

Stonewall

ABOUT THIS RESOURCE

This resource is produced by Stonewall, a UK-based charity that stands for the freedom, equity and potential of all lesbian, gay, bi, trans, queer, questioning and ace (LGBTQ+) people.

At Stonewall, we imagine a world where LGBTQ+ people everywhere can live our lives to the full.

Founded in London in 1989, we now work in each nation of the UK and have established partnerships across the globe. Over the last three decades, we have created transformative change in the lives of LGBTQ+ people in the UK, helping win equal rights around marriage, having children and inclusive education.

Our campaigns drive positive change for our communities, and our sustained change and empowerment programmes ensure that LGBTQ+ people can thrive throughout our lives. We make sure that the world hears and learns from our communities, and our work is grounded in evidence and expertise.

To find out more about our work, visit us at www.stonewall.org.uk

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Stonewall is proud to provide information, support and guidance on LGBTQ+ inclusion; working towards a world where we're all free to be. This does not constitute legal advice, and is not intended to be a substitute for legal counsel on any subject matter.

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**REFORM OF THE
GENDER
RECOGNITION ACT**

Parliamentary Briefing
February 2022

Executive Summary

1. The [Gender Recognition Act 2004](#) (GRA)¹ allows for transgender people to apply for legal recognition of their gender through a Gender Recognition Certificate (GRC) that enables their birth and death certificates to record their correct gender, alongside some policies such as pensions and insurance, and protects their privacy by not revealing their trans status in various situations such as applying for a job or university or college course.
2. The majority of trans people do not apply for legal gender recognition because the process is needlessly long, overly medicalised, stigmatising by requiring a diagnosis of ‘gender dysphoria’, and intrusive. It is possible to more easily update your name and gender marker on other identity documents, such as a passport or driver’s license.
3. Following the findings of the [National LGBT Survey 2018](#),² the UK Government under Prime Minister Theresa May launched a consultation into the Reform of the Gender Recognition Act 2004 which ran from July to October 2018 (the [GRA consultation](#)).³ The majority of respondents to the consultation supported significant reform.
4. Many countries around the world, including the [Republic of Ireland in 2015](#)⁴, have introduced straightforward systems of legal gender recognition for trans people, and do not report any problems with their operation for non-trans people.
5. In September 2020, the UK Government under Prime Minister Boris Johnson responded to the consultation, with the Minister for Women and Equalities, Liz Truss, setting out in a [Ministerial Statement to Parliament](#) the steps the Government would take.⁵ The proposed changes were to reduce the application fee for a Gender Recognition Certificate and digitise the existing process. The UK Government stated it would not reform the Gender Recognition Act 2004, despite the majority of respondents calling for it to do so and the clear problems with the process set out by trans people during the consultation and in the National LGBT Survey 2018.
6. The Women and Equalities Select Committee launched an inquiry to assess the UK Government’s proposals. The [Report](#) found there was “a lack of any real change to the gender recognition process”⁶ and recommended the Government bring back a plan within 12 weeks to reform the Gender Recognition Act 2004, particularly to remove the spousal consent, living in ‘acquired gender’ period and gender dysphoria diagnosis requirements.
7. Meanwhile in Scotland, the Scottish Government under First Minister Nicola Sturgeon will introduce the [Gender Recognition Reform \(Scotland\) Bill](#) in Spring 2022.⁷
8. The UK Government should follow the example of international partners, the Scottish Government and the recommendations of the Women and Equalities Select Committee and fulfil its promise to reform the Gender Recognition Act 2004.

¹ *Gender Recognition Act 2004*, <https://www.legislation.gov.uk/ukpga/2004/7/contents>

² *National LGBT Survey: Research Report*, Government Equalities Office, July 2018, <https://www.gov.uk/government/publications/national-lgbt-survey-summary-report>

³ *Reform of the Gender Recognition Act: Analysis of Consultation Responses*, Government Equalities Office & Prof. D King et al., September 2020, <https://www.gov.uk/government/publications/response-to-the-gender-recognition-act-2004-consultation>

⁴ *Gender Recognition Act 2015*, Irish Statute Book - Acts of the Oireachtas, <https://www.irishstatutebook.ie/eli/2015/act/25/enacted/en/html>

⁵ Written Ministerial Statement: Response to Gender Recognition Act (2004) consultation, 22 September 2020, <https://www.gov.uk/government/speeches/response-to-gender-recognition-act-2004-consultation>

⁶ *Reform of the Gender Recognition Act*, Third Report of Session 2021-22, Women and Equalities Select Committee, 21 December 2021, <https://publications.parliament.uk/pa/cm5802/cmselect/cmwomeq/977/report.html>

⁷ *Gender Recognition Reform (Scotland) Bill: consultation*, 17 December 2019, <https://www.gov.scot/publications/gender-recognition-reform-scotland-bill-consultation-scottish-government/documents/>

What is the Gender Recognition Act 2004?

9. The Gender Recognition Act 2004 enables trans people to change their legal gender (from female to male, or male to female) by applying for a Gender Recognition Certificate (GRC). This changes the name and gender on their birth certificate and is required for someone to be recognised as male or female, legally and officially.
10. To apply for legal gender recognition, trans people must:
 - Be over 18.
 - Have received a medical diagnosis of gender dysphoria from a gender specialist (a doctor or psychiatrist specialising in gender identity) and one other doctor (often a GP).
 - Have a detailed psychiatric report confirming how the diagnosis was determined and any treatment received.
 - Prove they've lived 'in role' of their 'acquired gender' for 2 years.
 - Pay a £140 application fee – but the Government has announced it will reduce this to a nominal £5.
11. There is **no** requirement to undergo any medical treatment, including physical surgery (the NHS waiting list for surgery is lengthy and not all trans people will want to or be able to undergo surgery), or hormone therapy (not all trans people will want to or be able to undergo hormone therapy).

What does legal recognition and a Gender Recognition Certificate (GRC) do?

12. Obtaining a Gender Recognition Certificate enables trans people to have significant official recognition and documentation that records their correct gender:
 - The gender recorded on their marriage or civil partnership
 - The gender recorded on their death certificate
 - Pension and insurance policies administered in the correct gender.
13. By ensuring their birth certificate is consistent with their other records (such as medical records, bank accounts, passports and driving licences, which are usually straightforward to update), it helps protect their privacy – protecting them from risking discrimination from employers and service providers, which is common when a person's trans status becomes known.

What does legal recognition not do?

14. A Gender Recognition Certificate is not required to update the recorded gender on a number of documents:
 - Updating the gender recorded on medical records does not require a GRC
 - Updating the gender recorded on bank accounts does not require a GRC
 - Updating the gender recorded on passports and driving licences does not require a GRC
 - Updating employment records does not require a GRC
 - A legal change of name does not require a GRC

Why does the Gender Recognition Act 2004 need to be reformed?

15. While ground-breaking for its time, the Gender Recognition Act 2004 is bureaucratic, intrusive and demeaning, and as a result, most trans people don't engage in the process.
16. While the Government Equalities Office [estimates](#) that there are approximately 200,000-500,000 trans people in the UK,⁸ at the time of the 2018 consultation on reform of the Gender Recognition Act, just 4,910 trans people had been issued a Gender Recognition Certificate.
17. This is despite a clear demand among trans communities for obtaining a Gender Recognition Certificate. The [UK Government's National LGBT Survey \(2018\)](#)⁹ found that only eight per cent of trans people who did not have a Gender Recognition Certificate, said they would not be interested in getting one.
18. The current process is:
 - **Stigmatising** and overly medicalised because it requires a diagnostic psychiatric report which reinforces the outdated assumption that being trans is a mental illness.
 - **Intrusive** because it requires trans people to provide extensive medical evidence about their bodies despite there being no requirement to undergo hormonal or surgical treatments.
 - **Expensive** for individual applicants and inefficient for the public purse.
 - Fee of £140 to apply plus 2 x £80 for medical reports.
 - Requires wages for judicial tribunal members rather than just administrators.
 - **Opaque and unfair** because no appeal process exists if the tribunal panel reject an application.
 - Too **complicated** for many trans people to navigate, especially if they have poor literacy, are disabled or have lost old paperwork while homeless or fleeing domestic violence.
 - **Needlessly slow** because trans people are not able to apply until two years after they transitioned.
 - **Exclusionary** of many trans people, including under-18s and non-binary people.
19. While trans people can live their lives in their correct gender and update many records and documents quite simply, the faults with the Gender Recognition Act 2004 deter most trans people from applying for legal recognition and this can cause serious problems:
 - Trans people are left in a risky legal limbo, with their birth certificate not matching all their other identity documents and contradicting how they live.
 - This forces them to reveal their trans history and risk discrimination from employers and service providers if they need to show their birth certificate – for example, when proving their right to work in the UK, joining a pension scheme, applying for college or university, or registering a marriage or civil partnership.
 - If a trans person dies without a Gender Recognition Certificate, their family will be given a death certificate in their birth sex – erasing the reality of their life and transition from historical records.

⁸ *Trans People in the UK*, Government Equalities Office, 2018

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721642/GEO-LGBT-factsheet.pdf

⁹ *National LGBT Survey: Research Report*, Government Equalities Office, July 2018,

<https://www.gov.uk/government/publications/national-lgbt-survey-summary-report>

What would reform of the Gender Recognition Act 2004 not do?

20. The Gender Recognition Act 2004, and its reform, does not have bearing on discrimination law, including the [Equality Act 2010](#) and provisions around single-sex spaces.¹⁰
21. The Equality Act protects trans people from discrimination on the grounds of ‘gender reassignment’ – which in law covers an individual “proposing to undergo, undergoing or has undergone a process (or part of a process) for the purposes of reassigning the person’s sex by changing physiological or other attributes of sex” ([Equality Act 2010, Section 7\(1\).](#))¹¹
22. It is important to note that the reference to “part of a process” means that a person can be at any stage of their transition and hold the protected characteristic of gender reassignment; there is no requirement that they hold or intend to apply for a Gender Recognition Certificate or undergo any medical treatment. Trans people don’t need a GRC to be protected under the Equality Act 2010.
23. There is a legal exemption in [Schedule 3](#) and [Schedule 23](#) of the Equality Act 2010,¹² which means that providers of single-sex services (whether public bodies or e.g. employers) can in some circumstances legally exclude trans people where this is a ‘proportionate means to achieve a legitimate aim’. This includes in the provision of sensitive single-sex services, for example, support services for people affected by domestic or sexual violence, and prison accommodation. However, what constitutes a ‘proportionate means to achieve a legitimate aim’ is highly fact-sensitive and context-specific, and it is unlikely a blanket policy will meet this legal standard.
24. Reform of the Gender Recognition Act 2004 would not change the single-sex services legal exemption included in the Equality Act 2010.

What other countries have self-declaration?

25. Countries that have self-declaration for legal gender recognition include: Argentina, Brazil, Ireland, Denmark, Norway, France, Portugal, Greece, Iceland, Luxembourg and Malta.
26. The Canadian provinces of: Quebec, Newfoundland and Labrador, Alberta, Nova Scotia.
27. 10 states in the USA.
28. New Zealand is in the process of enacting passed self-declaration legislation, and the new German Government has stated its intention to introduce legal self-declaration.
29. In the Republic of Ireland, the [Gender Recognition Act 2015](#)¹³ enables trans men and trans women over the age of 18 to have their gender legally recognised through a straightforward administrative process based on the principle of self-determination, with

¹⁰ Equality Act 2010, <https://www.legislation.gov.uk/ukpga/2010/15/contents>

¹¹ Equality Act 2010, Part 2 Equality: Key Concepts, Chapter 1 Protected Characteristics, Section 7 Gender reassignment
<https://www.legislation.gov.uk/ukpga/2010/15/section/7>

¹² Equality Act 2010, Schedule 3 Services and Public Functions: Exceptions, Part 7 Separate, Single and Concessionary Services, Etc, 26-28
<https://www.legislation.gov.uk/ukpga/2010/15/schedule/3>

Equality Act 2010, Schedule 23 General Exceptions, Part 3 Communal accommodation
<https://www.legislation.gov.uk/ukpga/2010/15/schedule/23>

¹³ *Gender Recognition Act 2015*, Irish Statute Book - Acts of the Oireachtas, <https://www.irishstatutebook.ie/eli/2015/act/25/enacted/en/html>

a statutory declaration witnessed by an official (such as a Solicitor, Notary Public, Commissioner for Oaths or the Peace Commissioner).

30. Applicants are not required to provide any medical evidence (such as a diagnosis of gender dysphoria or treatment undergone) or extensive documentary evidence. The legislation also enables trans people aged 16 and 17 to have their gender legally recognised, provided the young person's parents, surviving parent or guardian consents and applies for a Court Order from the Circuit Family Court on their behalf.

GRA Reform plans by the Scottish Government

31. The Gender Recognition Reform (Scotland) Bill is expected to be introduced to the Scottish Parliament in Spring 2022. This follows two public consultations, including a consultation on a [draft Bill](#).¹⁴
32. The first [public consultation in 2017-18](#) had over 15,500 responses and found that of respondents resident in Scotland:
- **64.6 per cent** agreed with proposals to remove evidence and medical requirements and introduce a self-declaratory system
 - **66.2 per cent** agreed with proposals to enable people aged 16 and 17 to apply for and obtain a GRC
 - **66.1 per cent** thought that action should be taken to recognise non-binary people.¹⁵
33. In 2019-20, the Scottish Government ran a second consultation, on the [draft Bill](#).¹⁶ The draft Bill proposed to amend the Gender Recognition Act 2004 as it applies to Scotland to streamline and improve the process by which trans men and trans women can update the sex on their birth certificate. It also sought to lower the minimum age for applications from 18 to 16.
34. Under the proposals in the draft Bill, current requirements for applicants to provide medical reports and evidence of a gender dysphoria diagnosis and of 'living in role' for two years were to be removed, with applicants instead to make a statutory declaration that they have lived in their 'acquired gender' for three months and intend to continue to live in the acquired gender permanently. The draft Bill proposed that this would be followed by a three-month enforced 'period of reflection', during which time applicants would be unable to be approved for a GRC.
35. The [analysis of the consultation](#) on the draft Bill found that the considerable majority of local authorities, NHS and health and social care partnerships, unions and political parties, third sector support organisations, children and young people's organisations, and LGBT organisations that responded supported a statutory declaration-based system.¹⁷

¹⁴ Gender Recognition Reform (Scotland) Bill: consultation, 19 December 2019 <https://www.gov.scot/publications/gender-recognition-reform-scotland-bill-consultation-scottish-government/pages/11/>

¹⁵ Review of the Gender Recognition Act 2004: consultation analysis, 23 November 2018

<https://www.gov.scot/publications/review-gender-recognition-act-2004-analysis-responses-public-consultation-exercise-report/pages/1/>

¹⁶ Gender Recognition Reform (Scotland) Bill: consultation, 17 December 2019

<https://www.gov.scot/publications/gender-recognition-reform-scotland-bill-consultation-scottish-government/documents/>

¹⁷ Gender Recognition Reform (Scotland) Bill: consultation analysis, 2 September 2021

<https://www.gov.scot/publications/gender-recognition-reform-scotland-bill-analysis-responses-public-consultation-exercise/>

What has the UK Government done so far?

36. In response to its consultation on GRA reform in 2018, in September 2020 the UK Government [stated](#) that while it would undertake non-legislative changes to improve the current process for trans people (including reducing the application fee and digitising the existing process), it would not undertake legislative reform of the Gender Recognition Act 2004.¹⁸
37. This was against the [overwhelming majorities of respondents calling for reform](#) in several areas:
- 64.1 per cent called for the requirement for a diagnosis of gender dysphoria to be removed.
 - 80.3 per cent supported the removal of the requirement for a medical report detailing all treatment.
 - 78.6 per cent called for the removal of the requirement for individuals to provide evidence of having lived in their ‘acquired gender’ for a period of time.
 - 84.9 per cent called for the removal of the requirement that a married trans person must obtain consent from their spouse before successfully getting legal gender recognition.¹⁹
38. The Minister for Women and Equalities, Liz Truss, did announce plans to reduce the fee from £140 to £5, to digitise the process, and made mention of three new gender identity clinics – however these clinics had already been previously announced and were the work of NHS England that the Government Equalities Office had little or no input into, they were not the result of the consultation.
39. While reducing the fee is welcome, this is a nominal change that does almost nothing to tackle the main problems with the process of legal gender recognition. This is a failure of the UK Government to reform a process that is needlessly medicalised, stigmatising and bureaucratic for trans people, and has no impact on non-trans people.

¹⁸ Written Ministerial Statement: Response to Gender Recognition Act (2004) consultation, 22 September 2020, <https://www.gov.uk/government/speeches/response-to-gender-recognition-act-2004-consultation>

¹⁹ *Reform of the Gender Recognition Act: Analysis of Consultation Responses*, Government Equalities Office & Prof. D King et al., September 2020, <https://www.gov.uk/government/publications/response-to-the-gender-recognition-act-2004-consultation>

Findings and Recommendations of the Women and Equalities Select Committee Report

40. The Women and Equalities Select Committee launched an inquiry into the Reform of the Gender Recognition on 28 October 2020.²⁰ The Inquiry Report was published on and is available on the Parliament website here: <https://committees.parliament.uk/publications/8329/documents/84728/default/>
41. The Committee analysed over 2000 pieces of written evidence. The Minister for Women and Equalities, Liz Truss MP, and the Minister for Equalities, Kemi Badenoch, did not agree to give oral evidence. Instead, the Parliamentary Under Secretary of State for Health, Jo Churchill MP, gave oral evidence, in which she repeatedly confirmed that the decision whether or not to reform the Gender Recognition Act 2004 was and is the responsibility to the Government Equalities Office and not the Department of Health and Social Care.
42. It is therefore unclear why the UK Government, specifically the Government Equalities Office, has refused to reform the Gender Recognition Act 2004 despite it being a priority of the Government's LGBT Action Plan and the GRA consultation showing majority support for reform. The Minister for Women and Equalities has not provided an explanation for the decision.
43. The Inquiry found that, while the reduction of the fee was a good start, the Minister for Women and Equalities' inclusion in her statement of three new clinics that in fact had already been previously announced "*served only as a distraction from the lack of any real change to the gender recognition process.*"²¹
44. The main findings and recommendations of the Women and Equalities Select Committee are:
- The Government should bring back an action plan for reform of the Gender Recognition Act 2004 within 12 weeks, specifically in relation to removing the spousal consent provision, the living in 'acquired gender' two-year period requirement and the diagnosis of gender dysphoria.
 - The Government should conduct a review on whether the Gender Recognition Panel could be replaced with the Registrar General for England and Wales.
 - Better guidance is needed on the single-sex and separate-sex exceptions of the Equalities Act 2010, including best practice guides for providing trans and non-binary inclusive and specific services.
 - The DHSC and NHS England should maintain the five pilot gender identity clinics unless or until the time that more permanent facilities with greater capacity, geographical scope and powers can be established.
 - The Government should clarify what barriers prevent it from allowing non-binary people to be recognised, and there should be research to create proposals for the legal recognition of non-binary people.

²⁰ Reform of the Gender Recognition Act, Third Report of Session 2021-22, Women and Equalities Select Committee, 21 December 2021, <https://publications.parliament.uk/pa/cm5802/cmselect/cmwomeq/977/report.html>

²¹ Reform of the Gender Recognition Act, Third Report of Session 2021-22, Women and Equalities Select Committee, 21 December 2021, page 71, Conclusions and Recommendations para. 3 <https://publications.parliament.uk/pa/cm5802/cmselect/cmwomeq/977/report.html>