

**Consultation response:
Reform of the Gender Recognition Act**

October 2018

Key messages:

1. Self-identification and self-declaration should be the basis for reform, an individual is best placed to make decisions on their own identity, and trans people should not be treated as if they have a mental illness.
2. Trans rights are not a threat to women's rights or women's spaces – equality is not a finite pool, and we should always approach reform from the basis of inclusion not exclusion. Diversity is our strength, and we hope that the views of diverse women are represented in this consultation.
3. We support the existence of Sex as a Protected Characteristic, and the exemptions which exist in the Equality Act 2010. It has rightly been made clear that there are no intentions to amend the Equality Act at this stage. However, issues of trans rights, and violence against women are not related and all concerns on this basis should be dealt with on a case-by-case basis, which is currently the approach of many single-sex services.
4. Thought needs to be given to the impact this debate has had on trans communities, and more needs to be done to protect trans women from everyday experiences of transphobia, sexism and misogyny.

Introduction

Chwarae Teg are pleased to submit a response to this consultation. Our vision is a fairer Wales where women achieve and prosper. This vision will only be achieved when all women can live free from harassment and discrimination and are able to reach their full potential.

In our detailed response below we have not responded to every consultation question but have focused on those we feel best able to address.

Question 3:

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

No

We do not think that there should be a requirement in the future for a diagnosis of gender dysphoria. We are in support of a process based on self-declaration and self-identification, and opposed to the idea that a third person or any institution should have ownership of someone else's identity. While the Gender Recognition Act 2004 was ground-breaking at the time of its

introduction, it is now out of date with modern practice and the way that trans people are treated and perceived in modern society.

The UK has fallen behind as a world leader on LGBT+ rights partly due to this, and trans people in countries like Ireland and Norway can have their gender legally recognised without the need for medical diagnosis.

The current process treats being trans as a mental illness which is out of step with current thinking, and this year, the World Health Organisation removed gender dysphoria as a mental illness, so reforms on this basis would bring the UK in line with world leaders. The medicalisation of the process is dehumanising and demeaning for many trans people, and also often makes it an incredibly lengthy process – in particular with the requirement to live in their ‘acquired gender’ for two years prior to treatment, which can have a detrimental impact on the mental health of trans people. It also must be considered that access to qualified medical practitioners can be an issue in Wales – there are only 2 doctors in Wales qualified to sign off a GRC, meaning that people in some areas of Wales have to travel for around 5/6 hours to access this service.

Other UK Legislation like the Equalities Act 2010 recognises that being trans isn’t a medical process, and trans people are not required to have medical treatment to be protected by law – this demonstrates the shift in attitudes since 2004, which need to be reflected in reformed legislation.

Question 4:

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

No

The current process of requiring a report detailing treatment reinforces the medical view of being trans, which as we demonstrated before is out-dated and dehumanising. Many of the treatments seen as ‘evidence’ often reinforce gender stereotypes, which as a charity focused on tackling gender inequality is a real concern. Going through certain treatments, or changing your name to one that sounds more masculine or feminine, does not determine ‘how trans’ a person is and a decision must not be made on this basis. Many trans people do not wish to have personal and intrusive medical or hormone treatments, and their autonomy to make that decision should be respected. Trans people should not face pressure to conform to stereotypes in order to feel accepted for who they are.

Question 5:

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

No

The current requirement to live in your 'acquired gender' for two years prior to attaining a GRC can be incredibly difficult for trans individuals – trans people we've spoken to have discussed feeling like they were living dual identities, and feeling 'in limbo' throughout this process. This also makes the process prohibitively lengthy, which can have implications on the mental health of people going through this process. Some individuals we spoke to said the process had taken up to six years, with gathering enough evidence, waiting for doctors' appointments and other factors. It is also difficult for some younger people to gather the right 'evidence' to support their application, if they are not bill payers, or they are students.

We also heard evidence that this can be incredibly difficult for trans migrants, who often have difficulty registering for a GP while going through the asylum process and this can delay the process even further. It was also documented that if you are waiting to apply for a GRC and then move local authority areas and try to register at a GP in your new location, your application then resets and you have to start the two year waiting period again.

We believe that this reinforces the idea that an individual's gender identity is for someone else to determine, which we disagree with. The process should not be medicalised in any way, and this factor in particular is a risk to trans people's safety and wellbeing.

Should there be a period of reflection between making the application and being awarded a Gender Recognition Certificate?

No, because people are undoubtedly going to put thought and consideration into this before applying for a GRC, and a period of reflection almost implies that there's an expectation that an individual's mind may change.

The Statutory Declaration would act as enough of a deterrent for anyone not serious about transitioning.

Question 6:

Statutory Declaration - Do you think this requirement should be retained, regardless of what other changes are made to the gender recognition system?

Yes

We agree with the retention of a statutory declaration to demonstrate the serious intent of change to an individual's Gender Recognition, and to provide a safeguard from those hoping to exploit the system. For many trans individuals we spoke to, the statutory declaration was seen to be key to 'claiming their own identity'.

The commitment 'to live permanently in the acquired gender until death' needs to be considered, as this is a more serious and long-lasting commitment than most other legal commitments, except marriage, for which divorce is still an option to end the agreement. While we agree with solemn declaration, this wording may need to be considered to ensure that it demonstrates longevity of commitment, but isn't disproportionate.

We would also like the consequence of breaking the declaration to be discussed, as this should be proportionate to risk. We must remember that this change only affects rights related to birth certificate, death certificate, or marriage, therefore if there are consequences for fraudulent or false cases, it should be clear that they are on that basis. The Government need to consider that in some rare cases, individuals do de-transition, and this declaration needs to be sensitive to that – de-transitioning is often due to social isolation as a result of transitioning, and becoming cut off from support networks for being trans. In cases we've heard of, individuals often decide that they need to deny their own identity in order to still have some form of human support.

We also would not want there to be any risks or consequences for those who are non-binary or gender fluid. We would like to see non-binary identities legally recognised in this reform, so we need to consider how a statutory declaration on that basis would be worded, and whether that would require a separate statement, or rewording of the same statement. If non-binary identities are not recognised in this reform, but are in the future, we would not want those who attained a GRC before their non-binary identity was legally recognised to be penalised for then reapplying.

Question 7:

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

No

We strongly believe that the need for spousal consent should be removed in these proposed reforms. Stonewall¹ found that 28% of trans people in a relationship last year have faced domestic abuse from a partner, and we are concerned that this could be a tool for coercive control. It also goes against the idea of individual autonomy and ownership of one's body and identity at the core of these reforms.

If a marriage does come to an end because of one partner's wish to transition and attain a GRC, separations and divorces can be a lengthy process, and one partner can make it difficult for the marriage to end which could further delay the process and create additional obstacles for a trans person to change their legal gender.

Question 8:

Currently, applicants must pay £140 to apply for a Gender Recognition Certificate. Do you think the fee should be removed from the process of applying for legal gender recognition?

Yes

¹ <https://www.stonewall.org.uk/sites/default/files/lgbt-in-britain-trans.pdf>

We believe that the fee should be removed as it is a prohibitive and unnecessary barrier to trans people having their identity legally recognised. If the process is de-medicalised through these reforms, this will also make the process less costly, and less of a strain on pressured resources. The cost is also disproportionate, being substantially more than a marriage license.

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

Other costs can be incurred throughout the process, such as travel to see medical practitioners, which in Wales can be several hours away and require an overnight stay, and the cost of GP's medical evidence. Cost should never be a barrier to someone being able to have their identity legally recognised.

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?

Diverse groups of women, and trans women must be considered. The overly lengthy and bureaucratic system as it currently exists is a barrier for many trans women with learning difficulties, or for whom English may not be their first language. We know that these barriers are prohibitive, with many trans women opting not to apply for a GRC due to the difficulty: only 12% of trans people who 'had completed or were going through transition' said they'd applied for a GRC, while 93% of those that hadn't applied for a GRC said they were interested in doing so.

The rights of young trans people are also not considered currently, as trans people below the age of 18 cannot apply for a Gender Recognition Certificate. This can be incredibly damaging to trans people and their families, and can lead to young people being outed or mis-gendered. Allowing 16 and 17 year olds to apply for GRCs would enable them to go into further education or start work in their true gender, meaning they can be awarded exam and educational certificates and be recognised at work as the gender they identify with. The Irish Act, passed in 2015, allows anyone over the age of 18 to self-declare their gender identity, while 16 and 17 year olds can also apply for legal recognition through the courts with a higher level of scrutiny. A similar system would be welcome in the UK.

We note that trans people are currently protected under the 'Gender Reassignment' characteristic, but we need to consider that trans women need to be protected from sexist abuse that they experience as women – such as sexual harassment and domestic violence, as well as transphobic abuse.

Question 13:

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

No

We do not believe that the exceptions that currently exist in the Equality Act 2010 will be affected by these reforms, given the guarantees from UK Government² that they do not intend to amend this legislation.

At the moment, most single-sex services are provided on the basis of the gender you present as, not the sex determined on your birth certificate. Trans women currently have access to single-sex spaces such as women's refuges, women's toilets, and women's prisons. The exemptions which are currently in place are there to protect people of all genders, and it is important that they are retained.

We are not providers of protected single-sex services, therefore it's crucial that those who do work in the sector are listened to throughout this process. However, we do work closely with these women's organisations, and agree with them that all women's safety is a priority and key to achieving gender equality.

Those who work in the violence sector are already highly skilled at risk assessment on an individual basis, and already support transgender women. When considering a case involving women-only spaces such as refuges or prisons, it should always be considered on a case-by-case basis, and any individual, of any gender, with a background or any history of violence or predatory behaviour towards women should be denied access to that space. We believe that current exemptions and protections do provide necessary safeguards, but the Government should maintain a relationship and ongoing discussions with these service providers to ensure that this continues to be the case.

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

We believe that a reformed Gender Recognition Act should recognise non-binary identities. We shouldn't de-prioritise non-binary identities, this is a prime opportunity to change the law on this as well. At the moment, non-binary people aren't legally recognised despite being a substantial demographic – 52% of trans respondents to the UK Government's recent National LGBT Survey identified as non-binary. Non-binary identities are already recognised by some local authorities in the UK such as Brighton, therefore, UK Government are already falling behind.

We believe that the binary view of gender and the stereotypes and ideas of difference that this reinforces is often a cause of opposition and fear, and any move towards a more fluid system would be welcome and would no doubt help in tackling gender inequality and stereotyping.

² <https://www.gov.uk/government/news/facts-about-the-gender-recognition-act-consultation>

Question 22:

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

We are concerned about the way these proposed reforms have, in some instances, led to a hostile debate on the identities of trans people, and the impact this has had on trans communities. We think that the UK Government needs to be mindful of this going forward, and has a responsibility to protect trans people from the widespread transphobia that is prevalent in the media.

We believe that this reform would bring the law in line with common practice across the UK, and while it will have substantial impact on trans communities, it will have little impact on cisgender people and this needs to be reflected in conversations around the GRA.

We would also like to document our concern about the common conflation of gender and sex in UK law and public discussion, and we believe this needs to be addressed. We agree with the position of the Fawcett Society that we need to talk about the role biological sex has to play in discrimination against women, but we believe that 'biological sex is key to how gender has been constructed, but misogyny is not only aimed at women with particular biological features'.³

For more information, please contact:

Natasha Davies
Policy and Research Lead

 Natasha.davies@chwaraeteg.com

 07837 284695

Polly Winn
Policy and Communications Partner

 Polly.Winn@chwaraeteg.com

 07825 965580

³ <https://www.fawcettsociety.org.uk/Handlers/Download.ashx?!DMF=bfa3ae68-abee-478d-b59b-71572881b5a0>