

STONEWALL RESPONSE: Consultation into the reform of the Gender Recognition Act 2004

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

No.

Please explain the reasons for your answer:

It's wrong for legal recognition of gender identity to depend on a diagnosis of gender dysphoria. Being trans is not a mental illness, a principle now recognised by the World Health Organisation. People should be able to legally self-determine their gender in line with best practice in other countries, like Ireland, Malta, Argentina and Norway. Self-determination means a trans person doesn't need to be diagnosed with a medical condition or prove themselves as 'trans enough' to a third party.

Needing a diagnosis of gender dysphoria and the wider medicalisation of our gender recognition process discourages trans people for applying for a Gender Recognition Certificate (GRC):

- Only 12% of trans people who "had completed or were going through transition" said they'd applied for a GRC. And yet 93% of those that hadn't applied for a GRC said they were interested in doing so. (*National LGBT Survey: Research report*, Government Equalities Office, 2018)
- The Government Equalities Office estimates a trans population of between 200,000 and 500,000 people in the UK – and yet Ministry of Justice figures show that only 4,910 trans people have obtained a GRC since the introduction of the 2004 Act.

Clearly, the system isn't fit for purpose.

Stonewall believes that any reformed Gender Recognition Act (GRA) must support trans people's right to individual autonomy and self-determination. Such principles aren't supported by medicalisation and the need for clinical assessments as trans people's identities are subject to interrogation. That's why this requirement must be removed.

This position is supported by the World Professional Association for Transgender Health (WPATH), an international organisation made up of medical experts, which set the International Standards of Care for transition-related healthcare. WPATH have stated in their Identity Recognition Statement that "medical and other barriers to gender recognition for transgender individuals may harm physical and mental health". They define these barriers as including "requirements for diagnosis".

Based on their experience of the harm that can be done to trans people when their access to gender recognition is obstructed, WPATH "urges governments to eliminate barriers to gender recognition, and to institute transparent, affordable and otherwise accessible administrative procedures affirming self-determination, when gender markers on identity documents are considered necessary".

Stonewall's own research demonstrates the clear link between medicalisation of trans identities and trans people's ability to feel a part of society without facing discrimination, prejudice and violence. When asked about the process as part of our *LGBT in Britain: Trans Report* (2018), participants said that medicalisation had contributed to a highly invasive and humiliating process based on outdated stereotypes of what it is to be trans, and what it is to be a man or a woman. As participants said:

"The gender recognition panel is an archaic, sexist and a deeply offensive, unnecessary gatekeeper." – Ivy, 21, Yorkshire and the Humber

"Many of my friends admit to ... 'jump[ing] through hoops' in order to access the care they require, which means professionals are likely to think that most trans individuals fit the medical model, when that's not the case." – Ash, 31, Yorkshire and the Humber

A system that didn't require diagnosis would save a significant amount of distress for trans people and have clear health benefits. It would also save time and money for NHS Gender Identity Services that are severely overstretched, something that negatively impacts the health and wellbeing of many thousands of trans people. As the Prime Minister told the *PinkNews* awards in 2017, "being trans is not an illness". A reformed Act must no longer treat it as if it is.

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

No.

Please explain the reasons for your answer:

As outlined in Stonewall's response to Question 3, a reformed Gender Recognition Act (GRA) that supports the dignity and rights of trans people in England and Wales, mustn't be linked to medical intervention, but based instead on a system of self-determination. The Gender Recognition Act 2004 already recognises this to a degree, as medical intervention isn't required to obtain a Gender Recognition Certificate (GRC). This means that a report detailing medical treatment is unnecessary and unhelpful.

This position is supported by the World Professional Association for Transgender Health's (WPATH) Identity Recognition Statement (also referenced in response to Question 3), which is clear that, as well as a requirement for diagnosis, "any form of clinical treatment or letters from doctors" constitutes a barrier to legal recognition that "may harm physical and mental health".

Although current legislation states that no medical intervention has to take place, the necessary diagnosis and the requirements set by the Gender Recognition Panel means that some applicants are pressured to undergo surgery just to secure their GRC. This demonstrates the control that Panels exert over trans people's lives very clearly. As James Morton, Manager of the Scottish Trans Alliance told the Women and Equalities Select Committee's Transgender Equality inquiry:

"A number of trans people... have been really traumatised and humiliated by the process where they have [had to say whether they have] undergone various medical treatments. The Act says you should be able to access your gender recognition without necessarily having those, and yet the Gender Recognition Panel has insisted on really intrusive levels of detail about the surgeries that people have undergone or their intentions for future surgery. We have had, for example, a young person in their early 20s who has not yet had any sexual relationships being forced to decide and state categorically whether or not they want genital surgery and being questioned over the fact that initially they wanted breast augmentation but then grew breasts through hormone treatment. Panels have been incredibly pedantic about any perceived inconsistencies in the medical reports, which means that people end up extremely upset and feel really invalidated."

There's a chronic lack of capacity within NHS Gender Identity Services so trans people face huge barriers to accessing medical support regarding their gender identity and transition, often waiting years to access the help they need. *LGBT in Britain: Trans Report* (2018) found that three in five trans people (62 per cent) who have undergone, or are currently undergoing, medical intervention for their transition aren't satisfied with the time it took to get an appointment. As one participant said:

"The waiting lists are excruciatingly long on the NHS to the point I feel I'm not mentally strong enough to wait this long, and hormones/surgery are incredibly difficult to get hold of but are something that will greatly improve my mental wellbeing." – Dominic, 24, North West

These are similar findings to those in the Government Equalities Office's *National LGBT Survey: Research Report* (2018). 68 per cent of trans respondents who had accessed or tried to access specialist Gender Identity Services in the 12 months preceding the survey said they'd had difficulty accessing the services due to the excessive wait.

The current requirement for evidence, which can include medical reports, to support an application for legal gender recognition means that barriers to healthcare also prevent trans people from securing a GRC or delay them from doing so for many years.

Although some trans people do experience gender dysphoria and need appropriate healthcare, having gender dysphoria isn't a prerequisite for being trans; many trans people don't experience gender dysphoria. Others may not pursue medical diagnosis because they don't want to undergo medical interventions (or can't for health reasons). For these people, the requirement to provide a report detailing the treatment they've received is entirely irrelevant to them and their transition.

De-medicalisation is also closely linked with trans people's ability to feel a part of society without facing discrimination. Psychiatric assessment is frequently described by trans people as demeaning. That's because trans people's identities are interrogated by third parties, contributing to their feelings of invalidation. The process gives Panels unnecessary control over trans people's lives and identities, violating their right to a private life.

The GRA doesn't require physical medical intervention in order to get a Gender Recognition Certificate. This must not change in any reformed Act, especially one based on trans people's right to autonomy and which values their privacy. What does need to be updated though, is removing the current medicalised process to receive a certificate. This is out of line with the principle that no medical intervention should be required, established both in the original Act and within the Equality Act 2010, which (in its description of gender reassignment) explicitly recognises that transition cannot be reduced to a medical process.

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?

No.

Please explain the reasons for your answer:

Currently, applicants have to 'have lived in their acquired gender' for a period of time and be able to prove it with evidence. This creates a system where a trans person's identity is interrogated and tested by a third party before their gender is recognised legally and they can access the rights and benefits it affords.

For example, many trans people who don't have GRCs worry that this may lead to marriage certificates being registered in the incorrect gender:

"I'd like a Gender Recognition Certificate, but the rule where you must live in your identified gender for two years is tough. I started my transition over two years ago, but I don't have enough evidence to prove it yet, so a GRC could be years away.

"That's distressing as I'm engaged and want to get married as a woman. Right now, I can't do that. A big part of my life is on hold because of some arbitrary time limit. And it's draining knowing my documentation has the wrong details. It would be such a boost to my mental health if all that was cleared up." – Jessica

Stonewall believes that any reformed GRA must support trans people's rights to individual autonomy and self-determination. Having to prove who you are to officials, whether in a medical or legal setting, is clearly out of step with the growing acceptance that the only person who can determine someone's gender is the individual themselves.

Trans people frequently describe submitting evidence as something that damages them and trans communities. One respondent in Stonewall's recent research, *LGBT in Britain: Trans Report (2018)*, spoke about the Gender Recognition Panel as a "gatekeeper" and the process of submitting evidence as "deeply offensive" and "unnecessary". Another put it succinctly:

“The Gender Recognition Act allowed me to change my birth certificate, however, the process to do so felt so invasive and judged for me not being ‘trans enough’” – Isaac, 24, West Midlands

It's clear that requiring people to submit evidence makes them feel judged. People and organisations providing evidence to the Women and Equalities Select Committee Transgender Equality Inquiry in 2015 described providing proof as “humiliating.”

The current process also forces those who do go through it to conform to outdated stereotypes of what it is to be trans, and what it is to be a woman or a man. Respondents in *LGBT in Britain: Trans Report* (2018) told Stonewall that the process is “sexist.” This is also the case in other European countries that require evidence as part of the recognition process. Amnesty International's 2014 report, *The State Decides Who I Am*, found that trans people they spoke to also felt evidence had to be based on rigid gender stereotypes, when in reality there is no uniform way to present your identity. As one participant said:

“You are constantly being reviewed on the basis of how ‘girly’ or ‘manly’ you are ... I spent over a year trying to convince other people that I am really a woman. It is a humiliating process, a breach of one's self determination. I see that as absurd. No-one else has to constantly convince others of who they are.” – N, 39, Finland

Having to provide evidence is also expensive and bureaucratic. It costs money to acquire supporting legal documents: a passport application, for example, costs £75.50, and a provisional driving licence £34. It costs £36 to change a name on a deed poll. Such costs create difficulties for trans people on low incomes, and for many trans people, the complexity of the system is an additional barrier. Stonewall has received accounts of people struggling with the system and receiving multiple rejections as a result:

“I was hurled into a maelstrom of bureaucracy... Filling out the application took five hours and gathering the ‘evidence’ they needed - NHS and Inland Revenue details, passport, driving licence, and Electoral Register confirmation letter – meant giving the government details they'd issued themselves! It's a ridiculous, long-winded process.” – Lisa

“My application was sent back to me half a dozen times. Every rejection was another kick. No wonder my gender specialist doctor asked me why I was bothering. I practically had to beg him to help provide the evidence I needed to jump through the ridiculous hoops of the process... People shouldn't have to fight so hard to be recognised. The system doesn't work. It needs to be fixed.” – Keira

Although trans people are protected from discrimination under the Equality Act 2010 irrespective of whether they have a GRC (under the protected characteristic of “gender reassignment”, which, as our response to Question 20 explains, may not fully protect non-binary people), it remains incredibly difficult for trans people to be out at work due to high levels of workplace exclusion. Yet *not* being out at work can create an additional barrier in establishing the ‘evidence’ the Panel needs. Stonewall's *LGBT in Britain: Trans Report* (2018), found that half of trans people (51 per cent) have hidden their identity at work for fear of discrimination, and one in eight trans employees (12 per cent) have been physically attacked by a colleague or customer in the last year.

It can be especially hard for some trans people to provide evidence of having lived in their acquired gender, even if they've been doing so for many years. Trans people who've been unemployed won't be able to rely on payslips or evidence of having worked in their true gender. Trans people who've been homeless may not be able to produce bills addressed to them in their true gender, and those without a permanent address could struggle to access the range of services people usually rely on to document their identity.

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

No.

Please explain the reasons for your answer:

A reflection period, as with the submission of evidence, is in opposition to the principle of self-determination that must be at the centre of any new system of legal gender recognition. It perpetuates the myth that trans people don't understand their identities or know what's best for themselves. This is patronising and fundamentally undermines trans people's right to equal treatment and protection from discrimination. Paradoxically, setting an arbitrary period of reflection will unnecessarily extend and complicate a process that the Government is aiming to 'streamline'.

It's important to state that countries where simpler, de-medicalised systems have been introduced, have seen no significant rate of instances of people going through the process, changing their mind and then making further applications. In the Republic of Ireland, for example, since the introduction of self-determination through their Gender Recognition Act 2015, 297 people have been issued with Gender Recognition Certificates upon application. There is no recorded case of any of them asking for their certificate to be revoked.

Countries that have reformed their gender recognition law to include a reflection period have been criticised by international LGBT rights organisations. For example, when Belgium introduced a new law in May 2017, ILGA-Europe's Executive Director, Evelyne Paradis, highlighted that the three-month reflection period represented a "missed opportunity" as it is out of step with European best practice, which "permit[s] legal gender recognition in a completely de-medicalised process, based on self-determination."

What's more, under the current Act in the UK, there's no restriction on the number of times a person can apply for legal gender recognition and there's no proposal to introduce a cap. Even in the rare situation that an individual might change their mind after having obtained a GRC, there would be no cost to any third party if they chose to make an additional application for it to be rescinded.

Fundamentally, there is no evidence that a reflection period adds any benefit to the Government or the individual looking to obtain a GRC. But the insinuation that trans people are unsure about their identities is flawed and detrimental. For the reformed administrative process to be truly centred on the wishes of the individual applicant, it must not include unnecessary obstructions such as a waiting period.

Question 6: Currently, applicants for a Gender Recognition Certificate must make a statutory declaration as part of the process.

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

Yes

Please explain the reasons for your answer:

Including a statutory declaration as part of a system of self-determination is a sensible approach, as long as it's the only requirement to obtain a GRC (as is the case in the Republic of Ireland, for example).

The process for statutory declaration is simple and straightforward and is used by people applying to change their legal name. The process is fully accessible and simply involves printing off a basic form, available from several online locations.

This would create a system in line with international human rights frameworks, including the European Convention on Human Rights and the Yogyakarta Principles. These Principles were created by international human rights experts on international standards on sexual orientation and gender identity.

Principle 31 states that everyone, regardless of their gender, sexual orientation, gender identity or sex characteristics, has the right to identity documents that are true to their self. It calls on member states to ensure access to a quick, transparent and accessible mechanism, and specifically states that “no eligibility criteria, such as medical or psychological interventions, a psycho-medical diagnosis ... shall be a prerequisite to change one’s name, legal sex or gender”.

A simple statutory declaration system is widely recognised as best practice internationally, having been implemented in a number of countries. Following a successful legal challenge lodged by a trans woman in the Irish High Court (which found that the absence of any system of legal gender recognition was a violation of the European Convention on Human Rights), the Republic of Ireland introduced the Gender Recognition Act 2015. This enables trans people to obtain a GRC by way of statutory declaration. The Irish Government adopted this best practice approach after widespread consultation with trans communities and other stakeholders including medical professionals. The process doesn’t require a medical diagnosis of intersex conditions or gender dysphoria, or proof of people having lived in their ‘acquired’ gender. Trans people over the age of 18 can self-identify by way of statutory declaration.

In 2015, Malta also passed its Gender Identity, Gender Expression and Sex Characteristics Act. Like Ireland, the process is a model of self-determination, and is achieved by someone declaring before a notary. The Bill prohibits requests for medical information or a mental health diagnosis. It was amended in 2016 to allow young people to access the process from the age of 16. Although they’re still required to go through the court system, their best interests and views are considered, rather than just those of the parents. Transgender Europe (TGEU) welcomed the de-pathologisation of trans identities and banning of conversion therapies, stating that Malta showed leadership on the world stage in safeguarding trans people.

In perhaps the most progressive and wide-ranging piece of trans legislation in the world, Norway introduced its Legal Gender Amendment Act in 2016, based on self-determination. Any person over the age of 16 can change their legal gender and name by filling in a short document and registering it with the local tax office. There’s no reflection period, no diagnosis and no need for compulsory medical intervention or surgical requirements.

These international examples show that statutory declaration systems, based on the principle of self-determination, are easy to implement. And they’re significantly better for trans people too, as they no longer have to meet invasive requirements to ‘prove’ their identity.

A statutory declaration also provides for legal intervention in the unlikely event of fraudulent application for gender recognition. It’s a criminal offence to knowingly make a false statement through a statutory declaration. We believe this provides an appropriate, effective and proportionate deterrent to anyone who might seek to make a fraudulent claim.

It should be noted that countries that have already adopted a system of self-determination through statutory declaration (including Argentina, Denmark, Ireland, Malta and Norway) have seen no evidence of people amending their gender with fraudulent intent.

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

No.

Please explain the reasons for your answer:

Although it's important that people looking to change their legal gender intend their declaration to be permanent, we believe including an 'until death' clause is unnecessary. Fraudulent applications are already illegal, and people seeking legal recognition of their gender do so with an understanding of the implications of their decision.

It's also important to note that this requirement doesn't reflect that some trans identities fall outside of 'male' and 'female' classifications, and where gender identity can be more fluid. That's why Stonewall believes a reformed GRA must recognise non-binary identities (as discussed in our response to Question 20).

As the primary objective of reforming the law should be to give individuals autonomy over their own bodies and identities, we cannot see any benefit to this requirement, particularly as the phrasing risks excluding some trans and non-binary people.

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

No.

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

Stonewall strongly urges the Government to remove the requirement for spousal consent in a reformed Gender Recognition Act. Often referred to as the 'spousal veto', this provision gives unprecedented power to a married trans person's partner to block them from having their gender legally recognised or forcing them into lengthy and expensive divorce proceedings.

In the very worst cases, we're concerned that the spousal consent provisions leave trans people at risk of abuse and coercive control. In circumstances where a relationship is breaking down or is abusive, a trans person's spouse may use this provision to intentionally and maliciously prevent them from accessing legal gender recognition.

We already know that trans people are at high risk of domestic abuse. SafeLives' 2018 *Guidance for Multi-Agency Forums: LGBT+ People* states that trans survivors are one of the most hidden groups of domestic abuse survivors. Stonewall's *LGBT in Britain: Home and Communities*, also found that one in five trans and non-binary people (both 19 per cent) have faced domestic abuse from a partner in the last year. As Galop, the UK's LGBT anti-violence charity states:

"Through our work we know while trans people may face similar patterns of abuse, many trans survivors face specific forms of abuse related to their trans identity. Most often, partners or family members may prevent trans people from expressing their gender identity or gender expression and isolate them from their systems of support. They may also threaten to withhold medication used for transition or threaten to make their trans history public. Without reform, the current Gender Recognition Act gives abusive partners the chance to wield an immense amount of control over their partner's life, by enabling them to prevent their partner from achieving legal gender recognition. This must end." – Nik Noone CEO, Galop

The Government has stated these provisions are necessary because a marriage represents a contract between two people. But Stonewall is concerned that the provision suggests that a married trans person has somehow violated this contract (either by deceiving or harming their spouse) by seeking legal gender recognition. It also implies that same-sex marriage may be automatically undesirable for a spouse.

It's vital that we follow Scotland, who removed the need for spousal consent by passing an amendment to the Marriage and Civil Partnership (Scotland) Act in 2014.

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.

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 certificates and what is the impact of these costs?

The £140 application fee is excessive and significantly more than other, comparable documentation. It only costs £4 to buy a short or full birth certificate when registering a new baby, or £9.25 to order a copy of an existing birth, death or marriage certificate. As the system is incredibly difficult to navigate and applications can be rejected without the right to appeal, people face the prospect of not getting a GRC even though they've paid for it.

What's more, trans people often have to provide additional documents to prove to a Gender Recognition Panel that they've been living 'in role'. This could include a passport (which costs £75.50 to obtain) or driving licence (£34 for a provisional or £14 to renew or change an existing licence) as well as medical reports (which cost up to £80). Name changes also incur a minimum cost of £36 to enrol a deed poll with the courts. As one person told Stonewall:

"I came out as trans three years ago, but I haven't applied for a Gender Recognition Certificate. The application fee is £140. That's three months' council tax for me. As a GRC application can be rejected without the right of appeal, I can't risk losing that amount of money. Nobody should have to choose between putting food on the table and legal gender recognition." – Chay

Although the GRA doesn't require medical treatment in order to obtain a GRC, any treatment *will* be accepted as supportive evidence. If a trans person hasn't undergone any medical treatment, the Gender Recognition Panel may ask why they haven't started medical treatment and require evidence to support the answer.

Clearly, this has an impact on access to legal recognition. Many trans people report that they feel obligated to seek medical interventions (that they may not have otherwise wanted) to secure recognition.

Trans people aren't entitled to treatments until they're in the care of a Gender Identity Service. As there are only eight Gender Identity Clinics in England, anyone who doesn't live close to them will incur significant travel costs to access their services. Access to treatment in Wales is particularly poor; with no Gender Identity Services whatsoever, patients have to travel to London for care.

As our response to Question 4 explained, it's also important to recognise that access to a Gender Identity Service may take years between a referral and an initial assessment. Participants in Stonewall's *LGBT in Britain: Trans Report* frequently described experiencing significant delays to treatment:

"I am currently on the waiting list to start hormones and so far, my first appointment has been pushed back by nine months, added onto the nine months I have already waited. They have given me false hope and told me that my appointment would be in the next month, then continued to say the same thing month after month." – Jo, 22, Wales

This means that a trans person applying for legal recognition may face significant pressure to pay for treatments or surgeries themselves – and the bills could amount to thousands of pounds. What's more, some medical intervention (like hair removal treatment) isn't available on the NHS.

No wonder trans people travel abroad or access medication online. *LGBT in Britain: Trans Report* found that more than one in ten trans people (11 per cent) have gone abroad for medical treatment to alter their physical appearance, including buying hormones over the internet.

“I went abroad for facial feminisation surgery and for voice feminisation surgery. While both are available in the UK, they are far below the superior standards and techniques available in other countries. The UK is embarrassingly behind on treatment for trans people. We can't even self-identify our gender, have to wait two years, and 'prove ourselves' to a panel of unqualified strangers.” – Heidi, 41, South West

This has a significant impact on trans people in lower socioeconomic groups, who are less able to pay for treatment. The requirement to live 'in role' for two years, often without access to free healthcare, also delays the process for trans people seeking legal recognition who may not be comfortable presenting as their true gender without receiving any medical intervention. That's because trans people who aren't regarded, at a glance, to be a cisgender man or woman face additional prejudice.

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

No.

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

As there have been no recorded cases of a successful prosecution under section 22 to date, it's clearly not fit for purpose as it isn't protecting trans people.

Section 22 must be reformed if the privacy and dignity of trans people are to be protected in any meaningful way.

Right now, it's an offence for someone who's acquired "protected information" in an "official capacity" to disclose it to anybody else. This includes information regarding an application for a GRC, whether it's been granted and the applicant's trans history.

This leaves the majority of trans people who haven't got, or not tried to get, a GRC, unprotected. That's why a reformed GRA must include provisions that protect the privacy of trans people who don't have and don't wish to apply for GRCs.

One reason for the lack of convictions is because prosecutions must be pursued within six calendar months of the offence being committed. But this assumes that police know that disclosing about someone having a GRC is an offence. As they often don't know, they don't pursue cases within the six-month time frame. What's more, victims may not realise an offence has taken place until after it's too late to secure a conviction.

The lack of awareness about Section 22 among employers is also problematic, as is the lack of guidance on how it should be used. Whatever amendment is made to this important part of the GRA, it must be accompanied by practical advice for both employers and employees.

Question 11: 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

Is there anything you want to tell us about how the current process of applying for a GRC affects those who have a protected characteristic?

Age

Children develop their gender identity from an early age. And, as the Scottish Trans Alliance told the Women and Equalities Select Committee's *Transgender Equality* inquiry (2016), "with growing social acceptance, the annual number of children and adolescents coming out as transgender has increased five-fold over four years".

Yet trans young people under the age of 18 can't apply for legal gender recognition.

Stonewall believes that 16 and 17-year-olds should be able to legally change their gender using the same self-determination process and statutory declaration as people aged over 18. And we urge the UK Government to introduce a system of legal recognition for trans children and young people aged under 16, based on a system of parental consent.

By the time they're 16, many trans young people will want to obtain a Gender Recognition Certificate before progressing into full time work or further education. Many exam boards make it difficult for a trans student's gender identity to be recognised on certificates or awards without a GRC. This means trans young people may receive qualification certificates with the wrong gender marker, so what should be a milestone marking their achievement becomes an inaccurate source of anxiety and upset. And when trans young people use their qualifications to get a job, they may be outed to employers against their wishes.

Having to continually disclose their trans identity is distressing for all trans people but is particularly hard for younger trans people. 16 and 17-year-olds must be able to access legal recognition. Doing so would bring legal gender recognition in line with other rights, responsibilities and decisions that 16 and 17-year-olds experience, such as being able to enter the workforce, become a parent, consent to having sex, and consent to medical treatment.

Young people don't need parental consent to change their names which means many trans 16 and 17-year-olds are forced into a situation where their legal name reflects their gender identity, but not their legal gender.

Not extending legal gender recognition to those aged 16 and 17, creates the likelihood of a disparity across Great Britain, given that the Scottish Government included lowering the age at which a person can apply for a GRC as one of the proposed reforms to the GRA in their consultation (which closed in March 2018).

Trans children and young people under the age of 16 should also be afforded the option of legal gender recognition. Trans students often have to move schools to have their gender identity respected. Bullying and transphobia are a major issue in schools and have a big impact on the health and wellbeing of trans children and young people.

Allowing trans children and young people under the age of 16 to access legal gender recognition isn't about accessing medical treatment. It's about recognising trans children and young people for who they are and supporting them to be themselves. Our *School Report* (2017), conducted with the University of Cambridge, found that half (51 per cent) of trans pupils are bullied at school for being trans and 57 per cent of trans pupils worry about being bullied. More than two in five trans young people (45 per cent) have attempted to take their own life. Nine in ten trans young people (92 per cent) have thought about doing it (Young Minds estimates that one in four young people have had these thoughts).

Access to legal gender recognition would improve children's well-being by allowing them to be recognised for who they are and protecting them from having their gender identity questioned or erased. And it would normalise trans identities from an early age and help children, young people, teachers and parents be more accepting.

We recommend a system of parental consent. Supportive parents are often the closest to their child and in the best position to assess if they're making a positive, informed decision. As one parent told Stonewall:

My daughter deserves to have the legal status and identity that matches who she is. I don't understand why people can't accept that everyone has a right to live their life being true to themselves, as long as it doesn't break the law or impact negatively on anyone else." – Susan

If a trans child or young person under 16 didn't get parental consent, there must be a process enabling them to apply for legal recognition in their best interest, based on their competency to make the decision. While assessment retains many of the disadvantages of the current system, there must be a route for trans children and young people whose parents disagree, or where they have no parental support, are in care or are homeless.

Reforms to support trans children and young people would bring England and Wales into line with international best practice. In Norway, for example, following the introduction of the Legal Gender Amendment Act in 2016, any person over the age of 16 can change their legal gender and name by filling in a short document and registering it with the local tax office, and children and young people between the ages of six and 16 years-old can access the process if at least one parent consents.

Question 12: Do you think that the participation of trans people in sport, as governed by the Equality Act, will be affected by changing the Gender Recognition Act?

No.

Please give reasons for your answer.

The Government has been clear that the proposals outlined within this consultation document are aimed at reforming the Gender Recognition Act 2004 and not the Equality Act 2010. So there will be no changes to restrictions on trans people participating in some sporting competitions, as governed by the Equality Act 2010.

But, to ensure that trans people feel comfortable participating in sport not governed by the Equality Act, Stonewall advocate that professional and grassroots sports clubs take proactive steps to tackle transphobic abuse and discrimination, whether this is among players, fans or on social media.

Furthermore, we're calling on national governing bodies to ensure full legal compliance and equality of provision to trans people, and that processes and procedures are regularly and frequently reviewed. All of our objectives are outlined in *A Vision for Change 2017-2022*.

Stonewall welcomes the Sports Council's Equality Group and Sport England's work to build on current guidance for trans inclusion in sport. We strongly urge that they fully consult with trans people throughout this process.

Question 13:

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

No.

Please give reasons for your answer.

The Government has been clear that the proposals outlined within this consultation document are with the aim of reforming the Gender Recognition Act 2004 and not the Equality Act 2010. There will therefore be no changes to this legislation, including the single-sex and separate-sex service exceptions.

Despite this clarity, media speculation about the impact that a reformed GRA would have on the work of single-sex services has been rife particularly with regard to services supporting survivors of sexual and/or domestic violence. Much of the reporting lacks evidence, balance and the voices of those delivering these services, so Stonewall (in partnership with the research agency nfpSynergy) produced a report, *Supporting trans women in domestic and sexual violence services: Interviews with professionals in the sector* (2018).

It features the findings of in-depth interviews with 15 national umbrella bodies and local domestic and sexual violence support services across Britain. They were asked to describe their experiences of supporting trans women and their views on planned reform of the GRA. The report was welcomed by high profile domestic violence and women's rights organisations, including SafeLives and Rights of Women, as well as cross-party MPs and peers.

The report demonstrates that services are supporting trans survivors of domestic and sexual violence and have been doing so for years. Many participants reported that GRA reform would have no relevance to how they deliver their services.

None of the respondents had invoked the exceptions in the Equality Act 2010 to deny access to a trans survivor. Instead, they spoke about providing services and accommodation options to meet the diverse needs of their clients. As is frequently the case for many different survivors, support through one-to-one counselling or in dispersed accommodation units is sometimes offered to trans survivors alongside, or as an alternative to, communal services.

Many participants were aware of a view that reform could allow violent men to pose as women to access their services. Although one participant expressed a concern about this, there was otherwise a clear consensus that thorough risk assessment procedures would safeguard against anyone who may pose a risk to other service users. Participants described occasions which abusive men had tried to access services by posing as delivery men or as family members. In the words of one participant:

“People say ‘Yes, but what if some man decides to dress as a woman and goes to the refuge’, and I’m like ‘That’s why we’ve got risk assessments.’”

Participants also recognised the need for reform and spoke about the difficulties that trans survivors face when accessing support. They commented that:

“I feel really positively about the Gender Recognition Act [reform] because I’ve never been comfortable with the medicalisation of it in the way that it has been.”

“A lot of the struggles that trans women have faced accessing women-only services and women’s services generally are very similar to the struggles that BAME women faced, and that lesbians and disabled women face as well in using these services.”

The report also includes a chapter on Scottish services. Since 2011 the Scottish Government has required these services to have action plans on trans inclusion. Guidance on trans inclusion has been produced in partnership between women's organisations and LGBT organisations. Scottish service providers, including Scottish Women's Aid and Rape Crisis Scotland, published a supportive statement on the release of the Scottish Government's consultation on the GRA, saying:

“For over a decade, we have engaged in constructive dialogue with our colleagues in the Scottish Trans Alliance, Equality Network, LGBT Youth Scotland and Stonewall Scotland. We have shared knowledge, explored complex practicalities and developed sensible policy positions on trans inclusion. We do not regard trans equality and women's equality to contradict or be in competition with each other ... Rape Crisis and Women's Aid in Scotland provide trans inclusive services on the basis of self-identification. We support the Equal Recognition campaign and welcome the reform of the Gender Recognition Act ... We will continue to work collaboratively with Scottish Trans Alliance and other equality organisations with the aim of ensuring that new processes are appropriately designed and without unintended consequences.”

Based on their experience of providing trans-inclusive services, Scottish participants rejected the view that gender recognition reform could allow men to pose as women to access services. The organisations credited the collaborative approach of the sector and Scottish trans and LGBT organisations, and the Scottish Government's leadership, with progressing trans inclusion in domestic and sexual violence services. They were clear that greater investment in training and resources in England and Wales would be critical in helping services in those countries become more trans-inclusive.

Alongside the support of national organisations including Rights of Women and SafeLives (who recently produced a report, *Free to Be Safe* (2018), on the experiences of LGBT survivors) service providers and feminist campaigners in Wales, made up of the Women's Equality Network (WEN) Wales, Chwarae Teg, Women Connect First and Welsh Women's Aid, released a statement in support of trans equality and the importance of trans women's inclusion in women's spaces, saying:

"Our organisations and our work are fully inclusive of trans women ... Women-only spaces should be open to all women, including trans women, and women's safety, including trans women's safety, within the criminal justice system, in services and in the community must be prioritised."

Although beyond the scope of this consultation, Stonewall recommends that, to improve trans inclusion in a range of single-sex services in England and Wales, the Government Equalities Office should work closely with the Scottish and Welsh Governments to replicate the action plans that have led to trans inclusion in the sector. The Government Equalities Office also has a key role to play in facilitating further discussion between the LGBT and women's sectors and encouraging joint working and mutual understanding.

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

No.

Please give reasons for your answer.

The Government has been clear that the proposals outlined within this consultation document are with the aim of reforming the Gender Recognition Act 2004 and not the Equality Act 2010. There will therefore be no changes to this legislation, including the occupational requirement exception.

We recommend that alongside the proposals outlined in this consultation document, the Government Equalities Office should replicate the Scottish Government's trans inclusion action plans and facilitate discussion and joint working between the women's and LGBT sectors.

It's also worth noting that, to be protected at work by the Equality Act 2010 under "gender reassignment", a binary trans person doesn't have to have obtained a Gender Recognition Certificate. Protection for non-binary people is less clear, as discussed in our response to Question 20.

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

No.

Please give reasons for your answer.

The Government has been clear that the proposals outlined within this consultation document are with the aim of reforming the Gender Recognition Act 2004 and not the Equality Act 2010. There will therefore be no changes to this legislation, including the communal accommodation exception.

We recommend that alongside the proposals outlined in this consultation document, the Government Equalities Office should replicate the Scottish Government's trans-inclusion action plans and facilitate discussion and joint working between the women's and LGBT sectors.

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

No.

Please give reasons for your answer.

The Government has been clear that the proposals outlined within this consultation document are with the aim of reforming the Gender Recognition Act 2004 and not the Equality Act 2010. There will therefore be no changes to this legislation, including the armed forces exception.

However, we do encourage the Government to consider how it can ensure that in every area of life, all trans people are protected from discrimination, based on their gender identity or the fact they are trans. Trans equality can't be achieved unless trans people enjoy the same opportunities, whether they have a GRC or not.

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

No.

Please give reasons for your answer.

The Government has been clear that the proposals outlined within this consultation document are with the aim of reforming the Gender Recognition Act 2004 and not the Equality Act 2010. There will therefore be no changes to this legislation, including the marriage exception.

It's crucial that trans people are entitled to form relationships, have families, and to marry without facing prejudice and discrimination. We urge the Government to consider how best to stop trans people who want to get married from being discriminated against. All of our objectives are outlined in *A Vision for Change 2017-2022*.

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

No.

Please give reasons for your answer.

The Government has been clear that the proposals outlined within this consultation document are with the aim of reforming the Gender Recognition Act 2004 and not the Equality Act 2010. There will therefore be no changes to this legislation, including the insurance exception.

To ensure trans people are treated fairly and appropriately with regard to insurance, Stonewall advocates that providers and employers should ensure all policies are inclusive of trans people. All of our objectives are outlined in *A Vision for Change 2017-2022*

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

Yes.

Please give reasons for your answer.

A reformed GRA provides good opportunities for improvements in the delivery of public services. A simple, de-medicalised system of legal gender recognition that's inclusive of non-binary people would improve monitoring data, for example, as people's records would accurately reflect their gender identity.

Question 20: Currently, the UK law does not recognise any gender other than male and female. Do you think that there needs to be changes to the Gender Recognition Act to accommodate individuals who identify as non-binary?

Yes.

Please give reasons for your answer.

We believe it's wrong for a non-binary person to be forced to identify as male or female, just as it's wrong for a trans man or trans woman to be forced to identify as the sex they were assigned at birth. All trans people, including non-binary people, should have the right to determine their own gender identity.

Non-binary identities aren't new. There have always been people whose identities don't fit into the binary of male and female and there are long traditions of people recognising genders other than male or female in many societies around the world. The idea that people must identify as either male or female is not just outdated - it prevents non-binary people living their true lives.

The lack of legal recognition for non-binary people compounds the discrimination and abuse non-binary people face, as it reinforces the idea that non-binary people's identities aren't valid, grounded in reality or worth respecting.

Non-binary is an umbrella term for people whose gender identity doesn't sit comfortably with 'man' or 'woman'. Non-binary identities are varied and can include people who identify with some aspects of binary identities, while others reject them entirely. While non-binary people might use a range of different terms to describe their personal identity, we believe the creation of a third legal gender category is the most appropriate way of ensuring non-binary people are recognised by law.

Currently, in many circumstances, non-binary people are forced to identify as someone they're not - male or female. Stonewall's *LGBT in Britain: Trans Report* (2018) found that three in ten non-binary people (31 per cent) have experienced a hate crime or incident because of their gender identity in the last 12 months. Despite such high levels of abuse the wording of the Equality Act 2010 makes it unclear whether non-binary people are legally protected from discrimination or not.

Changing the GRA so that the law explicitly recognises non-binary identities, would make it clear that non-binary people have a protected characteristic ('gender reassignment') under the Equality Act 2010.

This is particularly important given the size of the non-binary population in the UK. Of all of the trans respondents to the Government's *National LGBT Survey*, 52% of trans people in the survey identified as non-binary - more than the number of people who identified as trans men or trans women put together. This totalled seven per cent of all respondents. According to the *National LGBT Survey: Research report*, non-binary respondents "felt that as people who already identify within a marginalised group (LGBT), they were even more 'ignored' as non-binary people". This is clearly exacerbated by the lack of legal recognition of their identities. As two non-binary people told Stonewall:

"For me, legal recognition would mean validation. It would mean acceptance. The simple, basic human right to be our authentic selves."

"I'm non-binary so would love to see the Gender Recognition Act reformed. Being able to get a Gender Recognition Certificate in the correct gender would mean everything to me. [It]

would make me feel far more secure in my transition and gender role and help me convince anyone who doesn't believe me that my gender is MY truth." – Maya

As well as updating the GRA, Stonewall strongly suggests that identity documentation has a gender marker option suitable for non-binary people, as also recommended by the Women and Equalities Select Committee's recommendation in their *Transgender Equality* inquiry (2016):

"The UK must follow Australia's lead in introducing an option to record gender as 'X' on a passport. If Australia is able to implement such a policy, there is no reason why the UK cannot do the same."

UK passports should have the option for an 'X' marker under Sex, in addition to the options of 'M' for male and 'F' for female. With no suitable provisions currently in place, non-binary people are issued with inaccurate official identity documentation.

Legal recognition of non-binary identities is in line with the best practice established in the renewed Yogyakarta Principles. Principle 31 on legal recognition calls on states to ensure legal recognition of gender identity is available to everyone, with the ability to change legal documents including birth certificates so they match their gender identity. It also calls on states to provide more, and broader, gender markers on official documents.

England and Wales have fallen behind a growing number of countries that now legally recognise non-binary identities (including Denmark, New Zealand, Nepal and certain states in Canada and the USA). Putting this right will give non-binary people in Britain the protection from discrimination and the recognition they deserve – and restore our position as world leaders in equalities and human rights.

For example, in September 2017, the Maltese Government launched the 'X' marker for official documentation, including passports, identity cards and residence permits. Many organisations in the UK, from banks to public services, already recognise non-binary identities, with measures including 'Mx' titles to 'X' gender markers. Internationally, the International Civil Aviation Organisation's rules for passports already allow for three possible gender markers, including 'X'. As one non-binary person told Stonewall:

"How is it that my bank and my electricity supplier recognise my gender but not my country? Legal recognition of who I am would personally be very empowering and overwhelmingly emotional for me."

Although Stonewall warmly welcome the Government's commitment in the *LGBT Action Plan* to launch a Call for Evidence on the issues faced by non-binary people, we're adamant that this should not delay or impact the long overdue and much needed reform of the Gender Recognition Act.

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

Yes.

Age

Stonewall notes that in publishing this consultation the Government explicitly ruled out the possibility of lowering the age at which a GRC can be obtained. This would put England and Wales at odds with most countries that have modern systems of gender recognition, so we urge the Government to reconsider.

Even so, we expect other respondents to this consultation will provide evidence of the negative impact on the health and wellbeing of trans children and young people caused by the lack of legal recognition of their gender identity.

As age is a protected characteristic, Stonewall has outlined its recommendations regarding young trans people in response to Question 11. We urge the Government to listen to the evidence from trans

children, young people and their parents, friends and families in making decisions to reform gender recognition in England and Wales.

We hope the vulnerabilities of trans children and young people will be recognised and that the Government will join other countries (including Norway and Malta) in extending the right of legal gender recognition to trans people under 18.

Non-UK citizens

Stonewall and the UK Gay and Lesbian Immigration Group's report *No Safe Refuge* (2016) shows that only 50 UN member states recognise trans people's rights to have their gender identity legally recognised. The persecution, discrimination and violence commonplace in many countries often continues when they arrive in Britain. *No Safe Refuge* found that trans people face particular threats of violence in the detention system, with one trans interviewee reporting being placed in multiple male detention centres, even though she'd been clear she identified as a woman.

Any new system of legal gender recognition must ensure that trans people seeking UK residency or citizenship are able to access legal recognition rapidly, whether they have legal gender recognition from their country of origin or not. Then they'll be able to make their claim with the correct details. This should also include recognising those from other states who have 'X' markers on their passports (see our response to Question 20 for more detail).