

Reform of the Gender Recognition Act

The Women and Equalities Committee have launched a new inquiry into the Government's proposed changes to the Gender Recognition Act (GRA). This is an important opportunity to improve the legal rights and the lived experiences of trans people in the UK.

We've put together this guide to support Students' Unions to respond.

Introduction

The Women and Equalities Committee are currently calling for evidence regarding trans equality issues, including the Government's proposed changes to the Gender Recognition Act (GRA). You can find out more about what the GRA is and why it's important [here](#). This is a significant opportunity to improve the legal rights and day to day experiences of trans people.

This is different from the Women and Equalities 'Transgender Equality' inquiry held in 2016, and the government's GRA consultation in 2018.

In 2016, the **Women and Equalities Select Committee** made an inquiry asking trans people to tell their stories in order to gather evidence and lobby the government for trans equality. The recommendations from the 2016 inquiry can be found [here](#).

In 2018, after reading the recommendations, the **government** held a consultation specifically regarding the proposed changes to the GRA.

In 2020 the responses to this consultation were **considered 'biased' due to there being 'too many' positive responses**. Instead of acting on the recommendations from the 2018 consultation, the government has proposed: setting up three new Gender Identity Clinics (GICs), moving the process to apply for a Gender Recognition Certificate (GRCs) entirely online, and lowering fees for this application process.

The aim of this new inquiry by the Women and Equalities committee is to hold the government

accountable regarding their proposed GRA reforms. In 2016 and 2018, we came together to stand firm and organise for trans rights in the UK, and in 2020 we ask that you join us once again.

We are particularly encouraging LGBT+ and Liberation officers to submit a response, but we also think it's vital that all activists and societies take part where possible. NUS will submit a response in full as an organisation, but you can do so as a Students' Unions or as an individual as well. **You don't have to answer every single question**, so feel free to focus on the ones you feel most strongly about. We do encourage to use **case studies and real-life examples**, alongside potential statistics, to further your answers.

It is important that the Women and Equalities committee receive many responses which support our key recommendations. In this document we have included **guidance and recommendations on how to compile evidence for your own answers in the most effective way**, in order to create important and lasting change to the lives of trans people.

You can answer as many or as few questions as you want, see full details of the consultation [here](#).

Prior to submitting your response, it is important that you ensure that you meet the [government guidelines](#) on how to submit it. Responses must be submitted by **Friday 27 November 2020** via [this form](#).

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The Government's response to the GRA consultation:

• Question 1

Will the Government's proposed changes meet its aim of making the process "kinder and more straight forward"?

Answer: No.

Please explain the reasons for your answer.

Here you can describe how the changes that the government [proposed](#), instead of listening to the responses to the GRA consultation¹, are not enough for a "kinder and more straight forward" process. For instance:

- The move to place the Gender Recognition Certificate (GRC)² application procedure online will not actually make the process free and accessible to all, as many trans people do not have [access to the internet](#). You could suggest that there be an option to apply online *in addition* to an option to apply in person.
- The reduction in the fee to apply for a GRC does not have the same impact as abolishing the fee, as there are high rates of homelessness and poverty amongst trans people, and many will still be unable to afford this.
- Creating new gender clinics does not do enough to eradicate the waiting list, which currently stands at 13,500 patients.

You could also make some general points about the government's response undermining trust amongst the trans community, because of the trauma they had to go through in detailing their personal experiences for previous consultations, with minimal gain.

You could also discuss your own lived experiences if you are a trans person and feel comfortable doing so, or if you are a cis person, you could describe your own personal feelings or (with their consent) the experiences of trans friends or family.

¹ The 2018 GRA consultation received 70% positive responses, coupled with a [petition](#) with over 100,000 signatures in support of self-declaration

² A Gender Recognition Certificate allows you to change the gender listed on your birth certificate to either "female" or "male", provided you meet the requirements of the Gender Recognition Panel.

- **Question 2**

Should a fee for obtaining a Gender Recognition Certificate be removed or retained?

Answer: Removed.

Are there other financial burdens on applicants that could be removed or retained?

Here you can give examples of the extra costs that trans people already have to pay for gender affirming surgery and treatments, as well as their other needs. This can include:

- Costs of accessing private healthcare, due to waiting lists, transphobic doctors, and a variety of other issues with accessing the NHS as a trans person
- Travel costs, as there are so few Gender Identity Clinics (GICs) in the UK
- Cost of legally changing their gender due to the cost of applications for new ID documents (not only GRCs, but passports, driving licences, etc.)
- Cost of prescriptions
- Costs of new clothes

You could also discuss the economic situation facing many trans people, as they are seen as less employable if it is known that they are trans. You can evidence this by describing your own experience, or the experience of a friend or family member who faced discrimination after coming out as trans at work.

- **Question 3**

Should the requirement for a diagnosis of gender dysphoria be removed?

Answer: Yes.

Please explain the reasons for your answer.

'Gender dysphoria' is a clinical diagnosis for someone who doesn't feel comfortable with the gender they were assigned at birth.

Here you can provide examples of the fact that not all trans people experience dysphoria, or feel the need to access treatment for dysphoria. It would also be good to talk about how many trans people are prevented from getting a diagnosis because of multiple barriers that they face in accessing healthcare. This could also be a good opportunity to openly stress the importance of self-identification, or self-ID³.

You could also talk about the fact that the emphasis on medical treatment helps to perpetuate the myth that being trans is a 'mental disorder'.

Additionally, you could discuss the multiple barriers that trans people from other liberation groups face. For example, you could outline some of the experiences of disabled trans people, or trans people of colour.

You could provide evidence of this by talking about your own experiences, that of family or friends, or using recent research.

³ This means there is no specific criteria that a person has to fulfil in order to be a man, a woman or a non-binary person. There is no qualification to pass, no exam to sit and no judge of eligibility. All a person has to do to be a man, woman or a non-binary person is to describe themselves as one.

- **Question 4**

Should there be changes to the requirement for individuals to have lived in their acquired gender for at least two years?

Answer: Yes.

Please explain the reasons for your answer.

Here, you can expand on how trans people's access to legal processes are limited by the requirement for them to have 'lived in their acquired gender' for at least two years.

Feel free to provide examples of how trans people may not be able to safely or comfortably express their gender due to fear or threat of discrimination and violence.

You can also discuss the fact that 'living in your acquired gender' is not something which is measurable. There is no 'right' way to be a man, a woman, or a non-binary person. So how can 'living in your acquired gender' be measured?

Finally, you can write about how it can make someone feel to attempt to measure whether they have 'lived in their acquired gender' for at least two years.

You could provide evidence of this by talking about your own experiences, that of family or friends, or using recent research.

- **Question 5**

What is your view of the statutory declaration and should any changes have been made to it?

The 'statutory declaration' is a legally binding agreement, in this instance on the permanent change to someone's gender marker, witnessed by someone who's authorised to take oaths. You have to make a statutory declaration in order to obtain a GRC.

Here, you could discuss that there could be a financial cost attached to hiring someone who is authorised to take oaths to witness your statutory declaration.

You could also discuss the fact that the statutory declaration requires that you commit to 'living as your acquired gender', but there is no 'right' way to be a man or a woman.

Additionally, you cannot make a statutory declaration that you are non-binary, and even if non-binary was introduced as a third option, there is no one way to live as non-binary either. You can be prosecuted for 'not being' the gender you say you are in your statutory declaration, therefore you are at risk if you don't perform your gender in the 'correct' way.

We also suggest you highlight that, due to the risk of prosecution, anti-trans individuals or groups can use statutory declarations against trans people, putting them at risk of facing fines or criminal records.

There is also the issue of being unable to change your gender via statutory declaration more than once. When you take a statutory declaration, you are in a binding legal commitment to live as one gender for the rest of your life. For people with complex or changing gender identities, or those who come to new realisations and conclusions about their gender at different stages in their lives, this is a huge issue.

Finally, we recommend you state that statutory declarations should be abolished, and self-ID for trans people should be sufficient for them to access the resources that they need.

You could provide evidence of this by talking about your own experiences, that of family or friends, or using recent research.

- **Question 6**

Does the spousal consent provision in the Act need reforming?

Answer: Yes.

If so, how? If it needs reforming or removal, is anything else needed to protect any rights of the spouse or civil partner?

Spousal consent refers to the fact that you are not able to apply for a GRC without the consent of your partner, if you are married.

Here, we suggest that you explain that spousal consent creates another barrier for trans people and takes their agency away, leaving decisions regarding their gender to another person. It is dehumanising and infantilising to trans people, and leaves them vulnerable to domestic abuse and manipulation from their spouse.

We recommend that the spousal consent provision should be removed entirely.

You could provide evidence of this by talking about your own experiences, that of family or friends, or using recent research.

- **Question 7**

Should the age limit at which people can apply for a Gender Recognition Certificate (GRC) be lowered?

Answer: Yes.

Please explain the reasons for your answer.

Currently, to apply for a GRC, you must be over 18.

Here, you can explain why a self-ID model should be available to anyone, both over and under 18 years old.

You can also discuss that many young trans people feel isolated and vulnerable, typically suffering discrimination and violence across society, so being unable to obtain legal recognition for their gender identity until they are 18 years old can have a negative impact on their mental health.

• **Question 8**

What impact will these proposed changes have on those people applying for a Gender Recognition Certificate, and on trans people more generally?

Little to no positive impact.

Why?

Here you should explain why the proposed changes are not enough and will have little to no impact. For example, you can describe how this will have little to no positive impact on:

- The legal rights and lived experiences of trans people under 18 years old.
- The length of the legal gender recognition process.
- The overall cost of the legal gender recognition process.
- Access to gender-affirming healthcare.
- Pathologising attitudes towards trans people through the 'gender dysphoria' diagnosis and the requirement to have 'lived in your acquired gender' for at least 2 years.
- The safety of trans people, and protection of trans people from discrimination and violence.
- The dehumanising and re-traumatising process of having to provide evidence to a panel of people who you have never met, who may reject your gender identity.
- The difficulty of appealing this panel's decision.
- The impossibility for non-binary people to have legal recognition under the GRA.
- Trans healthcare is still not integrated and only available on the NHS through GICs.

• **Question 9**

What else should the Government have included in its proposals, if anything?

Here you should give evidence of what you think is missing from the proposals.

Here are some ideas of what you could focus on:

- Being able to apply for a GRC with only the requirement of self-ID.
- Creating a legal gender recognition process for under-18s.
- Making it free to apply for a GRC, both online and in person.
- Abolishing the need for spousal consent, statutory declaration, a 'gender dysphoria' diagnosis, and the requirement to have 'lived as your acquired gender' for at least 2 years.
- Extending the right to legal gender recognition to non-binary people.
- Creating provision for people to legally change their gender multiple times.

- **Question 10**

Does the Scottish Government's proposed Bill offer a more suitable alternative to reforming the Gender Recognition Act 2004?

Answer: Yes, to an extent.

Please explain the reasons for your answer.

You can read more on the [Scottish Government's proposed Bill here](#).

Here you could give evidence on how trans people would benefit from:

- The removal of the need for medical evidence.
- Reducing the time someone has to 'live in their acquired gender'.
- Extending provision to 16 and 17 year olds.
- Removing the role of a gender recognition panel and handing responsibility to the registrar general for Scotland.

Regarding how this could be taken even further, while it is positive that the time for someone to 'live in their acquired gender' has been reduced from 2 years to 3 months, we believe that this requirement should be abolished in its entirety. Similarly, while it is positive that gender recognition panels have been removed, no one should have the position of 'approving' anyone's gender, and a self-ID model should be adopted instead.

You could also mention that another limitation of the Scottish Government's bill is that it doesn't provide any provision for legal gender recognition to under 16s. It also fails to provide provision for changing your gender more than once, and is only establishing a working group to consider non-binary people, rather than proposing immediate change in this area. Finally, it does not abolish statutory declaration. It may also be worth noting that spousal consent, or spousal veto, was removed in Scotland in 2014.

Wider issues concerning transgender equality and current legislation:

- **Question 1**

Why is the number of people applying for GRCs so low compared to the number of people identifying as transgender?

Here you could give examples detailing how applying for a GRC can feel like a pathologising, dehumanising, and re-traumatising process. You could also give more details about the cost, and the amount of paperwork involved.

You can also expand on how being only able to switch from male to female or female to male on a GRC doesn't work for non-binary people.

You can give examples of other countries where the process is simpler and works better. You can also expand on the fact that people can 'transition' with or without a GRC, but having one makes some administrative tasks easier and smoother.

- **Question 2**

Are there challenges in the way the Gender Recognition Act 2004 and the Equality Act 2010 interact? For example, in terms of the different language and terminology used across both pieces of legislation.

Answer: **Yes.**

Here you can highlight and expand on how, in the Equality Act 2010, the protected characteristic under which trans people are protected is called 'gender reassignment', which re-enforces pathologising narratives about trans people.

You can also mention the limitations of using 'sex' as a protected characteristic rather than gender. You could expand on the definition of both terms, and how this does not fit with the GRA.

Another thing you might want to develop is that the Equality Act 2010 refers to 'pregnancy and maternity', implying that only women can be pregnant and care for a child. You can use your own experience or feelings to develop how this is not correct in practice and clashes with the GRA.

Finally, you can give more details on how non-binary people are currently not included in the GRA and are not included sufficiently under the Equality Act 2010, though technically they are protected against hate crime under the protected characteristic of 'gender reassignment'.

- **Question 3**

Are the provisions in the Equality Act for the provision of single-sex and separate-sex spaces and facilities in some circumstances clear and useable for service providers and service users? If not, is reform or further guidance needed?

Answer: No, guidance is not clear and usable.

We would suggest that you showcase why further guidance is needed, for example making it explicit that anyone should be able to use the facilities they feel most comfortable using, and it is unlawful to police which facilities one uses or to discriminate against or exclude trans people. You can also give examples around how the rhetoric surrounding having a 'legitimate reason' used to exclude a trans person, could be applied in transphobic settings.

You can explain again the limitations around the language surrounding 'the gender role in which they [the trans person] present'.

You could make more specific suggestions, for example that the Equality Act should provide further guidance particularly for non-binary people, as some non-binary people feel comfortable using single-gender facilities, and some do not feel comfortable using gendered facilities at all.

Again, do not hesitate to talk about your own experience here.

- **Question 4**

Does the Equality Act adequately protect trans people? If not, what reforms, if any, are needed?

Answer: **No**, the Equality Act does not adequately protect trans people.

We would recommend you expand on how, in the Equality Act 2010, being trans is referred to under the protected characteristic of 'gender reassignment', and how the definition of 'gender reassignment' is focused on medical transition.

You can also mention the limitations of using 'sex', as a protected characteristic, rather than gender, or even 'women and gender minorities', and the absence of non-binary identities.

Here you could raise again that the Equality Act 2010 refers to 'pregnancy and maternity', implying that only women can be pregnant.

- **Question 5**

What issues do trans people have in accessing support services, including health and social care services, domestic violence and sexual violence services?

Here, you could highlight that the main issue for trans people in accessing these services is transphobia. You can provide examples of when you know it's been the case.

With regards to healthcare specifically, you could discuss the financial costs of healthcare, for example you could write about someone who had to use private healthcare due to a long waiting list. You can also expand on how trans healthcare should be integrated in GP practices and not only available through Gender Identity Clinics.

Finally, regarding domestic violence services, you could list the numbers of organisations offering specific support to trans people in the UK and how much funding they receive in comparison with other services.

- **Question 6**

Are legal reforms needed to better support the rights of gender-fluid and non-binary people? If so, how?

Answer: Yes.

Here you could explain why you think that non-binary and gender-fluid people should have the legal right to have their gender recorded as something other than 'male' or 'female' on all documents.

You could also re-iterate that statutory declarations should be abolished due to the issues that they pose for non-binary people, as previously discussed.

You could suggest that people should be able to legally change their gender more than once, because this is more inclusive of non-binary and genderfluid people.

You can also expand on the importance of a self-ID model and scrapping the need for medical evidence and the need to have 'lived as your acquired gender' for a period of time.

It may be helpful to reiterate the earlier points with regards to the Equality Act 2010's exclusion of non-binary people as well.

Finally, you can suggest that it should be mandatory for public spaces to have gender neutral facilities, such as bathrooms and changing rooms, in addition to gender-specific facilities.