



Reform of the Gender Recognition Act – Government Consultation

Presented to Parliament

by the Minister for Women and Equalities

by Command of Her Majesty

July 2018



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Any enquiries regarding this publication should be sent to us at

LGBT Policy Team
Government Equalities Office
Sanctuary Buildings
Great Smith Street
London
SW1P 3BT

ISBN 978-1-78655-659-2

07/18

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the APS Group on behalf of the Controller of Her Majesty's Stationery Office

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Ministerial Foreword

This Government is committed to making the United Kingdom a country that works for everyone. We want to strip away the barriers that hold people back, to create equal opportunities for people to go as far as their talent can take them. In recent years, we have made progress in tackling the barriers that transgender people face within the UK. We have introduced a £3m project to help tackle transphobic bullying in schools; we have put more money into NHS Gender Identity Services; and we have conducted one of the largest national surveys of LGBT people in the world, receiving over 14,000 responses from trans and non-binary people.

The survey, however, has shown us that there is more to do. Trans people continue to face significant barriers to full participation in public life. Reported hate crime is rising. Reported self-harm and suicide rates, particularly amongst young trans people, are extremely concerning. Trans people continue to face discrimination and stigma, in employment and in the provision of public services.

One public service that we know trans people are concerned about is the legal process for changing gender as set out in the Gender Recognition Act 2004. This Act allows an individual to get their gender legally recognised, giving them access to the legal rights of the gender they identify with and a new birth certificate issued in that gender. Many of the trans respondents to our LGBT survey said they found the current system intrusive, costly, humiliating and administratively burdensome. Whilst many trans people want legal recognition, too few are able to get it. In too many cases the current system prevents them from acquiring legal recognition of who they are, denying them the dignity and respect that comes with it. It often leaves trans people in the difficult situation of living in one gender, and holding Government-issued forms of identification, credit cards, driving licence and all other documents in that gender, but a birth certificate and legal status in another.

This consultation seeks views on how the Government might make it easier for trans people to achieve legal recognition. The way this has been achieved in some other countries around the world is to remove the requirement for a medical diagnosis and to streamline other parts of the process. This is one option that the Government wishes to ask for views on but no firm decisions on our eventual approach have been taken. The legal recognition process is separate from the pathway that trans people follow to obtain medical treatment that they may wish to have, such as hormones or surgery. The questions about any removal of a requirement for a medical diagnosis in the context of this consultation is only with regard to the legal recognition process.

We also want to be clear that this is an explorative consultation and we do not have all the answers. That is why, as we consult, we are mindful of the need to engage with all perspectives. We particularly want to hear from women's groups who we know have expressed some concerns about the implications of our proposals. To be clear – this consultation focuses on the Gender Recognition Act; we are not proposing to amend the Equality Act 2010 and the protections contained within it. We do realise, however, that there are concerns about interactions between the two Acts and we want to use this consultation as a way of gathering these views.

This consultation marks a significant step in this Government's work to advance equality for LGBT people. Ahead of this consultation, we were pleased to announce the publication of an LGBT Action Plan outlining the further steps we are taking to tackle LGBT inequalities, and addressing many of the other issues raised in the LGBT survey. This is another important part of our work in Government to remove any barriers that might stop LGBT people from living full, happy lives as valued members of society.

We look forward to hearing your views.

The Rt Hon Penny Mordaunt MP

Secretary of State for the Department for International Development and Minister for Women and Equalities

About this Consultation

Topic

This consultation seeks your views on how best to reform the process of changing one's legal gender. The consultation focuses on the Gender Recognition Act 2004. We are not proposing any amendments to the Equality Act 2010.

This consultation does not consider the question of whether trans people exist, whether they have the right to legally change their gender, or whether it is right for a person of any age to identify with another gender, or with no gender. Trans and non-binary people are members of our society and should be treated with respect. Trans people already have the right to legally change their gender, and there is no suggestion of this right being removed. This consultation simply asks how best Government might make the existing process under the Gender Recognition Act a better service for those trans and non-binary people who wish to use it.

Geographical scope

This consultation concerns the legal gender recognition system in England and Wales only, though the implications of change for the United Kingdom as a whole are considered. The Scottish Government ran a separate Gender Recognition Act consultation, which closed earlier this year.

Impact assessment

In keeping with the Public Sector Equality Duty, set out in the Equality Act 2010, an initial Equalities Analysis has been produced for this consultation. A full cost/benefit impact assessment, along with other relevant tests, will be carried out once the Government makes a decision on what action to take, following the results from this consultation. This impact assessment will be published when the Government response to this consultation is published.

Audience

This consultation is open to everyone. We would be particularly interested in hearing from:

- Members of the public – particularly those who have used, or have considered using, the existing provisions in the Gender Recognition Act 2004;
- Individuals who have a transgender and/or non-binary identity, and their partners, spouses or parents;
- Organisations that work with trans people and within the wider LGBT charity sector;
- Organisations working to support individuals of a particular gender – such as women's groups providing support to victims of violence or sexual assault;
- Religious organisations and people with religious beliefs; and,
- Medical practitioners – particularly those who currently provide, or have provided, medical reports as part of the gender recognition process;

- Professionals who may be covered by the Section 22 provisions in the Gender Recognition Act 2004, and businesses who may also need to refer to these.

Duration

This consultation will run for 16 weeks and will close on the 19th October 2018.

Contact details

There are a number of ways you can respond to this consultation:

- You can complete the online response form.
- You can e-mail your responses to the questions in this consultation to: GRA.consultation@geo.gov.uk
- You can write to the Government Equalities Office at:
Gender Recognition Act Consultation
Government Equalities Office - 6th Floor Sanctuary Buildings
20 Great Smith Street, London
SW1P 3BT

You can also ask for hard copies and easy to read versions by emailing GRA.consultation@geo.gov.uk

Please tell us whether you are responding as an individual or whether you are representing the views of an organisation.

If you are responding on behalf of an organisation please tell us who the organisation represents, the size of the organisation, and, where possible, how the views of members have been sought.

Privacy, disclosure of information and data protection

Responses to this consultation will be treated in accordance with section 22 of the Gender Recognition Act. This provides protection for the privacy of a person who has applied for and/or obtained a Gender Recognition Certificate by making it a criminal offence to disclose information acquired in an official capacity about a person's gender history or about their application to the Panel, unless a specific exception applies.

Information provided in response to consultations, including personal information, may be subject to publication or disclosure under the Freedom of Information Act 2000, the Data Protection Act 2018 or the Environmental Information Regulations 2004. The Government Equalities Office will process your personal data in accordance with the Data Protection Act 2018, and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. This of course does not mean we will disclose any information that is protected under section 22 of the GRA 2004.

The Government may publish responses received from organisations. If you want all, or any part, of a response to be treated as confidential, please explain why you consider it to be confidential. If a request for disclosure of the information you have

provided is received, your explanation about why you consider it to be confidential will be taken into account, but no assurance can be given that confidentiality can be maintained. An automatic confidentiality disclaimer generated by your IT system will not, in of itself, be regarded as binding on the Department.

Next steps

After the consultation closes, the responses will be analysed. The Government will then publish a report summarising the responses, setting out our analysis of what they mean and indicating what action the Government intends to take as a consequence.

Terminology

We know that the terms used in relation to gender identity can be complicated and unfamiliar. We know that the use of specific words can be contested. We are also aware that certain terms used in legislation because of their specific legal meaning, such as 'transsexual', might be considered out of date. Throughout this consultation we have tried to use terminology that is generally accepted. No offence or omission is intended.

The following terms are used:

Acquired gender: The Gender Recognition Act 2004 describes this as the gender in which an applicant is living and seeking legal recognition. It is different from the sex recorded at birth and is instead, the gender the individual identifies with. It could be man or woman. While some people prefer to use 'experienced' or 'confirmed' gender rather than acquired gender, 'acquired' is used in this document due to its specific use in the Gender Recognition Act.

Equality Act 2010: An Act of Parliament that brought together a wide range of prior discrimination law and introduced several new provisions to further strengthen equality law. Amongst other things the Act places a duty on public bodies to have due regard to equalities considerations when developing policy and it sets out a number of 'protected characteristics' and prohibits discrimination on the basis of those characteristics. One of these, 'gender reassignment', affects trans people.

Full Gender Recognition Certificate: As distinct from an interim Gender Recognition Certificate. A full certificate shows that the holder has satisfied the criteria for legal recognition in their acquired gender, as set out in the Gender Recognition Act 2004. From the date of issue, the holder's gender becomes the acquired gender for all purposes. Full certificates also entitle the individual to a new birth certificate issued with an updated sex marker.

Gender: Often expressed in terms of masculinity and femininity, gender refers to socially constructed characteristics, and is often assumed from the sex people are registered as at birth.

Gender identity: A person's internal sense of their own gender. This does not have to be man or woman. It could be, for example, non-binary.

Gender dysphoria: A medical diagnosis that someone is experiencing discomfort or distress because there is a mismatch between their sex and their gender identity. This is sometimes known as gender identity disorder or transsexualism.

Gender presentation / Gender expression: A person's outward expression of their gender. This may differ from their gender identity or it may reflect it.

Gender reassignment: A protected characteristic under the Equality Act 2010. A person 'has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a

process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.'

Subject to certain exceptions, the Equality Act 2010 prohibits discrimination because of gender reassignment, for example in employment or in the provision of services. This includes treating employees or service users less favourably because of a mistaken belief that the person is proposing to undergo, is undergoing or has undergone the process of reassigning their gender.

Gender Recognition Act 2004: An Act of Parliament that allows transgender people to gain legal recognition of their acquired gender, so long as that gender is a man or woman. Applications for legal recognition made under the Act are determined by a Gender Recognition Panel which applies the evidential requirements set out in the Act. Following legal recognition, an individual is entitled to a new birth certificate issued in the acquired gender and in law the person's gender becomes the acquired gender for all purposes.¹

Gender Recognition Panel: A panel of medical and legal members, administered by Her Majesty's Courts and Tribunal Service. The panel deals with all applications for legal gender recognition under the Gender Recognition Act 2004. If the applicant applies successfully then the Panel will issue a full or an interim Gender Recognition Certificate. Applicants do not meet the Panel in person as applications are paper based.

Interim Gender Recognition Certificate: As distinct from a full Gender Recognition Certificate. Interim certificates are issued to applicants that meet the criteria for legal recognition of their acquired gender as set out in the Gender Recognition Act 2004 but who need to end their marriage or civil partnership before a full certificate can be granted. The interim certificate can be used to enable the applicant or their spouse to end their marriage or civil partnership but has no legal significance or purpose beyond this.

Intersex: An umbrella term for people with sex characteristics (hormones, chromosomes and external/internal reproductive organs) that differ to those typically expected of a male or female. Intersex people may identify as male, female or non-binary.

Legal recognition: In the context of gender this means that the person is recognised as being of his or her acquired gender, as opposed to the sex that was registered on that person's birth record when they were born.

Non-binary gender: An umbrella term for a person who identifies as in some way outside of the man-woman gender binary. They may regard themselves as neither exclusively a man nor a woman, or as both, or take another approach to gender entirely. Different people may use different words to describe their individual gender identity, such as genderfluid, agender or genderqueer.

¹ Subject to specific exceptions set out in the Gender Recognition Act 2004 and the Equality Act 2010.

Sex: Assigned by medical practitioners at birth based on physical characteristics. Sex can be either male or female.

Single or same sex services exception: These are terms used in relation to the Equality Act 2010, specifically paragraph 28 of Schedule 3. This paragraph allows service providers who are providing a service to men or women only, or providing services separately or differently to men and women, to act in a way that would otherwise be unlawful gender reassignment discrimination, if this is a proportionate means of achieving a legitimate aim. This might allow, for example, a domestic violence refuge for women to refuse entry to a trans person, provided it is proportionate to do so and the purpose is legitimate.

Transgender / Trans: Umbrella terms used to describe individuals who have a gender identity that is different to the sex recorded at birth. Non-binary people may or may not consider themselves to be trans. This consultation document primarily uses 'trans'.

Executive Summary

Introduction

1. When we are born, our parents register our sex and it is recorded as either male or female on our birth certificate. Sex is based on physical characteristics. As we develop, we begin to discover our sense of gender and how we want to identify and present ourselves. For the great majority of people, their gender identity will be either that of a man or a woman and it will be no different from their sex as recorded at birth. Trans people, however, have a gender identity that is not the same as the sex that is recorded on their birth certificate. This could mean that they feel like a man even though they were recorded as female, or vice versa. It could mean that they feel neither like a man nor a woman, or have a fluid gender identity that changes over time. Although we do not know exactly how many trans people there are in the UK, we estimate that between 200,000 and 500,000 people identify in this way. Annex E discusses estimates of trans population size.
2. Being trans is not a mental illness. Despite this, and despite the progress that we have made in recent years, trans people continue to face significant barriers to full participation in society. Rates of suicide and self-harm, particularly amongst young trans people, are too high. Trans people continue to face discrimination and harassment in the workplace, in school and on the street. Ultimately this can prevent many from fulfilling their potential, and finding the dignity and respect that they deserve.

The Gender Recognition Act 2004

3. In order to receive legal recognition of their acquired gender a trans person is able to apply for a new birth certificate, through a process set out in the Gender Recognition Act (GRA) 2004. The GRA outlines a process and set of evidential requirements that, once satisfied, allow trans people over the age of 18 to get legal recognition of their gender identity. The GRA process only covers the gender identities of man and woman. Legal recognition comes in the form of a Gender Recognition Certificate (GRC) and new birth certificate. A GRC means that, from the date of issue, the individual will be considered in the eyes of the law to have the gender they identify with (man or woman only) rather than the gender that accords with the sex that was recorded at birth.
4. When it was first introduced, the GRA was a world-leading piece of legislation. For the first time in the UK, it allowed trans people to have their acquired gender recognised in law, and uniquely in the world at that time, to be legally recognised without having first had surgical treatment. It gave trans people important legal rights, such as the right to marry in their acquired gender and the right to a pension at the age applicable to that gender. Crucially, it reflected the important principle that trans people should have their gender identity recognised by the State.
5. For many trans people, and organisations that support trans people, however, the legal recognition process is no longer delivering. Since the GRA came into force, 4,910 people have successfully acquired a GRC – this is fewer than the number

of trans men and trans women who responded to the Government's LGBT survey (around 6,900), and is far fewer than the estimated size of the trans population in the UK). The results of the survey show that only 12% of the trans survey respondents who had started or completed their transition had used the process set out in the GRA. Of those who were aware of the process, but did not have a GRC and had never applied for one, only 7% said they would not be interested in going through the process. This therefore suggests that there is interest in using the GRA system to obtain legal recognition of gender, but the process itself is not being used.

6. Respondents to the LGBT survey were clear: they wanted legal recognition but they had not applied for it because they found the current process too bureaucratic, too expensive and too intrusive. This consultation fulfills a promise that we made in July 2017 to bring forward a consultation on how best to modernise and simplify the GRA.²
7. The Government wants to make the legal recognition process less intrusive and bureaucratic for trans people. This consultation seeks your views on how we might achieve that. The consultation looks at many aspects of the GRA process, including:
 - a) The requirement for the trans person to provide two medical reports, one evidencing a diagnosis of gender dysphoria and the other outlining details of any treatment received;
 - b) The requirement for the trans person to provide a range of documentation that proves they have lived in their acquired gender for at least two years;
 - c) The requirement for the trans person to submit a statutory declaration of their intention to live in their acquired gender until death;
 - d) The requirement for married applicants to obtain the consent of their spouse or end their marriage;
 - e) The cost to the trans person of using the GRA process;
 - f) How the Act protects the privacy of individuals who have applied for a GRC.
8. The Government wants to understand more about trans people's experiences of the process of applying for a GRC, as well as using this consultation to collect more evidence about how any reform to the GRA might impact upon people's lives before deciding how to proceed. If we determine that changes are necessary, then we will aim to bring forward legislation that updates the Act.

The Equality Act 2010

9. As we consult, the Government is mindful of how changing the requirements for a

² See <https://www.gov.uk/government/news/new-action-to-promote-lgbt-equality>

GRC might affect other areas of law and public services. We want to understand more about these relationships as part of the policy development process.

10. In particular, we are interested in the relationship between the GRA and the Equality Act 2010. This consultation is clear that we do not plan to amend the existing protections in the Equality Act. The Equality Act specifically includes 'gender reassignment' as a protected characteristic. The Act outlines the limited circumstances where discrimination against individuals with this protected characteristic might be permissible, such as in the provision of single-sex services, so long as the discrimination is a proportionate means of meeting a legitimate aim. This might include, for example, the running of a rape support centre. We know that concerns have been expressed about how any change to the GRA might have an impact upon these protections in the Equality Act and we want to find out more about this. We are also interested in understanding how the current process of legally changing gender impacts upon those who have a protected characteristic under the Equality Act 2010.

Devolution

11. This consultation considers the devolution and international considerations of any future change to the legal gender recognition process. The proposed changes to the GRA in this consultation concern England and Wales only. Gender recognition is mostly devolved to Northern Ireland and Scotland, though at the present time each part of the UK operates broadly the same system and it is all governed by the GRA 2004. In November 2017, however, the Scottish Government launched their own consultation on amending the GRA for Scotland only so there may be more divergence in the future.³

Non-binary gender identities

12. The Government received around 7,400 responses to the LGBT survey from those who have a gender identity that is neither exclusively male nor female (known as 'non-binary'). This consultation asks an open question about the issue of legal recognition of people who have a non-binary gender identity. The Government is aware that there seems to be an increasing number of people who identify as neither exclusively male nor female. We are working to determine what action it may be necessary for Government to take to further advance equality for non-binary people. Non-binary recognition is a complex issue, with many potential implications for the law and public-service provision. In our recently launched LGBT Action Plan, we announced our intention to issue a 'call for evidence' on non-binary gender identities, which we want to use both to examine these potential knock-on implications more closely and to understand in more detail the experiences and needs of non-binary people living in the UK. We have included a question on non-binary gender identities in this consultation as a supplement to this call for evidence exercise, focusing here on your initial views on non-binary recognition as it relates to the Gender Recognition Act specifically.

³ See: <https://consult.gov.scot/family-law/review-of-the-gender-recognition-act-2004/>

Intersex

13. We understand that intersex people may need to apply for a GRC in order to amend their sex, if it were incorrectly entered on their original birth certificate or if they themselves are transgender. Requiring a diagnosis of gender dysphoria in order to apply for a GRC may not work for intersex people if they have no dysphoria, rather a medical error was made during sex assignment. Removing the need for a diagnosis of gender dysphoria would make it easier for these intersex people to apply for a GRC and obtain a corrected birth certificate. We want to understand if there are further changes to the GRC application process that would help intersex people if they need to change their birth certificate. We have therefore asked a question specifically for intersex people. We also want to understand how wider Government policies affect intersex people, and how they can be supported by Government. To that end, we will also publish a separate intersex call for evidence later in the year.

Medical pathway for trans people

14. This consultation is only on the legal process of gender recognition. There is a separate pathway for accessing medical treatment such as hormone therapy and surgery for trans people who are seeking that medical support. This medical pathway is governed by separate guidelines and regulations, as set out by NHS England and your legal gender is not relevant in access to these services. This consultation does not propose any changes to these regulations, nor does it ask about any change to how a trans person might access medical treatment. It also does not ask about any change to the age at which young people can access medical treatment, which currently stands at 16 for hormone therapy on the NHS, and 18 for surgery on the NHS. The reference to removing the need for a diagnosis of gender dysphoria is only in terms of this being currently required in order to apply for a GRC. If, as a result of this consultation, the Government decides to change the legal gender recognition process, and to make it easier to obtain a GRC, that will not automatically entitle the holder to medical treatment. Medical treatment will continue to be at the discretion of medical professionals, on a case-by-case basis.

Conclusion

15. Consultation is a vital part of policy development. The Government will carefully consider all of the views expressed in response to this consultation and will publish a response that sets out how it intends to proceed.

16. The Government is keen for this consultation to be as broad, open and accessible as possible. To that end, the Government will be running a series of consultation events as part of this consultation process and we will be working with a wide variety of stakeholders to ensure that everyone has the chance to contribute their views in a respectful environment.

17. Finally, the Government wants this consultation to be open to all views and perspectives. We know that conversations around transgender equality can elicit a wide range of views. Everyone has a right for their voice to be heard and we will treat all responses with equal respect. The public debate in recent months

has been at times unkind or even discriminatory. We urge all those who engage with this issue and respond to this consultation to treat each other respectfully. Abuse or hurtful comments are not acceptable.

Introduction

1. The Government's view is clear: being trans is not a mental illness. It is a simple fact of everyday life and human diversity. Indeed, the World Health Organisation has revised the International Classification of Diseases, ICD 11, to ensure that 'Gender Incongruence' (another name for gender dysphoria) is no longer classed under 'Mental and Behavioural Disorders'.⁴
2. Many trans people will try to address the fact that their gender identity does not match the sex recorded on their birth certificate through a process called 'transitioning'. In legislation, most prominently the Equality Act, this process is called 'gender reassignment'. Broadly speaking, transitioning may include a variety of social, medical and/or legal changes, described further in the table below. Trans people may transition purely through social changes without any medical treatment. Not everyone has the same transitioning journey.

Aspects of transitioning	Description
Social	<p>The trans person makes changes to their social life and environment. For example, they may:</p> <ul style="list-style-type: none">• Begin to tell people about their gender identity, such as work colleagues;• Express their gender identity through changes in their clothing or hairstyle;• Ask to be referred to as 'he' or 'they' rather than 'she' or vice versa;• Start using toilets and other single-sex facilities that match their gender identity;• Use a different name;• Change their gender, title and name on documents such as credit cards, bank statements, utility bills, medical records and employment records.• Change their gender, title and name on government-issued forms of identification.

⁴ Though this does not reduce trans people's access to medical transition healthcare.

Medical	<p>The trans person undergoes medical treatment to alter one or more aspects of their sex characteristics so that they experience less incongruence with their gender identity. For example, they may:</p> <ul style="list-style-type: none"> • Have speech therapy to alter the sound of their voice; • Take hormones, such as testosterone or oestrogen; • Grow, or remove, face and/or body hair; • Undergo surgery on their face, breasts/chest, genitalia and/or other areas.
Legal	<p>The trans person seeks to get their acquired gender legally recognised.</p> <p>In the UK, this involves the process set out in the Gender Recognition Act 2004.</p> <p>Legal recognition has no bearing on access to medical treatment.</p>

3. Transitioning can be difficult. Sometimes other people, from work colleagues to parents, will not be accepting of the trans person's gender identity. This can lead to discrimination, harassment and hate crime. Sometimes it can be hard to access medical treatment because of length of the waiting lists or the cost, as not all treatments are funded. Some trans people have long term-health conditions which prevent them undergoing certain medical treatments. Sometimes the barriers to legal recognition are too difficult to navigate.
4. Where a trans person experiences discomfort or distress as a result of the mismatch between their sex characteristics and their gender identity, this is called gender dysphoria. Diagnosis of gender dysphoria is an important part of accessing NHS assistance with medical transition and is currently required in order to fully transition legally.
5. The UK has a robust set of legal protections that protect trans people and LGBT people more generally and advance equality for those groups. The Equality Act 2010 protects trans people from discrimination in a number of areas, including employment and the provision of services. Hate crime legislation covers sexual orientation and transgender identities. The Gender Recognition Act provides enhanced privacy protection to trans people who have acquired Gender Recognition Certificates.
6. Before the GRA was introduced, trans people could not receive legal recognition of their acquired gender. Whilst they might be living in their acquired gender with documents such as their passport amended, and recognised as such socially, legally they would still be considered as having the sex recorded at birth. This meant they could not, for example, marry in their acquired gender, have the right to retire and receive state pension at the age corresponding with their acquired gender, or provide a birth certificate for any purpose without identifying themselves as trans – which could lead to difficult or even dangerous situations.

7. This consultation focuses on the process by which trans people get their acquired gender legally recognised. In the UK, trans people aged 18 or over are able to get legal recognition of their acquired gender by following the process set out in the GRA. This process is known as an 'assessment' based process, as it currently requires the trans person to bring together evidence and submit it to a panel who will determine whether the evidence meets the criteria for recognition as set out in law.
8. Other countries adopt a 'treatment' model, whereby the trans person can only get legal recognition if they have had some form of medical treatment. This could be surgery, gender-affirming hormone therapy, or a mixture of these. In some countries it can include a demand that the trans person undergoes sterilisation, something that the UK does not approve of, and which has serious and upsetting consequences for trans people.
9. The final model of legal recognition is a 'non-assessment based' model. This essentially allows the trans person to fill out a form themselves that changes their gender identity and be recognised on that basis, though usually with some kind of statutory declaration to show the seriousness of the intent. This is a relatively new approach, and one that many trans people and LGBT groups have welcomed, and are keen to see the UK adopt.

How does the Gender Recognition Act work?

10. In short, the GRA sets out a list of criteria that a trans person has to meet in order for them to receive legal recognition of their gender identity, so long as that identity is man or woman. The trans person has to collate evidence that they meet those criteria and send it to a Gender Recognition Panel (GRP), a legal body made up of legal and medical members and administered by Her Majesty's Courts and Tribunal Service. The GRP assesses the evidence and determines whether the trans person meets the criteria. If the application is successful, then the trans person is issued with a GRC.

What evidence does a trans person need to provide?

11. The GRA process consists of three different application routes and each one has different evidential criteria.

Application route	What are the main qualifying criteria?
<p>Standard Track</p> <ul style="list-style-type: none"> - Used by around 95% of applicants 	<ul style="list-style-type: none"> - Applicant must be 18 or over. - A statutory declaration that the trans person intends to live permanently in their acquired gender until death. - Application fee of up to £140 - Two medical reports – confirming that the applicant has, or has had, gender dysphoria and including details of any treatment the applicant has had to modify their body, e.g. hormone treatment or surgery. - Evidence that the applicant has lived full time in their acquired gender for at least two years. This might include, for example, documentation displaying the individual’s name and gender marker. - If married, the spouse must issue a statutory declaration of consent.⁵ - The applicant cannot be in a civil partnership unless both they and their partner get legal recognition on the same day.
<p>Alternative Track</p> <ul style="list-style-type: none"> - Used by around 1% of applicants, as this is for people who have socially and medically transitioned a while ago. 	<p>This is the same as the standard track except:</p> <ul style="list-style-type: none"> - Only one medical report is needed – either confirming the applicant has, or has had, gender dysphoria or that they have had surgery for the purposes of modifying their sexual characteristics. - The applicant must be in a protected⁶ marriage or civil partnership on or before the date the application is made. - Evidence needs to show that the applicant has lived full time in their acquired gender for at least six years prior to 10 December 2014, and continues to do so.⁷ - The applicant must be ordinarily resident in England, Wales or Scotland.

⁵ This provision was introduced by the Marriage (Same Sex Couples) Act 2013. Prior to that applicants had to get a divorce or annulment, as same sex marriage was not covered by law.

⁶ A marriage or civil partnership is protected if it’s one of the following:

- registered under the law of England and Wales
- a marriage solemnised in Scotland
- a civil partnership registered in Scotland
- a marriage registered under the law of a country or territory outside the UK
- a marriage on UK consular premises or in an armed forces base, if you elected England, Wales or Scotland as the relevant part of the UK

⁷ 10 December 2014 is the date at which Section 12 of the Marriage (Same Sex Couples) Act 2013 came into force.

Overseas Track	- Applicant must be 18 or over. - Application fee of up to £140.
- Used by around 4% of applicants	- Evidence that the applicant has been legally recognised in their acquired gender by a country or territory listed in legislation. The list covers jurisdictions with similar gender recognition systems to the UK. ⁸

12. Once the trans person has chosen their application track and pulled together the required evidence, they submit the documents in writing to the GRP. The GRP will assess the evidence provided by looking at the documents. In almost all circumstances, the trans person will not appear before the panel in person. The GRP may ask follow-up questions in writing, perhaps requesting further evidence or documentation if they are not convinced that the requirements under the Act have been met. If an application is unsuccessful, reasons will be provided. If the application is successful, then the trans person will receive a Gender Recognition Certificate. If their birth was registered in the UK, they will also be sent a new birth certificate by the Registrar General.

13. Since 16th November 2017, the Government Equalities Office has had responsibility for the GRA. This followed a transfer from the Ministry of Justice.⁹ The Ministry of Justice retains responsibility for the GRP.

14. A full explanation of the gender recognition process is given at Annex D.

What does having a Gender Recognition Certificate mean?

15. Once a trans person has been issued with a GRC, then legally their gender becomes the acquired gender for all purposes save for a few exceptions listed in the GRA. A GRC also entitles an individual to a new birth certificate reflecting the acquired gender rather than the one that was recorded at birth.

16. Legal recognition has no bearing on access to medical treatment for the purposes of medical transition.

17. Most trans people will already have changed their name, any government-issued forms of identification they hold, their driving license, their work records and their bank details to reflect their acquired gender. Having a birth certificate that does not match these other documents can mean that the trans person is effectively 'outed' as trans whenever they need to provide their birth certificate for administrative purposes. It also means their National Insurance number is connected to their old gender, and they are down on the electoral register as their old gender. By changing their legal gender, and receiving a new birth certificate, trans people are able to ensure all their documentation matches, thus avoiding

⁸ See the Gender Recognition (Approved Countries and Territories Order 2011 at <http://www.legislation.gov.uk/ukxi/2011/1630/contents/made>. While it lists 41 countries, only some States in a country may offer gender recognition. If the jurisdiction is not listed, then the applicant must apply using the Standard Application Track.

⁹ See the Prime Minister's Written Ministerial Statement - <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-11-16/HCWS253/>

potentially awkward or confusing situations when accessing services, or even dangerous situations where they could face discrimination or harassment as a result of being 'outed' as trans.

18. GRCs also provide trans people with the dignity and respect that can come from having their acquired gender officially recognised by the state.
19. Currently, the process for changing your legal gender is broadly the same in England and Wales, Northern Ireland and Scotland. If an applicant changes their legal gender using the GRA then that gender will be recognised throughout the UK. This consultation concerns the system for England and Wales only.
20. There are some limitations to legal recognition. For example, if someone has children then their acquired gender will not affect their legal status as the father or mother of that child. So if someone gave birth to a child they would legally be the mother of that child even if at a later date they successfully applied for a GRC and became a male for legal purposes. Other limitations or exceptions are set out in the Gender Recognition Act (see Annex C for further details).
21. The GRC is not retrospective and does not re-write a person's gender history or affect the things that they did before it was issued, for example a criminal history or financial history of bankruptcy. It also does not prevent organisations that need to investigate these issues, such as those conducting criminal records checks, from being able to access these.
22. The GRA received Royal Assent in 2004 and its provisions came into force on 4th April 2005. Since then, 4,910 trans people have successfully applied for a GRC. Around 3,600 (73%) have been issued to those recorded male at birth and 1,300 (27%) to those recorded female at birth.¹⁰ In recent years these proportions have altered slightly, with the proportion issued to those recorded female at birth increasing and the proportion issued to those male at birth decreasing.

¹⁰ See the latest Tribunals and Gender Recognition Certificate Statistics Quarterly bulletin, published by the Ministry of Justice at <https://www.gov.uk/government/collections/tribunals-statistics>

Why does the Gender Recognition Act need updating?

23. Put simply, the case for change is as follows. Transgender individuals want legal recognition of their acquired gender and the dignity and respect that can come with it. They will often have already changed their name, and other documents, such as any Government-issued forms of identification that they hold to reflect their acquired gender. This therefore creates a difficult bureaucratic situation where their legal status and birth certificate do not match the rest of their documentation and their identity.
24. To resolve this, however, they have to go through the current gender recognition process that is set out in the GRA. Many trans people feel that this process is overly intrusive, humiliating and administratively burdensome. Further they argue that by requiring a diagnostic psychiatric report, the process perpetuates the outdated and false assumption that being trans is a mental illness. As part of the process, the trans person has to collect a range of personal documentation, including information about their medical history, finances and identity which they send to people who they do not meet who then make a decision about their gender identity. The fee of £140 and associated costs are seen as expensive and there is no right of appeal against the decision unless on a point of law.¹¹
25. Ultimately, trans people argue that the system is denying too many people access to the legal recognition that they want. It amounts to an additional burden that trans people have to face when they already face a series of other barriers to full participation in wider society and to achieving the respect that they deserve.
26. The Government is persuaded by these arguments. We want to make it easier for trans people to achieve legal recognition, and that is why we are consulting on the best way to achieve this.

Whilst many trans people want legal recognition, too few are able to get it

27. The Government believes that the number of people who have successfully applied for a GRC is lower than might be expected.
28. Since the provisions of the GRA came into force, 4,910 GRCs have been issued, at an average of around 300 a year.¹² This total is a lot lower than all the size estimates of the trans population that the Government is aware of. These estimates vary, and there is no truly robust estimate, but they are all larger than the number of individuals with a GRC.¹³ Annex E discusses various estimates of

¹¹ Appeals on a point of law can be made to the High Court or the Family Court. Appeals can be made if the individual believes that the panel has not followed the process set out in the Gender Recognition Act, for example by applying a different legal test or introducing new criteria. Individuals cannot appeal just because they do not agree with the panel's decision. There is only one English reported case on a point of law since the Act's provisions came into force in 2005, *Carpenter v Secretary of State for Justice*, but the appeal was dismissed.

¹² See the Tribunal and Gender Recognition Certificate Statistics Quarterly: July to September 2017, published by the Ministry of Justice - <https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-july-to-september-2017>

¹³ There are a number of reasons why there is no robust estimate of the size and composition of the trans population in the UK. Acquiring accurate measurements of small, dispersed populations is generally difficult and there is no standardised approach for collecting data on gender identity. Further, some individuals may be unwilling to disclose that they are trans because of privacy concerns and for some being trans is not a permanent gender identity. We also know that some trans individuals would prefer to identify solely as being of their acquired gender rather than trans at all.

the trans population size. This suggests that the population in the UK is somewhere between 200,000 and 500,000 people.

29. Of the trans respondents to the LGBT survey who were aware of the GRA process, but did not have a GRC, and had never applied for one, only 7% said they would not be interested in getting one. This suggests that there is interest in using the GRA system to obtain legal recognition.

Improving the Gender Recognition Act will help in advancing equality for trans people, who continue to face a whole range of societal barriers

30. The Government is aware that the problems that trans people face with achieving legal gender recognition are just one of many barriers that they come across when engaging with wider society. The LGBT survey bears this out. For example:

- Respondents to the survey rated their life satisfaction out of 10. The mean satisfaction score for all respondents to the survey was 6.5. The mean life satisfaction for trans men was 5.1, for trans women was 5.5 and for non-binary respondents was 5.5. When compared with ONS statistics using the same metrics, this is much lower than the average for the general population which has a mean of 7.7/10.¹⁴
- 37% of trans respondents had experienced verbal harassment, insults or other hurtful comments over the last 12 months because of their LGBT status from someone that they did not live with. Threats, physical violence and sexual violence were also reported.
- Many trans respondents who were in education in the last academic year reported a negative reaction at their educational institution because of being, or people thinking they were LGBT. Around 1 in 3 trans respondents in education said they experienced a negative reaction in the last year due to someone disclosing their LGBT status without their permission, and a similar proportion due to verbal harassment, insults and other hurtful comments. Around 1 in 10 said it was due to them being excluded from events or activities.
- 42% of trans respondents who had accessed or tried to access specialist services at gender identity clinics said they were 'not at all easy' to access, with most respondents (68%) encountering difficulty due to having to wait too long.
- 16% of trans respondents who had started or finished transitioning said that they had used or paid for healthcare services or medical treatment outside of the UK (e.g. cross-sex hormones or surgery). A further 50% had considered it.
- Around two thirds (66%) of trans respondents avoided expressing their gender identity for fear of a negative reaction from others. This was a particular problem at work, on public transport and when walking around

¹⁴ ONS (2017). Personal well-being in the UK: Oct 2015 to Sept 2016. Available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/wellbeing/bulletins/measuringnationalwellbeing/oct2015tosept2016>

on the streets.

31. Outside of the LGBT survey, the Government is aware of a series of other sobering statistics that highlight the continuing inequalities faced by trans people:

- There were 1,250 hate crimes against trans people recorded by the police in England and Wales in 2016-17, up 45% on the 858 in 2015-16. The 2015-16 figures in turn were an increase of 41% on the 607 in 2014-15.¹⁵ In part, these increases are likely to be due to improved police reporting and an increased willingness of victims to come forward.
- Stonewall found that two in five trans respondents to their survey had experienced a hate crime or incident because of their gender identity in the last 12 months and that one in four trans respondents had directly experienced transphobic abuse online in the last month.¹⁶
- A trans mental health survey found that just over half of trans respondents had self-harmed at some point in their life and 84% had considered ending their lives at some point, with half attempting to do so at least once.¹⁷
- Secondary school teachers consider trans students to be the least supported in school, with 7% saying that the school supports them.¹⁸

32. Amending the legal gender recognition process will not fix some of these other barriers, but it will help. The Government has also published a wider LGBT action plan that will address some of the continuing inequalities that LGBT people face. This action plan responded to the findings of the LGBT survey, not just for trans people but for LGBT people more generally.

Trans respondents to the LGBT survey were clear about the problems with the GRA process

33. In the LGBT survey, the Government asked trans respondents a series of questions about the GRA process. The survey represents the largest sample of trans people providing their thoughts about the legal recognition process to date, with around 6,900 respondents identifying as trans (excluding non-binary). The full analysis of the survey, including an analysis of responses to a final open text question where respondents could raise any issue they liked, is now available and the findings from the survey will be considered as part of the Government's response to this consultation.

34. We asked those trans men and trans women who were aware of the process but had not obtained or applied for a GRC why they had not applied.¹⁹ When asked why they had not applied:

¹⁵ See the Home Office's Hate Crime in England and Wales statistics at <https://www.gov.uk/government/statistics/hate-crime-england-and-wales-2016-to-2017>

¹⁶ See Stonewall's LGBT in Britain report at <http://www.stonewall.org.uk/comeoutforLGBT/lgbt-in-britain/hate-crime>

¹⁷ See the Trans Mental Health Study at https://www.scottishtrans.org/wp-content/uploads/2013/03/trans_mh_study.pdf

¹⁸ See the Equalities and Human Rights Commission's Triennial Review: 'How Fair is Britain' report on page 320 at https://www.equalityhumanrights.com/sites/default/files/how_fair_is_britain_-_complete_report.pdf

¹⁹ Around a fifth (19%) of trans respondents were not aware they could get legal recognition of their acquired gender via the GRC.

- 44% of respondents said that they did not satisfy the requirements;
- 38% said that the process was too bureaucratic;
- 34% said the process was too expensive;
- 19% said they could not get the help they needed to put a successful application together;
- 8% did not want to submit medical information; and,
- 8% found it difficult to access the medical information required.

Respondents could provide multiple reasons if appropriate, which is why these figures add up to more than 100%.

35. The discrepancy between the numbers with a certificate and what we know about the trans population is notable. It raises the question of whether the current system is presenting too great a barrier to legal gender recognition.

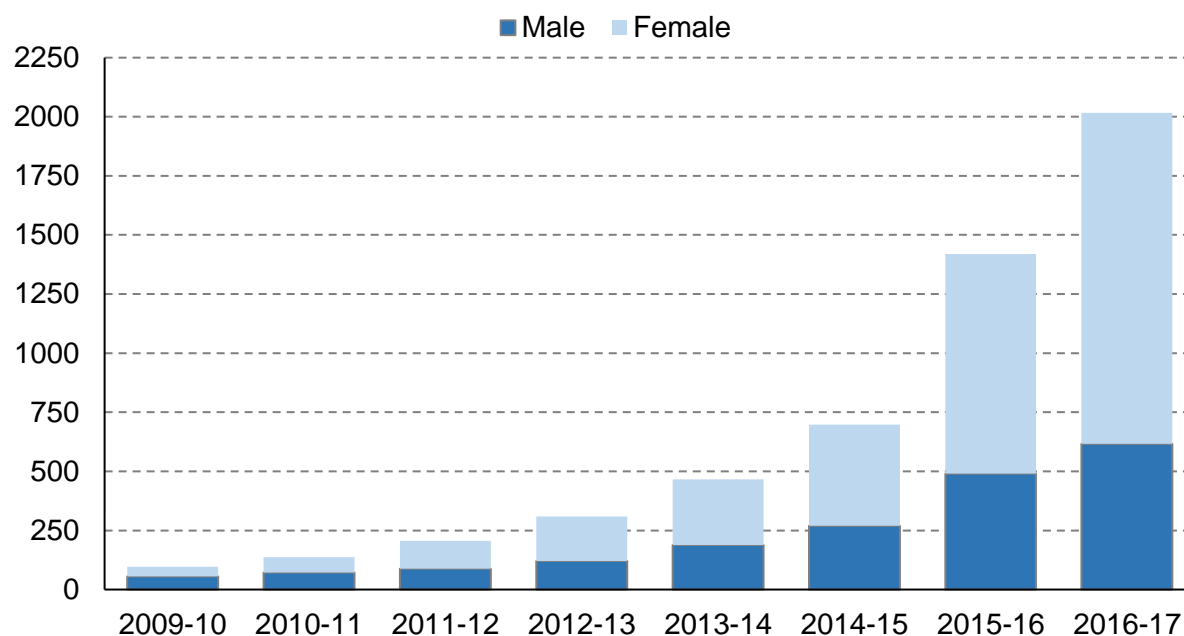
Increasing demand for Gender Identity Development Services

36. The Government is also aware that the demand for services such as Gender Identity Development Services is increasing. The number of under 18s referred to the Gender Identity Development Service has increased considerably since 2009.²⁰ The service is commissioned by NHS England and supports children and adolescents who are experiencing difficulties with their gender identity. In 2009-10 the service received 96 referrals but this had increased to 2,016 by 2016-17, as Figure 1 shows. We do not know for sure what is driving this increase. It may be because more people are feeling able to publicly disclose that they are trans and seek support from the NHS. For the adult services, we know, for example, that there has been a 20% - 40% year on year increase in referrals for some services.²¹

²⁰ See: <https://tavistockandportman.nhs.uk/documents/408/gids-service-statistics.pdf>

²¹ https://www.whatdotheyknow.com/request/waiting_times_for_charing_cross

Figure 1: Number of referrals for under 18s to the Gender Identity Development Service, by gender recorded at birth



The Women and Equalities Select Committee

37. The LGBT survey findings accord with the findings of the Women and Equalities Select Committee (WESC) who produced the first ever Select Committee report into transgender equality in January 2016.²² Witnesses to the WESC described the GRA application process as ‘bureaucratic’, ‘expensive’ and ‘humiliating.’
38. In particular, witnesses to the WESC criticised the medicalised aspects of the process. Concern was expressed about the need for a diagnosis of gender dysphoria. It was argued that this ‘pathologises’ transgender identities, which can cause distress and is an inappropriate way of approaching gender identity, implying that it is a mental illness. Concern was also raised about the requirement for a second medical report that covers any treatment that the applicant has undergone, for example cross-sex hormone treatment or surgery. Witnesses reported experiences of being asked intrusive questions in writing by the GRP about their sexual and surgical history, which was deemed unnecessary, demeaning and distressing.
39. Respondents to the WESC inquiry also made more general points about the appropriateness of a panel of people, who the applicant for legal recognition does not meet, making decisions about an individual’s internal sense of gender. It was argued that this is a matter for the individual and that it should not be decided by someone else, especially if it is at the applicant’s own expense.
40. The WESC also investigated some other elements of the process – namely the minimum age limit, the prohibition on disclosure of information in the GRA and the need for spousal consent before a full GRC can be granted to an applicant

²² See <https://www.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/inquiries/parliament-2015/transgender-equality/>

who is married.

41. When considered together, this evidence demonstrates that the GRA is a public service that is not working for its users. The current system is preventing too many trans people from acquiring legal recognition of who they are, and thereby denying them the dignity and respect that comes with it. The Government recognises that being trans is not a choice. As such, there should not be unnecessary barriers put in the way of trans people from being able to live full, happy lives, just as we do not want unnecessary barriers put in the way of any other citizen.

International Approaches

42. Earlier we described the different 'models' of legal gender recognition. Recently, countries are moving towards a non-assessment based model. Countries that have adopted this kind of model include Norway, Denmark, Malta, Colombia, Argentina, and the Republic of Ireland. Certain Canadian and America states, like Quebec and Oregon, have also moved this way.

43. The Republic of Ireland implemented this kind of system in 2015. A person whose birth or adoption was registered there, or who is ordinarily resident there, can have their preferred gender as a man or woman recognised and consequently change their legal sex. They must submit an application form incorporating a statutory declaration to the Department of Social Protection, declaring that they:

- have a settled and solemn intention of living in the preferred gender for the rest of their life;
- understand the consequences of the application; and
- make the application of their own free will.

44. The statutory declaration must be witnessed by a person authorised to take statutory declarations in the Republic of Ireland, such as a notary public or commissioner for oaths.

45. Denmark has a slight variation on this arrangement. A Danish transgender person may change their sex as recorded in the Danish Central Persons' Register on the basis of their written statement of 'a sense of belonging to the other sex'. This statement does not require any additional witnessing or other authentication. However, their new legal sex is not recognised until they have re-confirmed their application after a reflection period of six months.

46. Other countries and territories have an assessment based model, but one that does not require a medical diagnosis. France and Germany are examples, as is British Columbia.

47. From 2014, British Columbia allowed a person whose birth was registered there to submit an application to the Vital Statistics Agency. The applicant can request a change in their birth certificate from female to male or male to female. The applicant must submit:

- an application form containing a personal statement that they have assumed, identify with and intend to maintain the gender identity corresponding with

their requested change; and

- a statement from a doctor or psychologist confirming the applicant's gender identity.

48. The Scottish Government has already consulted on reforming the Gender Recognition Act, and the Government wishes to now consult on how reform might also be made to the GRA 2004 in England and Wales.

The Gender Recognition Act 2004: Questions on reform

49. The Government wants to make it less intrusive and bureaucratic for trans people to achieve legal recognition of their gender. This section of the consultation discusses our proposals in more detail.

50. In helping to determine what action we should take, we are interested in hearing more from trans people about their general experience of the GRA process. The LGBT survey provided useful quantitative information on the reasons why people who might want to apply had not applied. The survey did not, however, go into detail. Nor did it provide us with much information on what having a GRC means or might mean to a trans person. We are therefore asking the following two questions.

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?

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

Yes

No

Awaiting Decision

Information provided in response to this question 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 but these will be fully anonymised.

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 this question 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 but these will be fully anonymised.

The Evidence Requirements for Legal Gender Recognition

51. In this section of the consultation we consider the following evidential requirements for legal recognition:

- The need to provide medical reports evidencing gender dysphoria and/or treatment;
- The need to collect documentation that proves the trans person has been living for at least two years in their acquired gender; and
- The need to provide a statutory declaration of the trans person's intention to live in their acquired gender until death.

Having to provide medical evidence

52. The vast majority of GRA applications (over 95%) use the 'standard' application track. This requires the applicant to provide two medical reports.

53. The first report must demonstrate that the applicant has, or has had, gender dysphoria.²³ This must be provided by a registered medical practitioner or registered psychologist practicing in the field of gender dysphoria. There are 96 such practitioners in the UK.²⁴ The second report must outline any treatment that the applicant has undergone or is planned for the purpose of modifying their sex characteristics. This must also come from a registered medical practitioner, but the practitioner does not have to practice in the field of gender dysphoria.

54. Many trans people have expressed the view that the need for a diagnosis of gender dysphoria is demeaning and paints the identity of the applicant as a mental health issue. Instead of an individual being able to confirm their own gender identity, they have to rely on the medical profession for their gender identity to be legally recognised.

55. Some trans people also consider the GRP to be intrusive if they seek further information about the history of medical treatment and the diagnosis, especially if the applicant has to explain why no treatment to modify sexual characteristics has taken place. This can be considered distressing and unnecessary. It is also claimed that having to source reports from different medical professionals can be burdensome and expensive.

56. It has also been argued that the current arrangements exclude individuals who want to be legally recognised but who do not experience gender dysphoria as it is medically defined – i.e. they don't experience discomfort or distress. Some stakeholders have suggested to us that this specifically affects intersex individuals with whose sex was incorrectly assigned at birth.

²³ The panel will also accept a diagnosis of gender identity disorder or transsexualism, both of which are terms that pre-date the use of gender dysphoria.

²⁴ A list is held on the Gender Recognition Panel's website.

57. It should be noted that there is no suggestion of removing the need for a diagnosis of gender dysphoria from the medical treatment pathway for trans people. This consultation refers only to the legal recognition process.

58. Removing these evidential requirements would mean removing the need for a medical report – be that in relation to gender dysphoria or any treatment received. Even though legal recognition has, and will continue to have, no bearing on access to medical treatment this would also completely decouple the medical transition process from the legal transition process. The Government wants to understand views on this.

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.

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.

Evidence of living in acquired gender

59. GRC applicants on the 'standard' application track must also prove that they have lived full time in their acquired gender for at least two years before the date of their application. For evidence, the GRP asks to see a selection of documents covering the two-year time period. These documents are listed in guidance, not in law. They might include driving licences, passports, letters from banks or other financial institutions, utility bills, or academic certificates.

60. It is argued by some people that two years is too long a time-period to prove commitment to living in the acquired gender, particularly as an individual only has to live in their acquired gender for at least one year before they are eligible for gender reassignment surgery as part of medical transition. The two-year period is also considered arbitrary.

61. The requirement can be particularly difficult for young people to meet because they may not have the necessary documentation when they turn 18. Of the trans and non-binary respondents to the National LGBT survey, around 35% said they began transitioning before the age of 18 (and for trans men, 53% started transitioning before they were 18). A further 32% of all trans and non-binary

respondents began transitioning between the ages of 18 and 24. Acquiring the necessary documentation can be even harder if the trans person was not supported by their parents or carers when they told them they were trans. More generally, the Government is aware of concerns about acquiring some of the documentation required in the acquired gender and in the new name.

62. We know that 38% of trans respondents to the LGBT survey who were aware of the GRC process but did not have one and had never applied for one felt that the process was too bureaucratic. It is alleged that having to collect six or seven items of evidence (and liaise with the relevant organisation or authority to change the gender marker on them) is burdensome. The information provided can also be sensitive (e.g. bank statements, tax information, letters from GPs) and if the GRP asks follow-up questions this can feel unduly intrusive.
63. Removing the two year lived experience requirement would reduce the burden placed on trans people. It would prevent them from having to collect evidence at time and personal expense. It would mean they do not have to submit that evidence to a panel that they do not meet. For young people, it would also make it easier for them to achieve legal recognition as they start their adult life at 18.
64. Reducing, rather than removing, the two-year time period would reduce the time it can take for trans people to legally transition.
65. Reducing or removing the two year requirement could make it easier for trans people to more quickly become accepted in society.
66. If the two year lived experience requirement were to be removed, we would be interested in hearing whether a period of reflection should be built into the process. Other countries, such as Denmark and Belgium, have such a period. It would mean that the trans person has to wait for a set amount of time, such as six months, between submitting their application and being awarded a GRC. The rationale would be to provide time for the trans person to consider the implications and magnitude of their decision. It is also intended to reduce the risk that the trans person changes their mind.

Question 5

Under the current gender recognition system, an applicant has to provide evidence to show that they have lived in their acquired gender for at least two years.

(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.

(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?

Having to provide a statutory declaration

67. GRC applicants on the 'standard' and 'alternative' application tracks must submit a statutory declaration as part of their application. The declaration must state their intention to live permanently in their acquired gender until death.

68. Statutory declarations must be signed before a person authorised to administer oaths under law, such as a practicing solicitor, a magistrate or a commissioner for oaths.

69. It is a legal requirement that statutory declarations contain the following wording:

"I (name) do solemnly and sincerely declare, that/as follows... .. and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act 1835."

70. It is a criminal offence knowingly and wilfully to make a false statutory declaration.²⁵ The offence is punishable by up to two years imprisonment, an unlimited fine or both.

71. The Government is interested in views about whether some form of statutory declaration should be required for GRC applicants as a minimum, regardless of what other changes are made to the process. Having a statutory declaration would reflect the important legal consequences of gender recognition. It provides

²⁵ See Section 5 of the Perjury Act 1911.

a level of certification that the application is genuine and it acts as a safeguard with legal penalties if the system is abused.

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.

(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

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

Marriage and Civil Partnership

72. In this section, we consider the requirement that married trans applicants must have the consent of their spouse in order to make a successful application. The Government is keen to use the consultation as a way of gathering evidence on this requirement.
73. Prior to the Marriage (Same Sex Couples) Act 2013, married trans people who wanted legal recognition needed to divorce or annul their marriage before applying. At that time, it was not possible for same-sex couples to be married and a consequence of legal recognition would be to change the relationship from an opposite-sex one to a same-sex one.
74. Following the introduction of same sex marriage, it became possible for marriages to continue after one party to the marriage got a GRC. The same sex marriage legislation removed the requirement that married applicants must divorce or annul their marriage and replaced it with a requirement that the non-trans spouse must consent, via a statutory declaration, to the marriage continuing after the date of legal recognition.²⁶ This applies whether the marriage was originally between a man and a woman, or a same sex couple.
75. If the spouse does not consent, then the GRP will award an 'interim' GRC to the trans applicant, provided the other conditions (a diagnosis of gender dysphoria and so on) are met. The interim GRC can be used by the applicant or their spouse as grounds to annul the marriage. Once the marriage is ended then a full GRC will be issued. The interim GRC has no legal significance beyond enabling the marriage to be annulled and does not constitute legal recognition of an acquired gender.
76. Since the GRA came into force there have been 196 interim certificates issued in total, of which 130 have been converted to a full GRC, a 66% conversion rate²⁷.
77. The position for civil partnerships is different. Civil partnerships are open to same-sex couples only. Applicants for a GRC who are in a civil partnership must end that partnership (or convert it to a marriage) in order to be successful. It is possible, however, for the civil partnership to continue if both civil partners are granted a GRC at the same time. In such cases, both individuals must be granted their GRCs on the same day and they would both need to meet the other criteria. If an applicant and their civil partner decide to convert their civil partnership into a marriage, then the applicant would need to follow the process for married applicants.
78. The Government is aware of a range of concerns about the need for spousal consent and that amongst many trans people this provision is a particular cause

²⁶ These provisions do not apply to Northern Ireland as same-sex couples cannot marry there. The position in Northern Ireland is the same as it was in England and Wales prior to the Marriage (Same Sex Couples) Act 2013 – applicants are not allowed to be married if they want a GRC and must divorce before making an application.

²⁷ <https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificates-statistics-quarterly-january-to-march-2018>

for concern. Based on responses to the LGBT survey, the Government's pre-consultation engagement with stakeholders, and responses to the WESC inquiry on transgender equality, we understand the primary concerns to be:

- Requiring spousal consent extends the ability to make decisions over a trans person's gender identity to someone else, beyond the power given to the GRP;
- If spousal consent is not forthcoming, this can substantially delay the legal gender recognition process whilst the dissolution of the marriage takes place. This can be particularly time-consuming if the dissolution is difficult, perhaps because it involves complicated financial or child contact arrangements. Complicated dissolution arrangements can also be costly;
- Withholding consent might potentially be used by an abusive spouse to perpetrate domestic abuse. It can give the spouse an additional means of control; and
- Spousal consent may not be possible, for example if the spouse cannot be contacted or lacks mental capacity.

79. On the other hand, it could be argued that as marriage is an agreement between two individuals, it is appropriate that both spouses should have an equal say in the future of that contract in the event of a fundamental change like a change in the gender of one of the parties to it. This was the principal rationale behind introducing the spousal consent provisions in the same-sex marriage legislation. It could be argued that this could be achieved with a requirement to inform your spouse if you apply for a GRC, rather than a requirement to gain their consent.

80. The Government is keen to use the consultation as a way of gathering evidence about the spousal consent provisions, with a view to amending them in line with the overarching intention of streamlining the legal gender recognition process.

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?

The Cost of Legal Gender Recognition

81. In this section we consider the cost of acquiring legal recognition. The Government is considering reducing the costs of recognition as part of streamlining the GRA process.
82. The GRA requires applicants for a GRC to pay an application fee. The standard fee is £140, though this can be reduced via a remission scheme if the applicant has a low income and capital. This fee has not changed since the GRA came into force in 2005.
83. The Government is also aware that applicants can face additional costs in sourcing the medical reports that are needed as part of the GRA process. The NHS has a standard recommended charge of £80 for producing these reports but we do not know the size of these costs in practice or how often they are charged. Trans people have also reported costs in getting a witness for the statutory declaration.
84. Just over a third of trans respondents to the LGBT survey who did not have a GRC but who knew about the process said that one of the reasons they had not applied was that the process was too expensive. More generally, we know that many trans people argue that it is wrong to charge for legal recognition as a matter of principle. We are aware of instances where GRC applications have not been processed because someone has refused to pay the fee.
85. We are also aware of the argument that applying for a fee remission can be burdensome. It involves the completion of a form. In the past it has involved producing a number of documents to prove your level of income and/or savings, such as bank statements, payslips and tax returns. Transgender people argue that this is an additional burden above and beyond the others described in this consultation document.
86. The complaints reflect wider concerns about the courts and tribunals fee remission scheme, which applies to most of HMCTS's fee charging jurisdictions. To address these and similar concerns, HMCTS has introduced some reforms. For example, in October 2015, the scheme was relaunched as Help with Fees, which included:
- A revised, simpler version of the guidance (Form EX 160A) and a simplified application form.
 - A simplified procedure under which applicants no longer routinely need to provide evidence of income; and
 - The introduction of a digital link to the Department for Work and Pensions with an eligibility calculator to help court staff determine quickly the fee remission to which the applicant is entitled.
87. Furthermore, in July 2016, HMCTS introduced a facility allowing applicants to apply for Help with Fees online.
88. In determining whether we should reduce the cost of applying for legal gender recognition, and if so, how best to do this, we will need to consider a number of factors. The normal rule, set out in *Managing Public Money*, is that fees to access

public services should be set at a level designed to recover the full costs, but no more, of those services. However, under the current fee regime, fee income from proceedings before the Panel are well below full cost recovery level. It is also normal for Government to charge for services, such as the production of a passport or renewing a driving licence. Other countries regularly charge for legal recognition; the Republic of Ireland for example operates a 'non-assessment based' model and charges 20 Euro to apply. Further, it could be argued that charging a fee acts as a disincentive against malicious or frivolous applications.

89. On the other hand, the costs of running a legal recognition process in England and Wales may be lower in the future, if the medical evidence requirements are removed and the remaining elements are streamlined. This raises the question over whether users should continue to contribute towards the cost of that process and, if so, what the appropriate fee should be. Furthermore, the Government recognises that many trans people feel that the current costs act as a sufficient barrier to genuine applications.

90. At this stage we want to use this consultation to gather evidence on the costs and affordability of the process as it currently stands, in order to inform our decision making. This includes the application fee and wider costs, such as for sourcing medical reports or getting a statutory declaration.

Question 8

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

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

Yes

No

(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?

Privacy and Disclosure of Information

91. In this part of the consultation we look at a specific section of the GRA that protects the privacy of trans people who have applied for a GRC. The Government is keen to understand more about how these protections are working so that we can be sure that the GRA is working properly for trans people.

92. Section 22 of the GRA is intended to protect the privacy of people who have a GRC or who have applied for one. It is an offence, punishable by a fine of up to £5,000, for a person who has acquired 'protected information' in an official capacity to disclose it. 'Protected information' is described in the Act. It is information about a person who has applied for a GRC which concerns that application or the applicant's gender before the application. The GRA lists some circumstances where disclosure of protected information does not constitute an offence. These are circumstances where:

- The person to whom the information relates cannot be identified;
- The person has agreed to the disclosure of the information;
- The information concerns the person's gender before it became the acquired gender and the individual who discloses that information does not know or believe that a full GRC has been issued;
- A court or tribunal orders the disclosure or the disclosure is made for the purposes of court proceedings;
- The disclosure is for the purpose of preventing or investigating crime;
- The disclosure is made to the Registrar General for England and Wales, Scotland or Northern Ireland;
- The disclosure is made for the purposes of the social security system or a pension scheme; or
- The disclosure is in accordance with any other legislation, such as the Companies Act 2006.

93. After the GRA was introduced, secondary legislation was made setting out a number of additional circumstances where disclosure does not constitute an offence.²⁸ The additional circumstances are:

- The disclosure is for the purposes of obtaining legal advice;
- The disclosure is in relation to certain purposes of organised religion, such as determining whether or not to officiate at a marriage or to appoint an individual as a minister of religion;
- The disclosure is for medical purposes to a health professional, and the person making the disclosure reasonably believes the subject has given consent or cannot give consent;
- The disclosure is made by or on behalf of a credit reference agency where certain conditions are met; and,

²⁸ See the Gender Recognition (Disclosure of Information) (England, Wales and Northern Ireland) (No. 2) Order 2005. A separate but similar order exists for Scotland.

- The disclosure is for purposes in relation to insolvency or bankruptcy.
94. The disclosure provisions were explored by the WESC in their 2015 inquiry into transgender equality. They found particular concern amongst trans people about the exceptions covering court proceedings, with evidence from Gender Identity Research and Education Society (GIREs) suggesting that trans people are often 'outed' in court in an inappropriate way. They also found evidence that organisations may be overly and unnecessarily cautious as a result of the provisions and therefore may not record data on their systems about trans people for equality monitoring purposes.
95. Another major focus of the Committee was on the absence of prosecutions for a breach of Section 22. The Government is not aware of any prosecutions since the GRA came into force. As prohibited disclosure constitutes a summary offence (triable in the magistrates' court), prosecution is governed by Section 127 of the Magistrates' Court Act 1980, which states that the information for a prosecution (in this case of unlawful disclosure) must be laid before the court within six months of the offence having been committed. Evidence to the Committee suggested that this six-month period was too short. It could mean, for example, that someone who finds out five months after the disclosure that the disclosure has taken place would only have a month left before a prosecution could be brought. On the other hand, a lack of prosecutions could mean that public servants and others acting in an official capacity are aware of and abiding by the provisions in the Act. Other reasons might include trans people not reporting disclosures to the police or the police not investigating.
96. A separate concern that the Government is aware of with respect to Section 22 concerns the definition of a 'health professional' for the purposes of the provision allowing disclosure to such a person. It is argued that by not including clinical psychologists, this section has not kept pace with the role psychologists play in interacting with trans people.
97. We also have anecdotal evidence that potential job applicants with a GRC are having difficulty in applying for positions, as Section 22 creates an apparent hurdle for individuals to prove their career history and qualifications. We would be grateful for insight into how the needs of the individual to protect their gender history can be balanced against the needs of an employer – in order to check their qualifications, ability to practice, etc.
98. The Government wants the protections in the GRA to work effectively for trans people. We are keen to use this consultation to collect more evidence on how Section 22 of the GRA has been working.

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?

Impact of the current process on those with Protected Characteristics

99. The Equality Act 2010 legally protects people from discrimination in the workplace and in wider society. It replaced previous anti-discrimination laws with a single Act, making the law easier to understand and strengthening protections in some situations. It sets out the different ways in which it is unlawful to treat someone. This consultation does not ask about making any changes to the Equality Act 2010.

100. The Act sets out what characteristics are protected in law. These are:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

101. The Equality Act 2010 defines each of these categories as follows:

Age: A person belonging to a particular age (for example 52 year olds) or range of ages (for example 18 to 30 year olds).

Disability: A person has a disability if she or he has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities.

Gender Reassignment: A person has the protected characteristic of gender reassignment if that person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.

Marriage and civil partnership: A person who is married or is a civil partner.

Pregnancy and maternity: Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth, and is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, and this includes treating a woman unfavourably because she is breastfeeding.

Race: Refers to the protected characteristic of race. It refers to a group of people defined by their race, colour, and nationality (including citizenship) ethnic or national origins.

Religion and belief: Religion refers to any religion, including a lack of religion. Belief refers to any religious or philosophical belief and includes a lack of belief. Generally, a belief should affect your life choices or the way you live for it to be included in the definition.

Sex: A man or a woman.

Sexual Orientation: Whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes.

102. The Government wants to understand how the current process of applying for a GRC affects those who have a protected characteristic. If you fall underneath the category of one or more of the protected characteristics set out above, and have considered, or are considering applying for a GRC, or if you have previously applied, or are in the process of applying for a GRC, please let us know more about your experience.

103. Please also let us know your views on how the current process of applying for a GRC affects those who have a protected characteristic. You do not necessarily need to have this protected characteristic to give us your view. For example, you may be a charity who works with BAME trans people, and wish to tell us about how that protected characteristic of race affects those trans people's applications for a GRC, or whether they want to use the current applications process.

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?

Gender Recognition: Wider Considerations

104. As we consult on amendments to the GRA, we are mindful of how changing the requirements for a GRC might impact on other areas of law and public services. We want to understand more about these relationships as part of the policy development process.
105. In particular, we are interested in the relationship between the GRA and the Equality Act 2010. Below, we set out our current view on what the changes might mean as well as making the Government's intention clear that we do not plan to amend the Equality Act.

Gender Recognition and the Equality Act 2010

Background

106. The Equality Act 2010 makes it unlawful to discriminate against an individual because of 'gender reassignment', for example in employment or the provision of public services. A person has the protected characteristic of gender reassignment if they are proposing to undergo, are undergoing or have undergone a process (or part of a process) for the purpose of reassigning their sex by changing physiological or other attributes of sex.²⁹ An individual who applies for or gains a GRC has the protected characteristic of gender reassignment but the protection goes wider than just GRC holders.
107. Discrimination because of gender reassignment also includes treating an individual less favourably because of a mistaken belief that the person is proposing to undergo, is undergoing or has undergone the process of reassigning their gender. The Equality Act 2010 serves as an important protection for the rights of trans people in the UK and the Government has no intention of watering these protections down.
108. The prohibition on discrimination is not absolute, however. The Act outlines a number of limited circumstances where what might otherwise be discrimination against individuals with the protected characteristic of 'gender reassignment' is permitted. These exceptions are described fully in Annex C to this consultation but are outlined below as well.
109. Organisations may choose to make use of the exceptions in the Equality Act, but if they are used they must be applied lawfully. Many of the exceptions are qualified. For example, the Equality Act allows providers to offer single-sex services that exclude trans people so long as it is proportionate to do so and it achieves a legitimate aim. An example of a single-sex service might be a domestic violence refuge for women. The Government is aware of many refuge services that are fully trans inclusive, and allow trans women entry, but is also

²⁹ See Section 7 of the Equality Act 2010 at <http://www.legislation.gov.uk/ukpga/2010/15/section/7>

equally aware of services that may, in some circumstances, choose to exclude trans women and instead refer them on to a different service – this is lawful provided it is adequately justified.

The Government's position

110. The Government does not intend to make any amendments to the existing exceptions in the Equality Act 2010 associated with the 'gender reassignment' protected characteristic. However, the Government recognises that concerns have been raised about the potential implications of reforming the GRA on the operation of these. As such, the Government is keen to collect evidence and opinion from all voices about the potential implications of GRA reform on the Equality Act in order to inform its decision making. In particular, the Government is interested on what having a GRC might mean for the exceptions in the Equality Act. We cover each of the exceptions separately below.

Sport

111. The Equality Act permits restrictions on the participation of trans people in some sporting competitions if necessary to uphold fair competition or the safety of competitors.³⁰ This exception only applies to sports or other competitive activities where the physical strength, stamina or physique of average people of one sex would put them at a disadvantage compared with average people of the other sex. Many national sporting bodies provide guidance on how to include transgender participants in competitive sport.³¹

112. The Sports Council's Equality Group is in the process of updating its existing trans guidance and Sport England will be providing additional guidance on trans participation in sport specifically to support leisure and sport providers and facility designers to help empower trans people to make decisions about how and where they participate in sport and physical activity.

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.

³⁰ <https://www.legislation.gov.uk/ukpga/2010/15/section/195>

³¹ See, for example, the guidance from the Sport's Council's Equality Group <http://equalityinsport.org/publications/>

Single and separate sex services

113. The Equality Act enables service providers to offer separate or differing services to males and females, or to one sex only, subject to certain criteria. These services can treat people with the protected characteristic of gender reassignment differently, or exclude them completely, but only where the action taken is a proportionate means of achieving a legitimate aim.³²
114. As an example, refusing a transwoman with or without a GRC access to a female toilet³³ in a pub is likely to be unlawful³⁴, but a female only domestic violence refuge may provide a separate service to a trans woman only if it can be shown there is a detriment to other service users from including the trans woman as part of the regular service.
115. The Government is aware that, following the announcement of this consultation, there has been a lot of comment and discussion about the potential impacts of reforming the GRA on the single-sex service exception in the Equality Act.
116. We want to be absolutely clear – we are not proposing to amend the existing equality exceptions relating to single- and separate- sex services in the Equality Act. It will still be possible to exclude individuals with the protected characteristic of gender reassignment from single or separate sex services where doing so is a proportionate means of meeting a legitimate aim. The fact a trans person has legal gender recognition will form part of a service provider’s decision as to whether to provide a different, or even no service to a trans person, but having a GRC is not a complete answer.
117. Trans people with a GRC can still be excluded from single sex services, or provided with a different service if it is proportionate to do so on the facts of the individual case. Although reliance on this exception should be rare, it is most likely to be needed in particularly difficult and understandably sensitive areas, such as the provision of women’s domestic violence refuges. Whether it is proportionate to exclude a trans person would have to be judged by the service provider on a case by case basis, considering the trans person’s needs and the impact on other service users. Refuges will continue to make sensible risk-assessments of potential service users. Such assessments are required of all users, whether or not they are trans: for example the refuge might want to prevent an abusive lesbian from entering when her abused female partner is inside, or it may exclude a woman with a history of violence and instability.

³² <https://www.legislation.gov.uk/ukpga/2010/15/notes/division/3/16/20/7>

³³ There are a range of serious criminal offences that can be charged against anyone of any gender who sexually harasses, threatens, attempts to assault or voyeuristically observes or records anyone else of any gender in a toilet.

³⁴ <http://www.lawcentres.org.uk/policy/news/news/kirklees-law-centre-wins-landmark-transgender-discrimination-case>

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.

(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?

Yes

No

Occupational requirements

118. The Equality Act allows employers to impose a requirement that a job can only be open to people who do not have the protected characteristic of gender reassignment, where this is crucial to the post and a proportionate means of achieving a legitimate aim. For example, a hospital might determine that a midwife may need to be female and not a trans woman.³⁵

119. The Government's view is that this provision would not be undermined by amendments to the legal recognition process set out in the GRA. Having a GRC will be a factor that employers consider when determining whether imposing an occupational requirement is a proportionate means of achieving a legitimate aim, but it is not the only factor.

³⁵ <https://www.legislation.gov.uk/ukpga/2010/15/schedule/9/part/1/crossheading/general>

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.

Communal accommodation

120. Communal accommodation is defined as residential accommodation that includes shared sleeping accommodation which should only be used by members of one sex for privacy reasons. The Equality Act allows communal accommodation, such as dormitories, to be provided for one sex only and for trans people to be provided with separate accommodation or not to be admitted, where this is a proportionate means of achieving a legitimate aim.³⁶

121. The Government's view is that this provision would not be undermined by amendments to the legal recognition process set out in the GRA. Having a GRC will be a factor that organisations or accommodation providers will consider when offering communal accommodation, but it is not the only factor.

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.

Armed forces

122. When it comes to ensuring the combat effectiveness of the armed forces, the Equality Act permits discrimination on the basis of gender reassignment (as well as age, sex and disability).³⁷ Whilst that is the case in law, all branches of the UK Armed Forces permit transgender military personnel to serve. The Government does not, therefore, believe that amending the GRA would have any impact on this exception. Furthermore, determining whether or not to use it must be based on 'combat effectiveness', to which having a GRC has no relevance.

³⁶ <https://www.legislation.gov.uk/ukpga/2010/15/notes/division/3/16/40/3>

³⁷ <https://www.legislation.gov.uk/ukpga/2010/15/schedule/3/part/1/crossheading/armed-forces>

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.

Marriage

123. The Equality Act permits those who authorise or solemnise marriages according to religious rites to refuse to marry a person they reasonably believe to have obtained legal recognition of their gender under the GRA.³⁸ This exception specifically mentions the GRA, rather than referring to the broader category of 'gender reassignment.' Should the changes to the GRA result in more trans people having their gender legally recognised then this exception may see greater use.

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.

Insurance

124. Where employers provide annuities, life insurance policies, accident insurance policies or any 'similar matter involving the assessment of risk', the Equality Act allows the employer in certain circumstances to provide for different premiums for transgender people (and women and men; people who are or are not married or in a civil partnership; and on grounds of pregnancy or maternity) in their insurance products so far as it is reasonable to do so in light of actuarial or other reliable data.³⁹ The Government is not aware of any employer insurance policies that specifically differ for individuals with the gender reassignment protected characteristic, so we do not think that amending the GRC would have any practical bearing on the operation of this exception.

³⁸ <https://www.legislation.gov.uk/ukpga/2010/15/schedule/3/part/6>

³⁹ See paragraph 20 of Schedule 9 to the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15/schedule/9>. When the Equality Act 2010 was first introduced this exception applied to all insurance products. That changed following the decision in *Test-Achats v Council of Ministers* in 2011.

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.

Gender Recognition and other Public Services

125. Aside from the Equality Act, we recognise that there are specific pieces of legislation or particular public services that treat males and females differently. Updating the GRA will make it easier for trans people to achieve legal recognition of their acquired gender. We want to know what impact this might have, including any financial implications.
126. Public services where males and females are treated differently include:
- Single sex prisons, schools and high-security hospitals;
 - Sex-specific awards and bursaries;
 - Faith buildings or organisations;
 - Single sex gym, sports and swimming sessions;
 - The commissioning of domestic violence support services;
 - Sex specific medical screening services;
 - Toilets and changing rooms; and,
 - Different benefit, pension and leave (maternity/paternity) entitlements for men and women in law.
127. Most of these are allowed by exceptions in the Equality Act. In providing these services the Government often produces guidance on how trans individuals seeking to access the services should be considered.
128. For example, Her Majesty's Prisons and Probation Service has detailed policies on how to manage trans offenders, whether to place them in a male or female prison, access to treatment whilst in prison and so forth. While having a GRC is a factor in these decisions, a managed process also takes into account 'lived experience' and the view of the prisoner alongside individualised risk assessment, which forms the core of the decision-making process. There is provision within existing regulations to place a woman (including those who have legally transitioned) within the male prison estate. If the risk to other prisoners and/or staff is assessed as exceptionally high, then she can be held as a female in the male estate. It is also important to note that the women's estate has protocols for safely managing many non-trans women who have convictions for violence against women, including murder and sexual assault.
129. The Government is keen to collect evidence on the potential implications of amending the legal gender recognition process. This will help in making the most informed policy decisions possible and in developing robust impact assessments.

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.

Non-binary Gender Identities

130. The Government defines a non-binary person as someone who identifies as in some way outside of the man-woman gender binary. They may regard themselves as neither exclusively a man nor a woman, or as both, or take another approach to gender entirely. The word non-binary is used here as an umbrella term. Different people may use different words to describe their individual gender identity, such as genderfluid, agender or genderqueer.
131. The GRA enables a person to change the sex recorded on their birth certificate, either from male to female or vice versa. It makes no provision for the recognition of any other gender.
132. The Government is aware that there seems to be an increasing number of people who identify as neither exclusively male nor female. As with all other trans people, we want people who identify in this way to be able to live discrimination-free lives in accordance with who they believe their true selves to be. We are working to determine what action it may be necessary for Government to take in order to achieve this.
133. Non-binary recognition is a complex issue, though, with many potential knock-on implications for the law and public-service provision. For example, some laws provide for different legal entitlements depending on a person's gender (e.g. the State Pension age). Public-service provision can also be different depending on a person's gender (e.g. single-sex hospital wards). Public sector administrative and IT systems generally assume only two genders. If the Government were to recognise a gender other than male or female, it would require consideration as to how this would affect, and be affected by, those gendered laws and services. Substantial changes to legislation may be required to ensure legal and administrative coherence.
134. In our recently launched LGBT Action Plan, we announced our intention to issue a 'call for evidence' on non-binary gender identities, which we want to use both to examine these potential knock-on implications more closely and to understand in more detail the experiences and needs of non-binary people living in the UK. We have included a question on non-binary gender identities in this consultation as a supplement to this call for evidence exercise, focusing here on your initial views on non-binary recognition *as it relates to the Gender Recognition Act specifically*.
135. If the GRA were to be extended to provide legal recognition to non-binary gender identities, some of the issues with the current system that would need to be considered include:
- The current requirement for applicants to have, or have had, a diagnosis of gender dysphoria: our LGBT Survey found that non-binary respondents were less likely to have accessed specialist gender identity services in the year preceding the survey than trans respondents. We would like to know more about this.
 - The current requirement for applicants to collate two years' worth of evidence of having lived in their acquired gender: as things currently stand, this would be a difficult, even insurmountable, requirement for a non-binary person to

have to meet since, for the most part, it is not possible to identify as non-binary on the qualifying documentation and forms.

- The current requirement for applicants to make a statutory declaration that they intend to live in their acquired gender until death: we would like to hear respondents' views on whether they think non-binary people should be asked to commit to living permanently in a particular gender.

136. This consultation does not bring forward any proposals to extend the GRA to provide legal recognition to a third, or non-binary, gender. It merely seeks respondents' initial views on this complex issue. Together with the forthcoming call for evidence, these views will help us to build our evidence base further.

Background

137. The Government is not aware of a reliable estimate of the size of the non-binary population in the UK. It can be difficult to survey subsets of the population if, like non-binary people, they are thought to be small (and often hidden). Added to this, the fact that the term is used to cover a broad range of experiences, expressions and identities – and that some non-binary people may not be “out” in anything other than the most private of settings – means that reaching a reliable estimate of the size of the non-binary population is not possible at present.

138. Whilst we do not have a reliable estimate of the size of the non-binary population in the UK, the evidence suggests that it is increasing and is larger than we might have thought. Almost 7,410 (7%) of the LGBT Survey sample identified as non-binary and we received responses from around 6,910 trans respondents who had transitioned or were transitioning from male to female or female to male. Many LGBT organisations, such as Stonewall and Gendered Intelligence, now include non-binary issues within their trans advocacy work; stakeholders regularly tell us that more and more people (especially young people) are identifying in this way. Younger respondents to the LGBT Survey were more likely than older ones to identify as non-binary: 12% of 16-17 year old respondents and 9% of 18-24 year olds identified as non-binary, compared to between 4% and 6% of respondents aged 25 or over.

139. Non-binary genders are not recognised in UK law. Under the law of the United Kingdom, individuals are considered by the state to be of the sex that is registered on their birth certificate, either male or female. There exists no piece of UK-wide legislation that contemplates the existence of another gender. Furthermore, there is a raft of laws that are explicitly gendered or provide differently depending on a person's sex/gender. Some examples of this include: legislation relating to marriage and civil partnerships; legislation relating to pregnancy; and legislation relating to maternity rights and benefits.

140. However, the Equality Act provides protection to non-binary people who are perceived to have the protected characteristic of “gender reassignment”. And the Crown Prosecution Service has stated that “non-gender, non-binary or gender

fluid” people may be included under the definition of “transgender identity” in hate-crime legislation.⁴⁰

141. In response to the Government’s national LGBT Survey, 7,410 (7%) of the respondents identified as non-binary.
- When asked to score their life satisfaction out of 10, non-binary respondents gave an average of 5.5, compared to an average of 6.5 for all respondents to the survey. The average score for the general UK population is 7.7.⁴¹
 - Over three quarters (76%) of non-binary respondents said they had avoided expressing their gender identity for fear of a negative reaction.
 - Many non-binary respondents who were in education in the last academic year reported receiving a negative reaction at their educational institution due to their LGBT status. For example, 30% of those in education said they had received a negative reaction involving verbal harassment, insults or other hurtful comments in the last academic year.
 - 14% of non-binary respondents to the survey had tried to access mental health services in the 12 months preceding the survey but had been unsuccessful.

The Government’s position

142. The Government wants individuals who identify as non-binary to be able to live discrimination-free lives in accordance with who they believe their true selves to be. We are working to determine what action it may be necessary for Government to take in order to achieve this. However, we are also mindful of the practical consequences for other areas of law and public-service provision referring to the gender binary, if non-binary genders were to be recognised in the GRA.

143. We therefore want to use this consultation and our forthcoming call for evidence as first steps towards developing our understanding of this complex issue. Through our call for evidence, we want to: better understand the experiences of, and difficulties faced by, non-binary people in the UK; seek people’s views on how they think society could be more inclusive of people who identify as non-binary; and examine more closely the potential knock-on implications in other areas of law and society of recognising a gender that is neither male nor female. In this consultation, we are specifically interested in respondents’ views on whether and how the GRA should change to accommodate recognition of those who identify as non-binary. Our call for evidence will encompass any wider considerations.

⁴⁰ Crown Prosecution Service, *Hate Crime: Public Statement on Prosecuting Homophobic, Biphobic and Transphobic Hate Crime* (August 2017), p.3; accessible at: <https://www.cps.gov.uk/sites/default/files/documents/publications/homophobic-biphobic-transphobic-hate-crime-public-statement-2017.pdf>.

⁴¹ ONS (2017). Personal well-being in the UK: Oct 2015 to Sept 2016. Available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/wellbeing/bulletins/measuringnationalwellbeing/oct2015tosept2016>.

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?

Yes

No

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

Intersex

144. Intersex is an umbrella term for people with sex characteristics (hormones, chromosomes and external/internal reproductive organs) that differ to those typically expected of a male or female.
145. Sex is assigned at birth, based on physical characteristics. Males typically have a penis, testes, XY chromosomes and higher levels of testosterone. Females typically have a vagina, uterus, XX chromosomes and higher levels of oestrogen. Intersex people will have a variation in one or more of these. For example, they might have atypical genitalia, a vagina but no uterus or be physically male but do not produce enough testosterone to develop secondary male characteristics at puberty. Intersex is neither a gender identity nor a sexual orientation, so intersex people may, or may not, identify as lesbian, gay, bisexual or trans.
146. Some intersex people are diagnosed with a medical condition. As an example, a common condition is Congenital Adrenal Hyperplasia (CAH). CAH is a genetic condition that affects the development of the hormones regulating puberty. It can result in atypical genitalia and inadequate production of the stress hormone cortisol, which can require extensive attention to manage. Other diagnosable conditions include Turner Syndrome (females born without an X chromosome, with impacts such as inability to reproduce) and Klinefelter Syndrome (males born with XXY chromosomes, which can cause breast growth and small testicles).
147. We recognise that there are wide views about terminology. In this consultation we use the term 'intersex' though we recognise that there may be objections to this. For example, the term 'variations in sex characteristics' (VSC) is becoming more common.
148. There is little existing evidence on the experience of intersex people who interact with the GRA. The Government is interested in learning from and developing a better understanding of intersex people's experiences of the current legal gender recognition process and their views on how the system could be improved.

Background

149. The Government is not aware of a robust estimate on the size of the intersex population in the UK. This is inherently difficult as some intersex variations may never be apparent, some people may not disclose this information and there is no standardised approach to data collection. According to experts at the Office of the United Nations High Commissioner of Human Rights, 'it is estimated that there may be between 0.05% to 1.7% of infants born with intersex traits'.⁴² The birth

⁴² https://unfe.org/system/unfe-65-Intersex_Factsheet_ENGLISH.pdf

prevalence of atypical genitalia may be as high as 1 in 300 births⁴³, but the birth prevalence of a condition that may lead to true genital ambiguity on expert examination may be as low as 1 in 5000 births.⁴⁴

150. In response to the Government's National LGBT Survey, 1,980 (2%) of respondents identified as intersex.⁴⁵
- Within this sample, 25% of intersex respondents were non-binary, 17% trans women and 7% trans men. The other 51% did not identify as trans.
 - 17% of trans intersex respondents had a GRC.⁴⁶
 - When trans intersex respondents who were aware of the GRC process but did not have, or had never applied for one were asked about their reasons for not applying for a GRC: 13% said they were not interested in getting one, 12% said it was because they did not want to share medical information.
151. The Government is taking steps to understand the unique issues that intersex people face and design policies that are sensitive to the needs of intersex people.
152. We recognise that there are range of issues pertinent to intersex people, some of which include, unnecessary medical interventions performed on infants, correcting birth certificates, barriers in accessing healthcare services, psychosocial provision, support groups, as well as, issues in education and in the workplace. These issues are outside of the scope of the GRA consultation.
153. In our recently launched LGBT Action Plan, we announced our intention to issue a 'call for evidence' on intersex issues to understand in more detail the experiences and needs of intersex people living in the UK. We have included a question on intersex people in this consultation as a supplement to this call for evidence exercise, focusing here on your initial views on access to the legal gender recognition process as it relates to the Gender Recognition Act specifically.
154. Other countries have adopted different approaches to intersex people. Malta's Gender Identity, Gender Expression and Sex Characteristics Act 2015, for example, enables intersex people to apply for binary legal gender recognition of the gender they identify with.

Government's Position

⁴³ Ahmed, S.F., Dobbie, R., Finlayson, A.R. et al. (2004) Regional & temporal variation in the occurrence of genital anomalies amongst singleton births, 1988–1997 Scotland. *Archives of Disease Childhood*, 89, F149–F151.

⁴⁴ Thyen, U., Lanz, K., Holterhus, P.M. et al. (2006) Epidemiology and initial management of ambiguous genitalia at birth in Germany. *Hormone Research*, 66, 195–203.

⁴⁵ We asked respondents whether they identified as intersex. This question was intended to provide the Government with new understandings of the issues faced by people who are intersex. However, the Government understands the concerns that have been raised regarding inclusion of an intersex question in a LGBT survey. The Government recognises that some intersex people do not identify within this umbrella acronym.

⁴⁶ Intersex people can also experience gender dysphoria and have a gender identity that does not accord with the sex they were assigned at birth. Intersex people who had a transgender identity were able to answer the gender transitioning questions in the survey. This section uses the term 'trans intersex' to describe respondents who identified as either a transwoman or transman and had an intersex identity.

155. The Government recognises that intersex people who have had their sex incorrectly assigned at birth may want to apply for a GRC to make this amendment. We do not know how many people have done so or attempted to. We recognise that intersex people may currently face barriers in attaining legal gender recognition because of the requirement for a diagnosis of gender dysphoria. We would like to understand more about how intersex people find this requirement.

156. The Government is consulting on whether to remove the diagnosis of gender dysphoria from the GRC process and we recognise that this would make it easier for intersex people to attain legal recognition. The Government is also interested in learning about other recommendations for change that will support intersex people in the legal gender recognition process.

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?

Scotland, Northern Ireland and Jurisdictions outside the UK

Domestic recognition

157. Currently, the GRA imposes broadly the same system for recognition of an acquired gender across the UK, and a person whose gender is recognised for the purposes of the law of England and Wales also has that gender recognised as a matter of the law of Scotland and the law of Northern Ireland. The GRA regulates the interaction between the registration systems in England and Wales, Scotland and Northern Ireland in the administration of the gender recognition system.

158. This consultation only relates to the future operation of the gender recognition system in England and Wales and for the purposes of the law of England and Wales.

Scotland

159. On 9 November 2017 the Scottish Government launched its review⁴⁷ on whether and how the GRA should be amended in relation to the law in Scotland. This closed on 1 March 2018. The Scottish Government consultation principally covered: establishing new arrangements for dealing with applications for legal gender recognition, reducing the minimum age at which applications for gender recognition could be made and options for recognising non-binary individuals.

160. Gender recognition is devolved to Scotland. That means Scotland can have its own system for gender recognition if it wants to. Some areas dealt with by the GRA are not devolved, however, such as pension and benefit entitlements. The Scottish Government consultation clearly sets out what is and is not devolved with respect to its proposals and where, in the future, they might have to work with the UK Government.

161. The UK Government is committed to working closely with the Scottish Government on its proposals, especially on the implementation of its proposals where powers are not devolved, mutual recognition of certificates issued in different parts of the UK across the UK (this would include those issued under the current system and those issued in the future), residency requirements that applicants might need to meet and the implications of any difference in legal rights conferred by the issuing of a GRC in Scotland as opposed to England and Wales.

Northern Ireland

162. As with Scotland, gender recognition is devolved to Northern Ireland. This consultation does not cover Northern Ireland and changes proposed in this document will not alter the operation of the gender recognition system in Northern Ireland.

⁴⁷ <https://consult.gov.scot/family-law/review-of-the-gender-recognition-act-2004/>

163. We will work with Northern Ireland to ensure that any future gender recognition system in England and Wales operates appropriately across the UK, including within Northern Ireland.

Wales

164. This consultation includes Wales and any future legislative change will apply to Wales as well. Gender recognition is not devolved to the Welsh Government. We will continue to engage with the Welsh Government on changes to the gender recognition process and we will ensure that we engage widely with Welsh stakeholders during the consultation.

Overseas Recognition

165. Currently, if an individual can demonstrate they have gained recognition of their acquired gender under the law of an approved country or territory, then they will automatically be eligible for a GRC in the UK. Whether or not a country or territory is approved is based on whether the overseas gender recognition process is functionally equivalent to that set out in the GRA. Applicants who have overseas recognition apply to the GRP for legal recognition using the overseas application track.

166. In total, 109 gender recognition systems are identified in the table of approved countries and territories.⁴⁸ This includes many sub-national systems – the gender recognition process is determined by individual states and provinces in the United States, Australia and Canada. The list of approved countries and territories was last updated in 2011.⁴⁹

167. Overseas applicants who have gained recognition of their acquired gender in a country or territory not on the approved country of territories list cannot gain recognition via this method, and must apply for a GRC by using the ‘standard’ or ‘alternative’ application tracks.

168. In any future version of the GRA, the Government will need to consider what approach to take to legal recognition acquired overseas. Recognition by other countries and territories of current and future domestic GRCs is a matter for the overseas jurisdiction. The UK Government will endeavour to ensure mutual recognition of gender recognition systems takes place.

⁴⁸ See: <http://formfinder.hmctsformfinder.justice.gov.uk/t491-eng.pdf>

⁴⁹ See: <https://www.legislation.gov.uk/ukxi/2011/1630/contents/made>

Conclusion

169. For many trans people, the legal recognition process set out in the Gender Recognition Act is not delivering as a public service. Too few trans people are able to get the legal recognition of their gender identity that they need. There are currently too many barriers being put in their way. Trans people say the process is too bureaucratic, costly and intrusive, and that it inappropriately pathologises trans identities, by portraying being trans as a mental illness. The Government wants to fix it.
170. This consultation asks about ways of changing the current process that would modernise and simplify the Gender Recognition Act. We have asked about removing all requirements for medical evidence from the legal recognition process and streamlining what remains. We will consider all responses to this consultation carefully. If we determine that changes are necessary, then we will aim to bring forward legislation that updates the Act.
171. As we consult, the Government is mindful of how updating the Gender Recognition Act might impact on other areas of law and public services, particularly the Equality Act. We want to understand more about these relationships as part of the policy development process.
172. The Government has not produced any impact assessment alongside this consultation, though we have published an initial Public Sector Equality Duty assessment with the consultation. We will produce a full, substantive impact assessment once we know what action we will take, alongside a publication featuring the Government's analysis of the consultation responses and next steps.
173. Finally, the Government wants this consultation to be open to all views and perspectives. We know that conversations around transgender equality can elicit a wide range of views. Everyone has a right for their voice to be heard and we will treat all responses with equal respect. In order for the Government's policy to be as well informed as possible, we want to ensure that we capture everyone's opinion. If you do not feel that your views are best put in answer to any of the other questions in this consultation, please use the below box to provide us with any further views you might have about the Gender Recognition Act.

Question 22

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

Yes

No

If you answered yes, please add your comments.

Annexes

Annex A: Respondent information form

This form **must** be completed and returned with your response to the consultation.

Are you responding as an individual or an organisation?

Individual

Organisation

Full name or organisation's name

Phone number

Address

Postcode

E-mail

The Government would like your permission to publish your consultation response. Any responses will be treated in accordance with Section 22 of the Gender Recognition Act. This provides protection for the privacy of a person who has applied for and/or obtained a Gender Recognition Certificate by making it a criminal offence to disclose information acquired in an official capacity about a person's gender history or about their application to the Panel, unless a specific exception applies. One of the exceptions is if the person gives their consent to the disclosure of the information.

Publish my response, including my name

Publish my response in anonymised form only

Do not publish my response

The Government may wish to contact you again in the future, but we require your permission to do so. Are you content for the Government to contact you again in relation to this consultation?

Yes

No

Information provided in response to consultations, including personal information, may be subject to publication or disclosure under the Freedom of Information Act 2000, the GDPR and Data Protection Act 2018 or the Environmental Information Regulations 2004. The Government Equalities Office will process your personal data in accordance with the GDPR and Data Protection Act 2018, and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The Government may publish responses received from organisations. If you want all, or any part, of a response to be treated as confidential, please explain why you consider it to be confidential. If a request for disclosure of the information you have provided is received, your explanation about why you consider it to be confidential will be taken into account, but no assurance can be given that confidentiality can be maintained. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Annex B: Consultation Questions

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?

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

- Yes
- No
- Awaiting Decision

Information provided in response to this question 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 but these will be fully anonymised.

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 this question 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 but these will be fully anonymised.

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.

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.

Question 5

Under the current gender recognition system, an applicant has to provide evidence to show that they have lived in their acquired gender for at least two years.

(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.

(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?

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.

(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

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

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?

Question 8

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

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

Yes

No

(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?

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?

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?

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.

Question 13

(D) 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.

(E) 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.

(F) 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?

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.

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.

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.

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.

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.

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

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?

Yes

No

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

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?

Question 22

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

Yes

No

If you answered yes, please add your comments.

Annex C: Equality Act 2010 - list of exceptions

This Annex outlines the various exceptions set out in the Equality Act to the default position that individuals with the protected characteristic of gender reassignment should not be discriminated against.

Sport

Section 195⁵⁰ makes it lawful to restrict participation of trans people in sporting competitions if this is necessary to uphold fair or safe competition, but not otherwise. This replaces similar provisions originally in the Gender Recognition Act 2004.

Single and separate sex services

Schedule 3, Part 7 sets out the exception for single and separate sex services.⁵¹

A service provider can deliver separate services for men and women where providing a combined service would not be as effective. In each case, such provision has to be justified. So, for instance, it would not be unlawful for a charity to set up separate hostels, one for homeless men and one for homeless women, where the hostels provide the same level of service to men and women because the level of need is the same but a unisex hostel would not be as effective.

Single sex services are permitted where:

- only people of that sex require it;
- there is joint provision for both sexes but that is not sufficient on its own;
- if the service were provided for men and women jointly, it would not be as effective and it is not reasonably practicable to provide separate services for each sex;
- they are provided in a hospital or other place where users need special attention (or in parts of such an establishment);
- they may be used by more than one person and a woman might object to the presence of a man (or vice versa); or
- they may involve physical contact between a user and someone else and that other person may reasonably object if the user is of the opposite sex.

In each case, the separate provision has to be objectively justified⁵².

These exceptions would allow, for instance:

- a cervical cancer screening service to be provided to women only, as only women need the service;

⁵⁰ <https://www.legislation.gov.uk/ukpga/2010/15/section/195>

⁵¹ <https://www.legislation.gov.uk/ukpga/2010/15/schedule/3/part/7/crossheading/gender-reassignment>

⁵² The objective justification test is where the service provider has to prove the use of an exception is 'a proportionate means to achieve a legitimate aim'.

- a fathers' support group to be set up by a private nursery as there is insufficient attendance by men at the parents' group;
- a domestic violence support unit to be set up by a local authority for women only but there is no men-only unit because of insufficient demand;
- separate male and female wards to be provided in a hospital;
- separate male and female changing rooms to be provided in a department store;
- a massage service to be provided to women only by a female massage therapist with her own business operating in her clients' homes because she would feel uncomfortable massaging men in that environment.

In applying separate- and single-sex services, there is an exception to the general prohibition of gender reassignment discrimination. Not allowing a trans person to access a service has to be objectively justified. The example given in the explanatory notes is:

“A group counselling session is provided for female victims of sexual assault. The organisers do not allow transsexual people to attend as they judge that the clients who attend the group session are unlikely to do so if a male-to-female transsexual person was also there. This would be lawful”

Occupational requirements

Schedule 9, Part 1 (general) on occupational requirements⁵³ provides a general exception to what would otherwise be unlawful direct discrimination in relation to work. The exception applies where being of a particular sex, race, disability, religion or belief, sexual orientation or age – or not being a transsexual person, married or a civil partner – is a requirement for the work, and the person whom it is applied to does not meet it (or, except in the case of sex, does not meet it to the reasonable satisfaction of the person who applied it). The requirement must be crucial to the post, and not merely one of several important factors. It also must not be a sham or pretext. In addition, applying the requirement must be proportionate so as to achieve a legitimate aim.

The example in the explanatory notes to the Equality Act is:

“A counsellor working with victims of rape might have to be a woman and not a transsexual person, even if she has a Gender Recognition Certificate, in order to avoid causing them further distress.”

Schedule 9, Part 1 (religious requirements⁵⁴) applies to employment for the purposes of an organised religion, which is intended to cover a very narrow range of employment: ministers of religion and a small number of lay posts, including those that exist to promote and represent religion. Where employment is for the purposes

⁵³ <https://www.legislation.gov.uk/ukpga/2010/15/schedule/9/part/1/crossheading/general>

⁵⁴ <https://www.legislation.gov.uk/ukpga/2010/15/schedule/9/part/1/crossheading/religious-requirements-relating-to-sex-marriage-etc-sexual-orientation>

of an organised religion, this paragraph allows the employer to apply a requirement to be of a particular sex or not to be a transsexual person, or to make a requirement related to the employee's marriage or civil partnership status or sexual orientation, but only if –

- appointing a person who meets the requirement in question is a proportionate way of complying with the doctrines of the religion; or,
- because of the nature or context of the employment, employing a person who meets the requirement is a proportionate way of avoiding conflict with a significant number of the religion's followers' strongly held religious convictions.

The requirement must be crucial to the post, and not merely one of several important factors. It also must not be a sham or pretext.

Communal accommodation

Schedule 23 (gender exceptions) has a separate exception on communal accommodation⁵⁵. This paragraph provides an exception to the general prohibition of sex and gender reassignment discrimination. It allows communal accommodation to be restricted to one sex only, as long as the accommodation is managed as fairly as possible for both men and women. It sets out factors that must be considered when restricting communal accommodation to one sex only, and provides that discriminatory treatment of transsexual people must be objectively justified.

Communal accommodation is defined as residential accommodation, which includes shared sleeping accommodation, which should only be used by members of one sex for privacy reasons.

Armed Forces

The Equality Act contains exceptions that relate to the Armed Forces. The exceptions permit discrimination on the basis of certain protected characteristics, including gender reassignment. The exceptions apply in relation to the provision of services or performance of public functions (Part 3) and work (Part 5). In respect of the provision of services or the performance of public functions, discrimination on the basis of gender will be lawful as long as it occurs for the purpose of ensuring combat effectiveness. In so far as work is concerned, a trans person can be excluded from service in the Armed Forces if it can be shown that it is a proportional means of ensuring combat effectiveness.

Under current rules, however, trans people may serve in The Royal Navy, the Royal Marines, the Army and the Royal Air Forces. They may also serve in any of the reserve forces. A GRC has no relevance to 'combat effectiveness'. As a result, the

⁵⁵ <https://www.legislation.gov.uk/ukpga/2010/15/schedule/23/crossheading/communal-accommodation>

Government does not believe that amending the GRA would have an impact on the Armed Forces exception.

Marriage

Schedule 3, Part 6 on marriage⁵⁶ contains exceptions from the general prohibition of gender reassignment discrimination in section 29 of the Act for the religious solemnisation of marriages. A person with a full Gender Recognition Certificate acquired under the Gender Recognition Act 2004 is able to marry someone of the opposite gender to his or her acquired gender. The Marriage Act 1949 imposes an obligation on a clergyman in the Church of England or a clerk in Holy Orders of the Church in Wales to marry anyone residing in his or her parish, or who fits other stated connection criteria. However, section 5B of the Marriage Act contains an exception where the clergyman or clerk reasonably believes one of the parties' gender is acquired under the GRA. The legislation that preceded this Act did not prohibit discrimination because of gender reassignment in the field of public functions. As the Equality Act later prohibited this, this paragraph preserves the position by providing an exception for Anglican clergy in England and Wales, as well as those of other faiths in England and Wales whose consent is required to conduct marriages in religious premises registered under the Marriage Act, and others who may solemnise marriages.

Insurance

The original exceptions in Schedule 3, Part 5 on Insurance were removed to reflect a change to European Union law consequent on the ruling by the Court of Justice of the European Union in Case C-236/09 of 1 March 2011 (Test Achats).

However, work insurance⁵⁷ still applies. This paragraph applies where annuities, life assurance policies, accident insurance policies or similar matters which involve the assessment of risk are provided in the field of employment. It allows for employers to provide for payment of premiums or benefits that differ for men and women, persons who are or are not married or in a civil partnership, pregnancy or maternity or gender reassignment so far as this is reasonable in the light of actuarial or other reliable data.

⁵⁶ <https://www.legislation.gov.uk/ukpga/2010/15/schedule/3/part/6>

⁵⁷ <https://www.legislation.gov.uk/ukpga/2010/15/schedule/9/part/3/crossheading/insurance-contracts-etc>

Annex D: How does the legal gender recognition system work?

1. The Gender Recognition Act 2004 (GRA) sets out a process that allows individuals over the age of 18 to receive legal recognition of their acquired gender. Successful applicants are issued with a Gender Recognition Certificate (GRC). The process involves the submission of various forms of prescribed evidence to a Gender Recognition Panel (GRP), which determines whether the applicant has met the criteria for recognition set out in the Act.
2. The effect of the GRC is that legally the person's gender becomes the acquired gender for all purposes save for a few exceptions listed in the Act. A full GRC also entitles an individual to a new birth certificate reflecting the acquired gender rather than the sex that was assigned at birth.
3. Since 16th November 2017, the Government Equalities Office has had responsibility for the GRA. This followed a transfer from the Ministry of Justice.⁵⁸ The Ministry of Justice retains responsibility for the GRP, which is a branch of Her Majesty's Courts and Tribunals Service.

History

4. Before the GRA was introduced, trans people could not receive legal recognition of their acquired gender. Whilst they might be living in their acquired gender, and recognised as such socially and on some official documentation, legally they would still be considered as having the sex assigned at birth. This meant they could not, for example, marry in their acquired gender or get a birth certificate issued in it.
5. The GRA was introduced following two European Court of Human Rights rulings in 2002, in the cases of *Christine Goodwin v The United Kingdom* and *I v the United Kingdom*, that the UK Government had breached the Convention rights of two trans people under Articles 8 (the right to respect for private life) and 12 (the right to marry and found a family). The cases concerned the applicants' experiences as trans people in relation to a range of issues, such as pension rights (the state pension age being different for men and women), discrimination at work and marriage. The UK Government had a positive obligation under international law to secure the Convention rights and freedoms for UK nationals and therefore had to rectify the breach. The judges determined that it would not place a disproportionate burden on society to require the Government to accommodate the needs of trans people by issuing new birth certificates in the acquired gender and permitting marriage to someone of the opposite gender.
6. The GRA received Royal Assent in 2004 and its provisions came into force on 4th April 2005. Since then, 4,910 individuals have successfully applied for a GRC. Around 3,600 (73%) have been issued to those assigned male at birth and 1,300 (27%) to those assigned female at birth.

⁵⁸ See the Prime Minister's Written Ministerial Statement - <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-11-16/HCWS253/>

What does a Gender Recognition Certificate mean?

7. Legal recognition means that, for almost all purposes, the individual's gender becomes the acquired gender rather than that they were assigned at birth. Amongst other things, this means the individual can marry in the acquired gender, get a new birth certificate issued that reflects the acquired gender (provided a UK birth register entry already exists for the person) and has the right to retire and receive state pension at the age appropriate to the acquired gender. GRCs also provide trans people with the dignity and respect that can come from having their acquired gender officially recognised by the state. Legal recognition does not entitle an individual to any particular medical treatment.
8. Legal recognition currently has effect throughout the United Kingdom. That means, for example, that if an individual in Scotland is granted a GRC in Scotland then their gender will be recognised UK wide.
9. There are some limitations to legal recognition. The GRC is not retrospective: it does not re-write a person's gender history or affect the things they did before it was issued. For example, if an individual with a GRC has children their acquired gender will not affect their legal status as the father or mother of their children. So if someone gave birth to a child they would legally be the mother of that child even if at a later date they successfully applied for a GRC and became a man for legal purposes. Other limitations or exceptions are set out in the GRA (see Annex C for further details).
10. Section 22 of the GRA makes it a criminal offence for a person who has obtained "protected information" in an official capacity to disclose that information to any other person, save in certain circumstances. Protected information is information about a person's application for legal recognition of their acquired gender or, if they have legal recognition, their gender history.

The process of applying for a Gender Recognition Certificate

11. There are three ways to apply for a GRC;
 - the Standard Application Track;
 - the Alternative Application Track (for those who transitioned 6 years prior to the application); or
 - the Overseas Application Track.
12. Each track has an application form and one of three approved statutory declarations that must be completed (depending upon whether the applicant is currently married, in a civil partnership or single). The forms ask about the applicant's personal details and the details of the evidence they are submitting to the GRP. There are also templates to assist in gathering the evidence the applicant will need.⁵⁹
13. Each application track has a minimum age limit of 18 years and a requirement that the applicant signs a statutory declaration form confirming their intention to live permanently in their acquired gender until death. Other requirements include:

⁵⁹ See <https://www.gov.uk/apply-gender-recognition-certificate> for further details.

demonstrating that the applicant has, or has had, gender dysphoria (or instead, in the case of the Alternative Application Track, has undergone surgical treatment for the purpose of modifying their sex characteristics); and has lived fully for the last two years (standard track) or six years prior to 10 December 2014 (alternative track) in their acquired gender.

14. Overseas Track applicants have to demonstrate only that they have been recognised in their acquired gender by one of the recognised jurisdictions listed in legislation. This list covers those countries and territories with similar gender recognition systems to that of the UK. The latest list is in the Gender Recognition (Approved Countries and Territories) Order 2011.⁶⁰ If the jurisdiction is not listed, then applicants from that country must apply using the Standard Application Track.
15. In 2017-18, 407 applications were disposed of by the GRP. Of these, 367 (90%) were Standard Track Applications, 7 (2%) were Alternative Track applications and 33 (8%) were Overseas Track Applications.

Issuing of the Gender Recognition Certificate

16. A full GRC will be issued to a successful applicant who is:
- neither married nor in a civil partnership; or
 - in a protected marriage⁶¹ or protected Scottish marriage, where the couple have both issued statutory declarations of consent confirming their wish to remain in their marriage post gender recognition; or
 - in a protected civil partnership or a protected Scottish civil partnership, where both parties apply at the same time and are granted full GRCs on the same day.
17. An interim GRC will be issued to a successful applicant who is:
- in a non-protected marriage or in a non-protected civil partnership at the time of the application; or
 - in a protected marriage or a protected Scottish marriage and their spouse has not made a statutory declaration of consent to remain in their marriage; or
 - where both parties of a protected or protected Scottish civil partnership apply for gender recognition but only one partner is successful; or
 - in a protected civil partnership or protected Scottish civil partnership, but the other party has not applied to change their legal gender.
18. Applicants also have to meet the other requirements, outlined below.

Evidence of “living in the acquired gender”

19. To demonstrate that the applicant has lived full time in the acquired gender for at least two years (standard track) or six years prior to 10 December 2014 (alternative track) before the date of the application, the applicant must provide

⁶⁰ See <http://www.legislation.gov.uk/ukxi/2011/1630/contents/made>

⁶¹ A “protected marriage” means— (a) a marriage under the law of England and Wales and Scotland, or (b) a marriage under the law of a country or territory outside the United Kingdom and a “protected civil partnership” means a civil partnership under the law of England and Wales.

supporting evidence to the GRP. This is documentation showing the applicant has used a different name or reflecting their acquired gender. Applicants are given a range of suggested documents, including:

- Driving licences;
- Passports;
- Pay slips;
- Benefit documentation;
- Bank statements;
- Utility bills;
- Academic certificates; and,
- Letters from official, professional or business organisations such as solicitors or accountants.

20. Typically, five or six different documents need to be included with an application. The GRP can give directions for additional or alternative documents to be provided if necessary. The applicant does not have to provide evidence of what clothing etc. is worn. Each application is dealt with on its own merits.

Medical Evidence

21. For standard track applications, the applicant must provide medical evidence that they have been diagnosed with gender dysphoria, gender identity disorder or transsexualism and have undergone surgical treatment for the modification of their sexual characteristics. Evidence must come from either a doctor registered with the General Medical Council or a registered psychologist registered with the Health and Care Professions Council.

22. Two medical reports are required for Standard Track Applications:

- **Report A** - Must be made by a registered medical practitioner or registered psychologist practising in the field of gender dysphoria and must include the details of their diagnosis of gender dysphoria.
- **Report B** – Must be made by a registered medical practitioner who may, but need not, practise in the field of gender dysphoria (so could be provided by, for example, the applicant's GP or surgeon) and must include specific details of any treatment that the applicant has received. For example, this could cover what treatments (e.g. hormones) they are receiving and whether they have undergone, are undergoing or are planning to undergo surgery. If the applicant has not undergone surgery the report may explain why.

23. An applicant only needs to provide one medical report for an Alternative track application. If that person has undergone or is undergoing treatment for the purpose of modifying sexual characteristics, then the report needs to provide details of that treatment.

What is gender dysphoria?

24. Gender dysphoria is a recognised medical condition where a person experiences discomfort or distress because there is a mismatch between their biological sex and their gender identity. Irrespective of international classifications, the Government does not view gender dysphoria as a mental illness. While biological sex and gender identity are the same for most people, this is not the case for

everyone. For example, some people may have the physical characteristics of a woman, but identify as a man.

25. Some people with gender dysphoria have a strong and persistent desire to live according to their gender identity, rather than their biological sex. Some trans people have medical treatment to make their physical appearance more consistent with their gender identity; others may just change their name, use different pronouns, wear clothing and adopt hairstyles etc. that better match their gender identity.
26. The exact cause of gender dysphoria is unclear. A review of the evidence supports this view.⁶²

The Gender Recognition Panel

27. The Gender Recognition Panel (GRP) assess applications for Gender Recognition Certificates from people who would like to have their acquired gender legally recognised. The GRP is made up of eight legal members and six medical members. The Panel sits on average about three times a month and reviews 14 cases per session. The GRP is supported by an administrative team of three caseworkers and one team leader.
28. Unlike most courts or tribunals, almost all applications are decided 'on the papers', although the Panel may issue Directions requesting further information or documents. The trans applicant does not appear before the GRP itself to argue their case. If an application is unsuccessful, reasons will be provided. If successful, a full or interim GRC will be sent to the applicant. If the grant of a GRC is refused, applicants can appeal to the High Court in England and Wales or the Court of Session in Scotland on a point of law.

⁶² NHS England Clinical Evidence Review: Prescribing of Cross-Sex [gender affirming] Hormones as part of the Gender Identity Development Service for Children and Adolescents E03X16/01: <https://www.england.nhs.uk/commissioning/spec-services/npc-crg/group-e/e03/>

Annex E: Estimating the size of the transgender population in the UK

What is the size of the trans population in the UK?

There is no robust data on the number of trans people in the UK. Data on gender identity is not collected in any government social survey. Administrative data on applications for a Gender Recognition Certificate is routinely collected by the Gender Recognition Panel, a tribunal which decides whether these applications meet the criteria set out in the Gender Recognition Act 2004. Aggregated data on the number of people who have applied for GRCs and the outcome of their application, as well as some limited information on personal characteristics (including gender at birth, year of birth, marital status) is published on a quarterly basis. To end of March 2018, a total of 4,910 people have been granted GRCs since the Gender Recognition Act came into force in 2005⁶³. However, the number of people who have a GRC represents only a small proportion of the trans population in the UK overall.

Why is estimating the size of the trans population so difficult?

It is difficult to provide an accurate measure on the trans population for a variety of methodological reasons (see Mitchell and Howarth, 2010 and ONS 2009 for a more detailed discussion). Key issues relate to difficulties in defining and identifying the trans population, which in turn affects estimates of the size of the trans population and how they can be sampled. For example, not all trans people identify as ‘trans’ (i.e. a trans woman who has transitioned from being a man may describe themselves as a woman rather than a trans woman), some trans people may not wish to disclose their status. In terms of sampling, it can be hard to target small, sometimes hidden populations.⁶⁴

What are UK and international estimates of prevalence for trans populations?

In 2009 the Gender Identity Research and Education Service (GIRES) produced the first estimate of the size of the trans population in the UK, based on research from the USA and Netherlands, data from Gender Recognition Panels and Gender Identity Clinics. GIRES estimated the trans population (i.e. people who experience

⁶³ Ministry of Justice (2018) Tribunals and gender recognitions certificates statistics quarterly: January to March 2018. Available at: <https://www.gov.uk/government/statistics/tribunals-and-gender-recognitions-certificates-statistics-quarterly-january-to-march-2018>

⁶⁴ Mitchell and Howarth (2010) Trans Research Review. EHRC Research Report 27. Autumn 2009. Available at: http://www.equalityhumanrights.com/sites/default/files/documents/research/trans_research_review_rep27.pdf; ONS (2009) Trans data position paper. ONS May 2009. Available at: <http://www.ons.gov.uk/ons/guide-method/measuring-equality/equality/equality-data-review/trans-data-position-paper.pdf>

some degree of gender variance) was approximately 0.6% - 1% of the UK adult population.⁶⁵

There is some variation in international estimates of trans populations. These estimates have been produced using survey data. In the USA, trans population estimates range from 0.35% of adults in California⁶⁶ to 0.6% of adults nationally.⁶⁷ Studies in the Netherlands and Belgium have used a range of broader definitions to encapsulate gender identity, using survey questions to measure feelings of ambivalent and incongruent gender identity, as well as gender dysphoric feelings. Of these measures, incongruent gender identity (i.e. where people feel a stronger identification with the opposite sex to that they were born with) is probably closest to the generally accepted definitions of trans in the UK. These studies found that 1.1% of natal men and 0.8% of natal women in the Netherlands⁶⁸ reported incongruent gender identity, compared with 0.7% of natal males and 0.6% natal females in Flanders/Belgium⁶⁹.

Some of the differences in the estimates of trans populations may result from:

- inconsistent use of questions to identify trans and non-binary respondents – for example, to identify the trans population the surveys may ask questions about respondents' sex assigned at birth and respondents' sex now or they may simply ask whether the respondent considers themselves to be transgender.
- conceptual crossover between trans and non-binary gender identities in survey questions and response categories, which also make it difficult to understand if current international estimates include or exclude non-binary people.
- variations in survey populations – for example, the lower age limit in the US surveys was either 16 or 18 years.

⁶⁵ Reed, Rhodes, Schofield and Wylie (2009) Gender Variance in the UK: Prevalence, Incidence, Growth, and Geographic Distribution. GIRES, June 2009; GIRES (2011) The Number of Gender Variant People in the UK - Update 2011.

⁶⁶ Herman, Wilson and Becker (2017) Demographic and Health Characteristics of Transgender Adults in California: Findings from the 2015-2016 California Health Interview Survey. 2016. This estimate is based on respondents aged 18-70.

⁶⁷ Flores, Herman, Gates and Brown (2016) How many adults identify as transgender in the United States? The Williams Institute June 2016. The estimate is based on respondents aged 18 years or more.

⁶⁸ Kuyper and Wijzen (2014) Gender Identities and Gender Dysphoria in the Netherlands. Archives of Sexual Behavior 43(2). The estimate is based on respondents aged 16-70.

⁶⁹ Van Caenegem, Wierckx, Elaut, Buysse, Dewaele, Van Nieuwerburgh, De Cuypere and T'Sjoen (2015) Prevalence of Gender Nonconformity in Flanders, Belgium. Archives of Sexual Behavior v.44(5), The estimate is based on respondents aged 14-80.

How have we estimated the trans population in the UK?

In the absence of accurate and reliable data on gender identity, we have applied a trans prevalence range of between 0.35% - 1%⁷⁰ (from the UK and international evidence) to the latest data on the UK adult population. This provides an approximate and limited estimate of the national trans population⁷¹. On this basis, using the latest data available, for 2016, the adult trans population in the UK is estimated as, approximately 200,000 – 500,000⁷². Please note that this approach is imperfect: the total number of trans people is difficult to estimate and no reliable approximation exists that is based on statistical evidence in the UK alone. Furthermore, owing to differences in the estimates highlighted above, this estimate may include some non-binary people. The lack of robust evidence on the size of the non-binary population in the UK means the estimate does not represent the total size of the trans and non-binary populations together.

What is being done to improve data on the trans population in future?

The Office for National Statistics (ONS) has established a clear need for robust data on gender identity in the UK as part of its consultation on the 2021 Census topics. In March 2016, they published a Gender identity research and testing plan to identify options to meet user requirement and make recommendations on how to develop better gender identity data. In January 2017, they published a Gender identity update which outlines developments around the topic of gender identity covering: legislation; the Women and Equalities Committee Transgender Equality inquiry; data collection and question development worldwide, and details of research, testing and findings so far. It also sets out the next steps and future work the ONS will be undertaking on this topic.⁷³

⁷⁰ The lower prevalence rate is based on the Californian estimate of 0.35%. The upper prevalence rate is based on the upper estimate from GIREs.

⁷¹ Based on ONS (2017) Population Estimates for UK, England and Wales, Scotland and Northern Ireland. Mid-2016. The UK population aged 16-90+ is 53,257,957. To produce an estimate, prevalence rates from the Californian and GIREs studies have been applied to the UK population aged 16 or more, although the rates were based on different age ranges.

⁷² Rounded to the nearest 100,000.

⁷³ ONS (2016) Gender identity research and testing plan. Available at:

<https://www.ons.gov.uk/file?uri=/census/censustransformationprogramme/consultations/the2021censusinitialviewoncontentforenglandandwales/topicreport20genderidentityresearchplan.pdf>; ONS (2017)

Gender identity update. Available at:

<https://www.ons.gov.uk/methodology/classificationsandstandards/measuringequality/genderidentity/genderidentityupdate>;

978-1-78655-659-2