

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

Yes

No

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

This response is given on behalf of Amnesty International UK and has been prepared in consultation with Amnesty UK LGBTI network. Please note that throughout the responses we use transgender to include non-binary and gender variant people.

If you have applied, were you successful in obtaining a Gender Recognition Certificate?

Yes

No

Awaiting Decision

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

Information provided in response to these questions will be protected under the existing provisions in Section 22 of the Gender Recognition Act, as relevant.

Examples given may be published in the consultation response if you give consent to this at the end of this consultation.

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

Yes

No

Please explain the reasons for your answer.

The requirement for a diagnosis of gender dysphoria is intrusive and humiliating, violates transgender people's right to privacy, and further stigmatise trans identities. In June 2018 the World Health Organisation (WHO) took the decision to [remove gender dysphoria](#) (or gender incongruence) from its list of mental health disorders to classify it as a sexual health issue. The WHO has recognised, through improved understanding of the issue, that gender dysphoria is not actually a mental health condition and that classifying it as such had perpetuated stigma against trans people. According to the [Yogyakarta Principles](#) (an affirmation of existing international legal standards as they apply to all persons on grounds of their sexual orientation, gender identity, gender expression

and sex characteristics), neither medical or psychological interventions nor a psycho-medical diagnosis should be a prerequisite for accessing legal gender recognition.

A revised GRA should be based on international human rights standards including the right to highest attainable standard of health, therefore we recommend the requirement for a diagnosis of gender dysphoria to be removed.

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

Yes

No

Please explain the reasons for your answer.

Legal gender recognition should not be contingent on psychiatric assessment, surgical, hormonal or other medical treatment. Requiring applicants to submit to a psychiatric procedure or other medical treatments not only places unnecessary barriers in the way of obtaining legal recognition of their gender; it also forces applicants to choose between their human rights: the rights to the highest attainable standard of health and to be free from cruel, inhuman or degrading treatment, and the rights to private life and to recognition before the law.

In a system where legal gender recognition is contingent on obtaining a specific mental health diagnosis, individuals who wish their gender identity to be reflected on official documents must submit to a notion that their transgender status is a mental disorder. The stigma attached to the psychiatric assessment can itself be a barrier that deters from applying. In addition, this notion is medically imprecise and outdated, as recognised by the WHO (see answer to question 3).

Most of the transgender people Amnesty spoke to for our [‘The State Decides Who I Am’](#) report expressed the view that psychological counselling would be helpful before and during the transitioning phase. However, psychiatric diagnosis is a practice that is demeaning and humiliating and can further stigmatise transgender identities. Transgender people from across Europe who spoke to Amnesty also felt the diagnosis was based on black-and-white gender stereotypes, when in reality gender identity issues do not manifest themselves in a uniform and consolidated pattern. “You are constantly being reviewed on the basis of how ‘girly’ or ‘manly’ you are. I spent over a year trying to convince other people that I am really a woman. It is a humiliating process, a breach of one’s self determination. I see that as absurd. No-one else has to constantly convince others of who they are. It is derogatory and stigmatizing that the issue is treated as a psychiatric one; for instance, I had to explain to my employer that I did not have mental health issues.” N, a 39 year old transgender woman from Finland. In speaking to transgender people, Amnesty International notes psychiatric diagnosis as demeaning as well as unnecessary for the purpose of obtaining legal gender recognition. Ely, a trans man living in Belgium said: “Of course, trans people have the right to see a psychiatrist if they want too... What is wrong is the [idea that] you need a psychiatric opinion to be who you want to be.”

Freedom from discrimination is stifled by the presence of any psychiatric assessment and runs counter to UN guidelines which stipulate that “people may not be discriminated against in the enjoyment of rights on the basis of (sexual orientation) or gender identity” (United Nations General Assembly, 2011: ‘Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity’). This type of discrimination can result in infringed economic, social and cultural rights including reduced access to employment, education and housing

(Amnesty International, 2013: 'Submission to the working group tasked to propose a new draft law: Gender legal recognition in Finland'). If the requirements for legal recognition contain mandatory criteria to be fulfilled that in effect excludes some groups of transgender people - such as psychiatric assessment - the right to private life and to recognition before the law may also be violated.

Good implementation of non-medicalised gender recognition can be found in Malta's Gender Identity, Gender Expression and Sex Characteristics Act 2015 which states that people have a right to 'bodily integrity and physical autonomy' (Transgender Europe, 2017: Third Gender Markers in Europe and Beyond). In this jurisdiction, the gender recognition procedure is quick, transparent and accessible and the requirement of psychological or medical proof is forbidden. In May 2017, the Belgian Parliament introduced legislation which removed the requirement for mental health diagnosis (as well as enforced sterilisation), a move which has the potential to reduce the "pathologisation" (when health or behaviour is treated as a medical condition) of gender identities. Amnesty also notes progress in Norway, Ireland and Greece, where the respective parliaments granted legal gender recognition on the basis of self-identification (Amnesty International, 2017: 'The State of the World's Human Rights 2016/17').

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?

Yes

No

Please explain the reasons for your answer.

The current requirement for an applicant to have lived in their 'acquired gender' for two years means that trans people must wait a long time to obtain legal recognition which can lead to violations of their right to privacy and to discrimination because of the divergence between their gender, gender expression and documents. This does not comply with international human rights standards which stipulate that a process must be quick, transparent and accessible.

The current process is also difficult, time consuming and expensive as it requires original copies of a passport, driving licence, payslips or benefit documents, utility bills and other documents of an official nature. This is a significant amount of information, which is both logistically difficult, time consuming and can be traumatic to obtain. Applicants send their application to a tribunal who they never meet, and who don't have clear, definitive or publicly accessible decision-making criteria. It costs £140 for an application, as well as additional costs for medical reports (up to £80 per report). Such costs are likely to exclude potential applicants thus breaching trans people's right to privacy and potentially causing further discrimination and breaches of social, economic and cultural rights.

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

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

Two years or more

Between one year and two years

Between six months and one year

Six months or less

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

Retaining a period of reflection would contribute to stigma against trans people as it would imply their ability to self-determine is not adequate. Legal gender recognition should be quick, transparent and accessible: prolonging the length of time individuals must wait before having their gender legally recognised prolongs the length of time that their rights, including their right to privacy, are violated.

Question 6: Currently, applicants for a gender recognition certificate must make a statutory declaration as part of the process.

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

Yes

No

Please explain the reasons for your answer.

The current statutory declaration can pose a barrier due to cost and the requirement to obtain an oath. Access to legal gender recognition should be quick, accessible and transparent, we favour a procedure similar to a name change by deed poll.

Please see answers to question 5.

(B) If you answered yes to (A), do you think that the statutory declaration should state that the applicant intends to 'live permanently in the acquired gender until death'?

Yes

No

This language is unnecessary and implies that people seeking legal gender recognition may be doing so fraudulently. Some people may wish to change their legal gender status a second time and should not be barred from doing so because of an arbitrary limit.

When a person is undergoing a legal gender status change it is likely to be an extremely stressful period, and the introduction of arbitrary limits on the number of times a person can undertake the process would only add pressure and additional anxieties to the process. People who seek to change their legal gender status may already have limited resources and sources of support available. This is likely to be especially true for young people.

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

Trans people wish to obtain legal gender recognition in order to ensure their documentation reflects their gender and their identity. This is about living in dignity, freely and authentically. Arguing for safeguards entrenches discrimination against trans people as they are required to 'commit' to their identity and fails to recognise the prejudice and discrimination they face.

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

Yes

No

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

According to the Yogyakarta Principles (an affirmation of existing international legal standards as they apply to all persons on grounds of their sexual orientation, gender identity, gender expression and sex characteristics), neither marital status nor any third party opinion should be a prerequisite for accessing legal gender recognition.¹

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

Yes

No

Legal gender recognition should be accessible to all who seek it: no-one should be barred from accessing legal recognition of their gender for financial reasons. Legal gender recognition should not cost more than any other comparable procedure like a change of name.

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

Yes

No

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

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

¹ YP+10, Principle 31 http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf

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

Yes

No

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

There is a need to ensure all personal records match a person's legal gender recognition once obtained, including records relating to national insurance, pension and benefits.

Question 10: If you are someone who either has, or would want to undergo legal gender transition, and you have one or more of the protected characteristics, which protected characteristics apply to you? You may tick more than one box.

Age

Disability

Gender reassignment

Marriage and civil partnership

Pregnancy and maternity

Race

Religion or belief

Sex

Sexual orientation

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

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?

Age: Legal gender recognition should be accessible to minors, taking into account the child's freely expressed views regarding their own best interests, and in light of their evolving capacities. A blanket age restriction would not be appropriate to achieve this - absolute denial of legal gender recognition to individuals under a given age is not consistent with existing standards regarding the rights of children.

The UN Convention on the Rights of the Child (CRC) requires states to respect the right of children to be heard and to duly take into account their views. A key requirement of the CRC is the "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." The UN Committee on the Rights of the child has highlighted that the identity of the child includes characteristics such as sexual orientation and gender identity and "the right of the child to preserve his or her identity is guaranteed by the Conventions (Article 8) and must be respected and taken into consideration in the assessment of the child's best interests."

A blanket age restriction excluding minors from the possibility of obtaining legal gender recognition may violate the right of children to be heard taking into account their evolving capacities, and the duty under human rights law to take into account the best interests of children in all matters concerning them.

AIUK recommends that the self-determination process is open to those aged 16 and above. For those aged 16 and below there should be an administrative process based, on parental support. A back-up mechanism should be available by which a child without parental support should be able to apply for gender recognition – ideally an administrative rather than court-based process.

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?

Yes

No

Please give reasons for your answer.

An improved process would not affect the participation of trans people in sport. Trans people have the right to participate free from discrimination.

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?

Yes

No

Please give reasons for your answer.

Amnesty International is concerned that there has been much negative and misinformed media reporting on how GRA reform could affect the provision of single sex services.

There is no evidence from countries implementing a self-determination system that this has had any impact of anyone except trans people themselves. Research conducted by Stonewall with 15 single sex service providers has shown that domestic and sexual violence services in England and Wales have been supporting trans women in their single-sex women-only services for some time with many taking proactive steps to ensure their services are trans-inclusive². These services take a victim-centred approach, supporting everyone through their specific circumstances. The Scottish coalition for women's rights, Engender, has also expressed support to the GRA reform at the time of the

² <https://www.stonewall.org.uk/news/stonewall-and-nfpsynergy-report-professional-experiences>

Scottish consultation, stating that Rape Crisis and Women's Aid Scotland have been providing trans-inclusive services on the basis of self-identification³.

In addition to legal reform the government should adopt best practice from Scotland by introducing trans-inclusion action plans and facilitate joint working between the LGBT and women's sectors. Ensuring adequate support for the diverse and specific needs of all victims of gender-based violence requires long-term, sustainable and predictable funding. Recent data from [Galop](#) LGBT+ domestic abuse casework service, finds over half (55%) of all lesbian, bisexual and trans women who have been supported by the organisation in the past five years identify as having a disability and 50% belong to BME minority. However according to monitoring of refuge spaces by Women's Aid there is an acute lack of LGBT+-specific refuge services in England and less than 1% of refuges (two refuges in London and one in Brighton) provide specialist support to LGBT+ survivors. This dearth of support for trans survivors exists in the context of cuts to services overall.

The [Bureau for Investigative Journalism](#) revealed local authorities across England have cut their spending on domestic violence refuges by nearly a quarter (24%) since 2010. A snapshot survey of 40 refuge managers across England revealed they had turned away more than a thousand women in six months alone. As documented by [Women's Aid](#) on just one day in 2017, 94 women and 90 children were turned away from refuge. 60% of all referrals to refuges were declined in 2016-17, normally due to a lack of available space.

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

Yes

No

Please give reasons for your answer.

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

Yes

No

Please give reasons for your answer.

(D) If you answered 'yes' to (C), was this support adequate?

³ <https://www.engender.org.uk/news/blog/statement-in-support-of-the-equal-recognition-campaign-and-reform-of-the-gender-recognition/>

Yes

No

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

Yes

No

Please give reasons for your answer.

This provision is not affected by the existing requirements for legal gender recognition so they will not be affected if the process becomes less onerous.

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

Yes

No

Please give reasons for your answer.

Please see answer to question 14.

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?

Yes

No

Please give reasons for your answer.

See answer to question 14.

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

Yes

No

Please give reasons for your answer.

See answer to question 14.

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?

Yes

No

Please give reasons for your answer.

Please see answer to question 14.

Question 19: Do you think that changes to the Gender Recognition Act will impact on areas of law and public services other than the Equality Act 2010?

Yes

No

Please give reasons for your answer.

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

No

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

At present non-binary people have no option for legal recognition. Individuals who identify as a gender other than male or female should be able to obtain documents that reflect their gender identity in the same manner as those who use the binary male or female. A lack of non-binary inclusion leaves a significant portion of the trans population without any legal recognition.

People generally do not experience and perceive their gender identities according to one standardized pattern. Transgender people, whose innate sense of their own gender identities differs from the sex they were assigned at birth, also experience and express their gender identity according to a variety of patterns. Of the respondents to the [National LGBT survey](#) who identified as trans, 52% identified as non-binary.

A survey on the life experiences of non-binary people conducted by the [Scottish Trans Alliance](#) provides an overview of the 'specific detriment' they face in many areas of life from using services to accessing appropriate healthcare and discrimination in the workplace. It is concerning that 69% of respondents never felt comfortable sharing their non-binary identity with the police: this can have a detrimental impact on non-binary people reporting hate crime and seeking protection. However, the protected characteristic under the Equality Act is 'gender reassignment' rather than 'gender identity' thus excluding those who do not transition into the binary. The Women and Equalities Select Committee enquiry on transgender equality recommended that the government updates the protected characteristic to gender identity to recognise the diverse experiences of trans people and include all are protected against hate crime and discrimination.

64% of survey respondents wanted to be able to access a form of legal recognition for their non-binary gender identity. The survey concluded: 'many of the findings reflect the difficulties that we know are experienced by trans men and trans women in the UK. However, it is apparent that there are a number of issues faced that are specific to this community. A lack of legal recognition leaves many people feeling invalidated. The lack of explicit legal protections leaves many people fearing discrimination. A lack of visibility and inclusion pose problems throughout services and employment, and has a significant negative impact on non-binary people's wellbeing'.

According to a survey undertaken in Belgium, only 55% of those transgender people who were assigned the male sex at birth identified themselves as either fully or mainly female. Similarly only 60% of those transgender people who were assigned the female sex perceived themselves as either fully or mainly male. The rest identified as neither male nor female, both male and female, or “other.” (Amnesty International, 2014: ‘The State Decides Who I Am’) The government has a unique opportunity in reviewing the GRA to ensure that non-binary people are included rather than left behind. Putting off the decision making only leaves non-binary individuals in unnecessary limbo. The gains for non-binary people and society as a whole in bringing change now far outweighs putting off further decision making.

Having driving licenses, birth certificates, passports and other official documentation, including medical documentation, that reflects this would have a significant impact on their sense of acceptance in society. Acknowledging non-binary identities on legal documentation has international precedence: options for non-binary people to obtain legal documents exist in Malta, Denmark and are under discussion in Germany, Ireland and Scotland.

Outside Europe, several countries, including Canada, Nepal, Australia, New Zealand, Pakistan and India, already allow for passports with gender markers other than “F” or “M”; these countries typically use “X”, which is recognised by the International Civil Aviation Organization. (Transgender Europe, 2017: Third Gender Markers in Europe and Beyond).

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

Yes

No

As outlined in question 3, the Government wants to understand whether there should be any requirement in the future for a report detailing a diagnosis of gender dysphoria and any requirement for a report detailing treatment received.

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

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

Legal gender recognition should be accessible to all individuals who wish to access it, regardless of their sex characteristics. Individuals with variations of sex characteristics should not face additional barriers in accessing legal recognition of their gender if it differs from the sex they were assigned at birth.

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

Yes

No

If you answered yes, please add your comments.

Amnesty International is concerned by the rise of a transphobic climate in public opinion, including widespread misinformation on the GRA reform process itself. This misinformation has moved the public discourse on areas that will not be affected by legislative change, for example the use of

public toilets. The GRA dates back to 2004 and has fallen out of step with best practice legislation putting the rights of trans people at risk. We urge the government to reform the GRA by bringing it in line with international human rights standards.