

Response ID ANON-HSR6-78EB-S

Submitted to **Reform of the Gender Recognition Act**
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Your Details

About you

Name:
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Are you responding as an individual or an organisation?

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Your details or the details of your organisation

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About the Consultation

Additional information (as published in the consultation document)

Questions 1 and 2 - Experiences of Trans Respondents

Question 1: If you are a trans person, have you previously applied, or are you currently applying, for a Gender Recognition Certificate?

Not Answered

If yes, please tell us about your experience of the process. If no, please tell us why you have not applied?:

Not Answered

Question 2: If you are a trans person, please tell us what having Gender Recognition Certificate means, or would mean, to you.

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

Questions 3 and 4 - Medical Reports

Question 3: Do you think there should be a requirement in the future for a diagnosis of gender dysphoria?

No

Please explain the reasons for your answer.:

Gender recognition procedures should be quick, accessible, transparent and based on self-determination (Council of Europe Parliamentary Assembly, Resolution 2048(2015)) . This applies also and in particular to mental health assessments of a person's gender identity.

A mental health diagnosis of a person's gender identity is as unethical as trying to assess a person's sexual orientation. A person's gender identity is a highly personal matter and the right to gender recognition must not hinge on a medical statement.

If a person requires a change in how their gender is recorded this expression of intent should serve as the sole basis for such a change.

Requiring a person to submit a mental health assessment of their gender identity violates their huamn rights, such as the right to free personality development, the right to dignity, the right to be free from unwanted medical treatment and experimentation, the right to a fair trial and the right to be free from discrimination. Noone else in the general population has to submit to mental health attestation or diagnosis before being granted the right to have documents reflecting truthfully

their identity.

The European Court of Human Rights has since *Goodwin & I v UK* (2002) repeatedly confirmed that states have to have regard to societal and scientific development as relates to conditions in gender recognition legislation and built-in requirements. Following human rights and professional state of the art means to base gender recognition on the self-determination of the person concerned.

The Committee of Ministers of the Council of Europe asked member states to review their gender recognition legislation and remove any abusive requirements (Recommendation to member states on measures to combat discrimination on grounds of sexual orientation and gender identity, 2010).

Human rights institutions, such as the Council of Europe Human Rights Commissioner have spoken out against a mandatory diagnosis in gender recognition procedures. (See "The need of European societies to recognise the full diversity of gender identities ", Nils Muižnieks, European Commissioner for Human Rights – Keynote speech 6th European Transgender Council, 2016)

Professional opinion, such as of the World Professional Association for Transgender Healthcare WPATH, clearly states that any barriers to gender recognition should be removed:

"WPATH opposes all medical requirements that act as barriers to those wishing to change legal sex or gender markers on documents. These include requirements for diagnosis, counseling or therapy, puberty blockers, hormones, any form of surgery (including that which involves sterilization), or any other requirements for any form of clinical treatment or letters from doctors." (WPATH Gender Identity statement, 2017)

The World Health Organisation (WHO) stated in June 2018 that being transgender does not constitute a mental disorder. It has subsequently changed the classification code and removed all trans-related diagnoses from the mental health chapter. There will be no medical basis on which to make a mental health assessment of a person's gender identity. The newly created diagnosis "gender incongruence" is merely there for enabling access to gender affirming healthcare services. It shall not and cannot be used in regulating how a person's gender is recorded. Hence, in the future there will be diagnostic framework to use.

Thus, it is evident that there is no basis - neither in the medical nor in the human rights field - for a mental health assessment or diagnosis of a person's gender identity in legal gender recognition.

Question 4: Do you also think there should be a requirement for a report detailing treatment received?

No

Please explain the reasons for your answer.:

Legal gender recognition needs to be completely demedicalised. Legal gender status and medical healthcare needs of a person are independent from each other and should not be intertwined in gender recognition legislation. Requiring healthcare details in legal gender recognition violates a person's right to privacy and confidentiality. There is also no added value for the process of gender registration and should therefore be removed.

Malta, Denmark, Norway, Belgium, Ireland, Luxembourg have all demedicalised their gender recognition procedures successfully, without detriment to the public or the individual.

Question 5 - Evidence

Question 5: (A) Do you agree that an applicant should have to provide evidence that they have lived in their acquired gender for a period of time before applying?

No

Please explain the reasons for your answer. :

Gender recognition procedures should enable a person to live their life to the fullest and enable meaningful participation. Requiring someone to live according to their gender identity while withholding the protective effects of correct documents showing their gender is cruel. It is likely to out the person against their will and lead to situations of unwanted outing, discrimination and even violence.

Given the strong anti-trans sentiments still surfacing in today's society it cannot be regarded as ethical to require a so called "real-life-test".

In fact obtaining proper documentation quickly provides a person much better with the tools to actually experience their gender identity.

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

Not Answered

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

No.

There should be no extra period of waiting before receiving a Gender Recognition Certificate. Withholding the document artificially does not serve any purpose.

Often, applications for a modification to registered gender data is acute with up-coming travel, change of work or study. Any further delay jeopardize a person's enjoyment of the right to freedom of movement, and right to equal access to employment and access to goods an services.

Question 6 - Statutory Declaration

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

No

Please explain the reasons for your answer.:

The process should be as simple as possible.

A simple form, such as formless written application, where a person states their wish and intent to have their recorded gender information changed can be regarded as sufficient. This works well in for example Norway.

It is important to think carefully about any potential barriers to gender recognition and remove any. A statutory declaration might further discourage those already marginalised from taking the step to apply for a Gender Recognition Certificate.

A statutory declaration does not have added value in contrast to a simple expression of intent.

Not Answered

(C) If you answered no to (A), do you think there should be any other type of safeguard to show seriousness of intent?:

Transgender Europe's research into repeated decision making and potential regrets in self-determined gender recognition procedures in Argentina, Malta, Denmark, Norway and Ireland have shown that no cases of abuse or fraudulent intent were recorded.

We regard it as unnecessary to require further proof of intent.

Transitioning is already difficult enough in a society dominated by notions of the binary gender and cis-normativity. Gender recognition procedures should thus be designed to affirm a person's self-determined gender identity.

Question 7 - Spousal Consent

Question 7: The Government is keen to understand more about the spousal consent provisions for married persons in the Gender Recognition Act. Do you agree with the current provisions?

No

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

Marriage status should not pose a disadvantage. Currently, a married person applying for a GRC is dependent on their spouse's agreement on their application.

As it is nowadays inappropriate for a husband to decide over his wife's employment or bank account, the highly personal matter of gender recognition cannot be dependent on the spouse's consent. This opens the opportunity for blackmail as one partner has power over the other.

If the spouse does not consent to remaining married there is still the possibility to seek a divorce.

There is no added value for society to keep the spousal consent.

Question 8 - The Cost of Legal Gender Recognition

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

Yes

Not Answered

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

Besides applying for the GRC, costs often occur for subsequent changes to documents issued by state and non-state actors.

Administrative fees, if applied at all, should be reduced to the minimum so as to ensure that also poor people can access gender recognition. Given the continuous difficult economic situation of many trans people, particularly those trans people most marginalised due to their ethnicity/ race, disability, age etc. are likely to not seek a GRC if considerable costs are involved.

Question 9 - Privacy and Disclosure of Information (Section 22)

Question 9: Do you think the privacy and disclosure of information provisions in section 22 of the Gender Recognition Act are adequate?

No

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

The scope of the protection against disclosure should be widened to include any disclosure of private information relating to a person's gender identity or gendered past. If reformed it needs to be ensured that the provisions are effective and practically applicable.

Questions 10 and 11 Impact of Legal Gender Recognition Process (Protected Characteristics)

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.

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

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?

Enter your answer below.:

We are concerned that the current proposal does not address the situation of underage persons as well as asylum seekers.

Asylum seekers should have the opportunity to use quick, transparent and accessible gender recognition procedures that are based on self-determination. As

they are highly vulnerable during asylum procedures it is paramount to make information about gender recognition and the actual procedures accessible. Without it they are more likely to be exposed to violence and discrimination, particularly in mass asylum accommodation. Gender recognition is also important for ensuring the processing of their asylum claim is actually respectful and does not use the person's "dead name" and wrong gender marker. This serves also as important guidance for those conducting asylum interviews to treat the person respectfully. Enabling an asylum seeker access to gender recognition for the duration of their asylum procedure does not preempt any decision in their claim for international protection. It might however positively affect their wellbeing and help them to stabilise and recover quicker from experienced trauma.

Young trans people are particularly vulnerable for anti-trans discrimination, bullying and harrassment, while they have often less opportunities to secure their rights.

Legal gender recognition for minors is key to ensure their human rights are upheld and that they can grow up with dignity and respect.

In consultation with TGEU membership we see that trans people come out at an increasingly young age. Hence, legal protection mechanisms need to be updated accordingly.

It is paramount to the principle of the best interest of the child that young people are enabled to take decisions for themselves. The UN Convention on the Rights of the Child require that minors are not discriminated against - neither on grounds of age nor on grounds of their gender identity - , and that they are heard according to their maturity and evolving capacity in all matters that concern them.

Also, professional associations support this view. The World Professional Association for Transgender Health confirms "increasing numbers of adolescents have already started living in their desired gender role upon entering high school," highlighting the large number of trans adolescents showing gender identity continuity throughout adulthood. (The Standards of Care - Version 7, 2011, p. 12)

The Council of Europe Commissioner for Human Rights has highlighted the barriers young trans people face in accessing legal gender recognition and called for accessible procedures for them. ("LGBTI children have the right to safety and equality"; 2014)

Also, the PACE Resolution 2048(2015) states that the best interest of children needs to be paramount in all gender recognition decisions that concern them.

Barring young people from legal gender recognition signals that being trans and/ or seeking legal gender recognition is somewhat undesirable and further contributes to the stigma and pressure many of them experience.

Not enabling gender recognition for young people violates also parental rights. It deprives parents of the possibility to take decisions in the best interest of their child.

Introduction to Wider Considerations of Impact (Equality Act)

More information (as published in the consultation document)

Question 12 - Impact on Sport (Equality Act)

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?

No

Please give reasons for your answer.:

No changes to the Equality Act are foreseen by this reform as it focuses on the Gender Recognition Act.

Question 13 - Impact on Single-sex and Separate-sex Service (Equality Act)

Question 13: (A) Do you think that the operation of the single-sex and separate-sex service exceptions in relation to gender reassignment in the Equality Act 2010 will be affected by changing the Gender Recognition Act?

No

Please give reasons for your answer.:

No changes to the Equality Act are foreseen by this reform as it focuses on the Gender Recognition Act.

Regarding the publically debated effect on women's safety services, the Istanbul Convention and the EU Directive on Victims Rights oblige State Parties to offer victim support services without discrimination on grounds of gender identity, and gender expression (in case of the Victims Rights Directive).

Not Answered

Please give reasons for your answer.:

Not Answered

Please give reasons for your answer.:

Not Answered

Question 14 - Impact on Occupational Requirements (Equality Act)

Question 14: Do you think that the operation of the occupational requirement exception in relation to gender reassignment in the Equality Act 2010 will be affected by changing the Gender Recognition Act?

No

Please give reasons for your answer.:

The reform only aims at changing the Gender Recognition Act and will not affect the Equality Act 2010.

Question 15 - Impact on Communal Accommodation (Equality Act)

Question 15: Do you think that the operation of the communal accommodation exception in relation to gender reassignment in the Equality Act 2010 will be affected by changing the Gender Recognition Act?

No

Please give reasons for your answer.:

The reform only aims at changing the Gender Recognition Act and will not affect the Equality Act 2010.

Question 16 - Impact on the Armed Forces (Equality Act)

Question 16: Do you think that the operation of the armed forces exception as it relates to trans people in the Equality Act 2010 will be affected by changing the Gender Recognition Act?

No

Please give reasons for your answer.:

The reform only aims at changing the Gender Recognition Act and will not affect the Equality Act 2010.

Question 17 - Impact on Authorising or Solemnising Marriages (Equality Act)

Question 17: Do you think that the operation of the marriage exception as it relates to trans people in the Equality Act 2010 will be affected by changing the Gender Recognition Act?

No

Please give reasons for your answer.:

The reform only aims at changing the Gender Recognition Act and will not affect the Equality Act 2010.

Question 18 - Impact on Insurance Operation (Equality Act)

Question 18: Do you think that the operation of the insurance exception as it relates to trans people in the Equality Act 2010 will be affected by changing the Gender Recognition Act?

No

Please give reasons for your answer.:

The reform only aims at changing the Gender Recognition Act and will not affect the Equality Act 2010.

Question 19 - Impact on Other Public Services (beyond the Equality 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

Please give reasons for your answer. :

While the aim of the reform is to change only the gender recognition act, its change will have impact also on other areas of law and public services. The Fundamental Rights Agency has evidenced that explicit positive public action results in better acceptance-rates and increased quality of life of gay, lesbian, trans, and bisexual people (FRA, LGBT Survey, 2012)

Data sets held by public registry will be more accurate and thus help public service providers to engage respectfully with their trans service users. It will also increase trust of trans citizens to turn to authorities, e.g. complain in cases of discrimination or anti-trans violence. This in turn will improve public awareness, law enforcement and more safety for all.

A key area for the reform would be to make the gender recognition procedure also available for minors. Thus, delivery of goals in educational settings can be easier achieved, as staff will feel more confident to address transgender students according to their gender identity and stand up against any anti-trans bullying. This is likely to improve overall climate at school and result in fewer drop-out and underperformance by trans students.

Question 20 - Non-binary Gender Identities

Question 20: Do you think that there need to be changes to the Gender Recognition Act to accommodate individuals who identify as non-binary?

Yes

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

Non-binary trans people face higher levels of discrimination and social exclusion, as shown by TGEU's health report "Overdiagnosed but Underserved" (2017).

Binary

recognition is not sufficient to reflect the human rights of a growing part in the trans community of those not identifying as one or another gender. Introducing legal gender recognition for non-binary people is an important step to counteract structural discrimination on grounds of gender identity.

Resolution 2048 (2015) of the Council of Europe's Parliamentary Assembly welcomed "the emergence of a right to gender identity [...] which gives every individual the right to recognition of their gender identity and the right to be treated and identified according to it" and asked member States to "consider including a third gender option in identity documents for those who seek it". The UK government cannot ignore this call.

The German Constitutional Court found in November 2017 that the legislator is under the obligation to introduce a positive gender marker option for those not identifying as male or female. (See

<https://tgeu.org/joint-statement-civil-society-welcomes-ground-breaking-german-constitutional-court-demand-for-a-new-regulation-of-sex-registration/>)

Similar conclusions were drawn up by the Austrian Constitutional Court and a Dutch Court, when presented with a similar question.

WPATH recognizes that there is a spectrum of gender identities, and that choices of identity limited to Male or Female may be inadequate to reflect all gender identities. An option of X, NB (non-binary), or Other (as examples) should be available for individuals who so choose. (WPATH Identity Recognition Statement 2017)

The TGEU position on gender markers can be found in the TGEU Position Paper on Gender Markers (2018). As the foundation of this position, Transgender Europe (TGEU) fully endorses Principle 31 of the Yogyakarta Principles +10, calling for the full abolition of gender markers on official identity documents, the curtailing of collection of gender and sex information wherever possible in public records, and where gender markers remain, creating a quick, transparent, and accessible method for amendments without any requirements or restrictions.

Additionally, TGEU acknowledges the ongoing need for aggregate data on sex and gender as part of gender equity data monitoring by States. For this reason, sex and gender data, when collected for these purposes, should be collected voluntarily and on the basis of self-determination only, with at least one additional coding option in addition to the possibility for the code to be marked unspecified (e.g. X), and stored only in aggregate in fulfillment of the right to privacy.

Question 21: Experiences of Intersex Respondents

Question 21: (A) Do you have a variation in your sex characteristics?

Not Answered

(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? :

Question 22 - Any further comments?

Question 22: Do you have any further comments about the Gender Recognition Act 2004?

Not Answered

If you answered yes, please add your comments.:

This reform is an opportunity to legislate for the future and for basing Gender Recognition on self-determination. This sends also an important signal to society and will instigate positive change also beyond the UK.

However, the UK government should closely listen to those people who are directly affected by it, namely trans and intersex people, and not be afraid to debunk any myths and fears that self-determined gender recognition might lead to abuse or loss of rights of other (marginalised) groups.

In our research in countries with self-determination in gender recognition procedures (Malta, Denmark, Norway, Ireland, Argentina) no evidence was found that indicated a fraudulent or frivolous usage of the procedures.

As highlighted in the questions we strongly recommend to make the Gender Recognition Act also accessible for minors and to ensure that asylum seekers can access quick, transparent and accessible gender recognition procedures based on self-determination.

We remain available for further discussion and support to the GRA reform process.

Consent for publishing your response

Can we publish your response?

Publish my response, including my name

Yes