly; the social costs for doing so can be heavy and so those who decide to legally change their gender will do so after a long period of having thought about it. Any time taken up until this point will not be included in this gender recognition process so requiring a period of reflection will place further barriers and unnecessary waits in the process. Not being able to

legally change their gender when they are ready to do so denies trans people dignity and respect and may have implications for an individual's mental health.

Furthermore a lack of legal recognition can put trans people in unsafe situations if they are forced to out themselves when needing to show their birth certificate which does not match their gender identity.

We urge the government to commit to the principle that no individual has a better understanding of their gender than they themselves. This would eliminate the need to introduce this or any measure which presupposes that a trans person may necessarily be unsure of their gender, or would regret or have any choice in if they did feel differently about their gender identity in the future.

#### **Question 6**

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

**6a: Do you think this requirement should be retained, regardless of what other changes are made to the gender recognition system?**

Answer: No

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

Making a statutory declaration and then acting contrary to that declaration is a criminal offence and can result in fines, criminal records, and other financial and social costs. There is a significant risk here of trans people being accused maliciously by anti-trans individuals or groups.

Furthermore, given that convictions for breaking a statutory declaration in gender recognition cases are almost unheard of

both the UK and other jurisdictions with similar or more relaxed laws, it seems unlikely such mechanisms are needed.

We urge the government to acknowledge that abusive men do not need to change their legal gender in order to abuse women. Nor have cases of men falsely changing gender for nefarious purposes been a significant issue in the UK since either the Equality Act 2010 or the Gender Recognition Act 2004 came into force, nor for any other jurisdiction who have similar laws or more relaxed laws. The only people who have been known to falsely claim gender changes have been anti-trans campaigners trying to make a point<sup>3</sup>. As such, the safeguards provided by statutory declarations are unnecessary, and a deed poll style process is preferable.

Our preferred option would be one akin to changing one's name by deed poll, whereby a trans people would not face legal implications if they were deemed to be not living as their legal gender. Should statutory declarations be the government's preferred option however, protections should be put in place to protect trans people against malicious accusations of breaking a statutory declaration. It is largely acknowledged within the trans community that the courts do not have the cultural competency to deal with cases involving trans people in a way which understands the specific needs and contexts of the trans community. This would be particularly the case if non-binary people were given legal recognition, as "non-binary" is not an identity with a coherent and universally legible understanding, meaning that there may well be many wrongful accusations of breaking a statutory declaration upheld by the courts.

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<sup>3</sup>[https://www.independent.co.uk/life-style/topless-woman-male-only-swimming-pool-protest-gender-](https://www.independent.co.uk/life-style/topless-woman-male-only-swimming-pool-protest-gender-recognition-act-amy-desir-dulwich-south-london-a8261801.html)

[recognition-act-amy-desir-dulwich-south-london-a8261801.html](https://www.independent.co.uk/life-style/topless-woman-male-only-swimming-pool-protest-gender-recognition-act-amy-desir-dulwich-south-london-a8261801.html)

**6c: If you answered no to (6a), do you think there should be any other type of safeguard to show seriousness of intent?**

Most organisations in their data collection do not require safeguards in order to change gender on an administrative system. As a result, we have de facto self-declaration of gender in almost all areas, which has not resulted in any adverse impacts. We believe therefore that no safeguards are necessary.

Furthermore, as seen elsewhere in this consultation, this proposal seems to suggest that trans people are somehow ill equipped to make decisions around the legal recognition of their gender. Again, if the objective of introducing safeguards would be to ensure that trans people have sufficiently considered their decision this is not only patronising to trans people but ignores the often long-term and challenging considerations many trans people will have had to make leading up to that point.

**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?**

Answer: No

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

Requiring spousal permission for a trans person to legally change their gender essentially leaves the decision regarding someone else's gender up to another person. We believe that this denies trans people autonomy and we urge the government to commit to the principle that

no individual better understands a person's gender identity than themselves.

Furthermore trans people are more likely to be victims of domestic violence and abuse than their cisgender counterparts<sup>4</sup>. As such, requiring trans people to gain the permission of their partner in order to legally change their gender allows abusive spouses to use their power to hold trans people's identities hostage, potentially compounding other existing forms of abuse.

If a spouse does choose to veto a trans partner's gender recognition, then the trans person would need to start divorce proceedings. This is unacceptable considering that acrimonious divorces can proceed over a long period of time, especially when there is custody of children or significant assets at stake. Similarly, some people may not wish to get divorced for religious or other reasons, even if they are in a marriage where their partner is not comfortable with them legally changing their gender. Furthermore a trans person can live as their acquired gender without having written permission from one's spouse. As such gaining permission for legally changing their gender is inconsistent with this. We believe therefore that the need to acquire permission from their spouse unfairly singles out trans people who wish to have their gender legally recognised.

In reference to the stated reasoning for maintaining spousal consent that both members of a couple should '*have an equal say in the future of that contract*' again this reinforces the wrong assumption that trans people (or anyone) chooses their gender. This is untrue and no expectation would be placed on an individual to gain permission from their spouse for something they have no control

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<sup>4</sup> [https://www.scottishtrans.org/wp-content/uploads/2013/03/trans\\_domestic\\_abuse.pdf](https://www.scottishtrans.org/wp-content/uploads/2013/03/trans_domestic_abuse.pdf)



over otherwise. Whilst a trans person does technically have a choice as to whether they legally change their gender, not doing so is likely to have serious impacts on an individual's wellbeing and safety.

#### **Question 8**

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

**(8a) Do you think the fee should be removed from the process of applying for legal gender recognition?**

Answer: Yes

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

**(8c) What other financial costs do trans individuals face when applying for a gender recognition certificate and what is the impact of these costs?**

Trans people face many extra costs as part of their transition, including costs associated with accessing healthcare. This can include extensive costs for travel, given that many trans people are required to travel across the UK to access support, because of the lack of Gender Identity Clinics. Some trans people also face the cost of prescriptions and private health care, for those who are unable to access support through the NHS for a variety of reasons beyond their control.

Trans people may also face the costs relating to their social transition including new clothes, losing or changing jobs and extra costs borne through being less employable if you are visibly trans.

Regarding the process of legally changing gender, trans people also face costs in relation to acquiring new documentation including a new passport and birth certificate as well as the cost of safe postage of important documents by courier.

These costs, and others, mean that legal recognition is a right that many trans people are unable to afford.

#### **Question 9**

**Do you think the privacy and disclosure of information provisions in section 22 of the Gender Recognition Act are adequate? If no, how do you think it should be changed?**

Answer: No

Whilst we do not believe that any legal changes are required to section 22 of the Gender Recognition Act (GRA), we do have concerns relating to section 22 which we urge the government to address.

Particularly, section 22 of the GRA often isn't upheld, with many violations of the privacy and disclosure provisions not leading to prosecution. A common experience for many trans people is to come across employees in administrative positions asking to see a Gender Recognition Certificate (GRC). This likely happens as a result of a lack of awareness amongst employees, and the population more broadly, and as such will not be fixed by a change in legislation. We do however urge the government to take action to build this understanding within companies and organisations.

#### **Question 20**

**Currently, UK law does not recognise any gender other than male and female. Do you think that there need to be changes to the Gender Recognition Act to accommodate individuals who identify as non-binary?**

Answer: Yes

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

Over recent years non-binary trans people have seen their gender identities become increasingly reflected both legally and culturally, with the number of people openly defining as non-binary increasing.

As such the legal recognition of man and woman alone reflects an increasingly outdated model of understanding gender. Not only does it prevent many non-binary trans people from accessing legal recognition of their identities, but also sends a message to all non-binary people that their gender identities are less legitimate than cisgender and trans binary people. We urge the government to follow the lead of countries across the globe including Austria, Malta and now Scotland<sup>5</sup> in taking steps to allow formal recognition of non-binary genders.

Representation of non-binary people is missing from almost every level of the UK's laws and institutions which in turn leads to their needs being disregarded. In enabling non-binary people to access legal recognition of their identities would improve an important first step in causing institutions and laws to move forward in recognising and providing opportunities for non-binary people.

## **Question 22**

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

Whilst we have responded to this consultation in good faith and believe that reforms would have a positive impact on trans people, NUS are nonetheless committed to achieving an end to gender as a characteristic regulated by the state in the long term. Self-definition applies to many other protected characteristics including disability and sexual orientation and we believe that no state record or approval process should be needed to identify as any gender. We would note that "self-definition" is the norm in almost all of society. After all, the alternative to self-definition is either providing a birth certificate or a genital check, and these requirements are exceedingly rare.

We would also note that in relation to access to women's services, it is not one's gender that is deemed suitable, it is one's assumed birth assignment. For example, a trans woman who has undergone hormone replacement therapy and vaginoplasty and is read as a cisgender woman will only have her access to a single-sex service/space blocked in the case of a malicious intervention. Such a trans woman would not pose any risk to cisgender women, as they would all believe that she was assigned female at birth. A different example is with an intersex woman who was assigned female at birth having higher levels of testosterone, perhaps having visible facial hair or a deeper voice. This category of woman would be at risk of being excluded from women's spaces due to overzealous gatekeeping, where even a birth certificate may not be sufficient to gain entry to a vital service.

Therefore, we have to concede that it is one's perceived assigned gender at birth which governs access to women's spaces, not their actual assigned gender at birth. And given that the gatekeeping of gender is often based on gender stereotypes, we see many conceptual issues which remain even if gender recognition is reformed by Parliament.

Furthermore, we would like to see an end to the government register of those who have obtained a GRC. If this information is leaked, which can happen despite the best of intentions, it could completely destroy a person's settled life. As there is not a need for the state to have this information, we would like it to be destroyed for the safety of trans people.

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<sup>5</sup><https://tgeu.org/third-gender-marker-options-in-europe-and-beyond/>