

## Reform of the Gender Recognition Act

### Introduction

The Westminster government consultation on reforming the 2004 Gender Recognition Act (GRA) took place in 2018, with the results of the consultation being released in September 2020.

Despite reports that 70% of respondents to the consultation on the GRA said that trans people should be able to self identify as a different sex and that the process of obtaining a gender recognition certificate was humiliating and unnecessary, the government decided that the current provisions are safe and fair.

The Government will move the process of applying for a gender recognition certificate online, and indicated that the fee would be reduced from £140 to a '*nominal amount*'

A second consultation was launched in October 2020, to examine whether the Government's proposed reforms on gender recognition go far enough and what other changes need to be made to improve transgender equality.

UNISON made its views very clear in our response to the original consultation on the reform of the GRA. Our views have not changed. We welcome the reduction of the fee. But we do not believe that moving the process online and not removing the medicalised, quasi-judicial application process for a gender recognition certificate is a positive step forward. The process remains humiliating and unnecessary, furthermore it excludes trans children and young people. It also excludes non-binary people.

Ever since the consultation was first announced there has been a debate in the media and certain political circles which has purposefully caused confusion about what the 2004 Act covers and what the proposed reforms would mean.

### Why reform is needed

Apart from birth certificates, the name, title and gender marker on all UK identity documents can already be changed on a self-declaration basis when a trans person starts living permanently in their gender identity. These documents include:

- Passports
- Driving licences
- Medical records

- Bank accounts
- Employment records
- Education records and qualification certificates
- Voter registration cards
- Disclosure and barring service certificate.

By contrast, the process for changing the legal gender on a trans person's birth certificate is a humiliating and expensive red-tape nightmare. It requires people to submit intrusive psychiatric evidence to a faceless tribunal panel years after they have socially transitioned, with the only right of appeal if their application is rejected being based on process, which is opaque at best.

The current process for legal gender recognition is:

- **Expensive** for individual applicants and **inefficient** for the public purse:
  - Fee of £140 (which will be reduced to a '*nominal amount*') plus 2 x £80 for medical reports. Even higher costs if people transitioned abroad as they often need to pay to be reassessed by UK medics and to translate evidence.
  - It requires wages for judicial tribunal members.
- **Outdated compared to international human rights best practice.** There is more information on this below.
- **Stigmatising** of trans people: it requires a diagnostic psychiatric report, reinforcing the outdated assumption that being trans is a mental illness.
- **Intrusive and humiliating:** it requires trans people to provide extensive medical evidence about their bodies despite the 2004 Act making no requirement to undergo hormonal or surgical treatments.
- **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:** people cannot apply until two years after they socially transitioned.
- **Excludes many trans people** who have transitioned, including under 18s and non-binary people. There is more about this below.

For these reasons, most trans people do not even apply for a gender recognition certificate. This leaves them in a risky legal limbo, with the gender recorded on their birth certificate not matching their other identity documents and contradicting how they live. This can cause harmful errors and difficulties including:

- Problems entering a **marriage or civil partnership** correctly

- Mistakes calculating their **pension entitlement** and start date
- Accidental invalidation of **insurance policies**, especially car, travel or life insurance
- Less protection of their human right to **privacy** about their gender reassignment history
- Increased risk of **harassment and discrimination** from employers and service providers. This could also result in people being identified wrongly after death, particularly if next of kin are not accepting of the trans person's correct identity

## What change is needed to the Gender Recognition Act

1. Replace the psychiatric diagnosis requirement with a self-declaration procedure, as already used for identity documents such as passport and driving licence
2. Reduce the age at which people can get legal recognition of the gender they live as
3. Provide legal recognition for non-binary people - people who do not identify as men or women.

## Self-declaration process

A 'self-declaration' procedure to update a trans person's legal gender:

- Would be administrative in nature, not involving a court or tribunal decision
- Would require a trans person to make a statutory declaration that they are living permanently in their gender identity
- Would not require a psychiatric report or any other medical evidence
- Would not require a trans person to prove they have already lived a long time in their gender identity.
- Deliberately making a false statutory declaration is a serious crime punishable by imprisonment.

Young trans people under 16 can already change their name, title and gender marker on all UK identity documents except their birth certificate, with parental consent.

It is important to note that under 16s aren't able to have surgery. They can be prescribed puberty blockers. Pausing puberty is the only way to mitigate emotional pain and distress. The Government announced in September 2020 that NHS England have appointed Dr Hilary Cass OBE (former President of the Royal college of Paediatrics and Child Health) to lead an independent review into gender identity service for children and young people.

In April 2021, it was announced that NHS England will establish an independent review body to assess the prescription of puberty blockers to people aged under 16. The review group's role is

not to endorse or refuse treatment – it is there to ensure appropriate decision-making processes have been followed, particularly with regard to assessing and supporting consent to treatment,

Self-declaration procedures for changing gender on these UK ID documents have been working smoothly for over 40 years, with no evidence of misuse. It is now time to bring the process for birth certificates into line with all other ID by reforming the Gender Recognition Act.

## **Legal recognition for non-binary people**

Non-binary people are those whose gender identity is neither female nor male. UNISON is acutely aware of the need to acknowledge non-binary gender identities. This is being raised by increasing numbers of our members. Non-binary people are slowly gaining the confidence to speak about how the failure to recognise their identities impacts on their work, their well-being and their lives.

*UK-wide research conducted by Scottish Trans ‘Non-binary people’s experiences in the UK’ (2015) gave clear evidence of this. See [www.scottishtrans.org/wp-content/uploads/2016/08/Report-final.pdf](http://www.scottishtrans.org/wp-content/uploads/2016/08/Report-final.pdf).*

This is still the most current research in the UK, and we believe that little has changed in the last five years.

*UNISON conducted a smaller scale survey of UNISON non-binary members in the autumn of 2017, which very much reinforced the findings of the Scottish Trans survey.*

*Non-binary people should be able to fully participate in all aspects of society in line with their gender identity. The option of legal recognition is an important part of this.*

## **Myths versus facts**

Concerns have been, and continue to be, raised about problems that may arise if the GRA is reformed in line with international best practice. There continues to be an unfortunate suggestion of a conflict between trans equality rights and women’s equality rights.

*Prior to the 2018 consultation in Scotland, Scotland’s seven national women’s equality organisations - Close the Gap, Engender, Equate Scotland, Rape Crisis Scotland, Scottish Women’s Aid, Women 50:50 and Zero Tolerance - all support reform to a self-declaration process inclusive of young people and non-binary people. In a joint statement they have said:*

*“We do not regard trans equality and women’s equality to be in competition or contradiction with each other. We support the Equal Recognition campaign and welcome the reform of the Gender*

*Recognition Act. Rape Crisis and Women's Aid in Scotland provide trans inclusive services on the basis of self identification."*

*The Scottish government undertook another consultation, which closed in March 2020. All of the organisations mentioned above continue to support trans inclusion and GRA reform.*

Concerns that have continually been raised are based on misunderstandings about what reform would mean. To clarify:

- **GRA reform does not affect access to single-sex services and facilities.** It is the Equality Act 2010 (which is not under review), not the Gender Recognition Act 2004, that provides trans people with legal protection from discrimination and addresses access to single-sex services. The Equality Act 2010 protected characteristic of gender reassignment applies from the moment a person proposes to undergo any part of a process of transition. No medical diagnosis is needed.
  - Trans people, regardless of stage of transition, have always been lawfully able to use whichever toilet they wish in the UK without showing any ID. Cubicles mean it is not proportionate to restrict trans access.
  - The Equality Act 2010 provides an exemption for single-sex services allowing them to treat a trans person differently from other service users providing this is a proportionate response to achieve a legitimate aim. Gender Recognition Act reform will not change this exemption.
  - Violence against women services already have robust risk-management and safeguarding policies in place, for example to be able to identify and prevent any lesbian or bisexual female perpetrator of violence from being able to access a service where her abused female partner is staying.
  - Such services regularly reject non-trans women who are unsafe to include within group work and/or shared refuge accommodation due to antisocial behaviour, criminal history, drug addiction or severe mental illness.
  - Possession of a gender recognition certificate does not circumvent in any way these risk management procedures and exclusion would still be possible.
  - A number of services allow trans women to use their services on a self-declaration basis. No problems have been reported.
- **GRA reform does not affect hate crime law.** Whether or not a trans person has received legal gender recognition is irrelevant to prosecution of a hate crime. Polite disagreement about gender is not a hate crime but harassment and threatening behaviour can be aggravated by anti-trans hate.
- **GRA reform does not affect Equality Act 2010 gender reassignment protections and exemptions.** The EA2010 already protects trans people against gender

reassignment discrimination from the moment they first propose to start any aspect of social or medical transition away from their birth gender. The existing EA2010 single sex services and genuine occupational requirement exemptions allow a trans person to be treated differently if that is a proportionate means of achieving a legitimate aim.

- **GRA reform does not affect Equality Act 2010 sex discrimination coverage.** The EA2010 protected characteristic of sex already covers not only discrimination based upon an individual's actual biological sex characteristics but also discrimination based upon perception and wider aspects of sex and gender. Trans women who have not undergone any hormonal or surgical treatments can already become legally female.
- **GRA reform does not affect sports competitions.** Where necessary to ensure safe and fair competition in gender-affected sports, sports governing bodies can set their own restrictions on participation by trans people regardless of legal gender recognition status.
- **GRA reform does not affect any NHS clinical decision-making** about minimum ages and other criteria for approving a trans person to receive hormone blockers, hormone replacement therapy or any surgeries.
- **GRA reform does not affect NHS funding of gender identity services.** De-medicalising the process for gender recognition is irrelevant to NHS evidence-based decisions about trans healthcare.
- **GRA reform does not affect ability to receive NHS cancer screening.** Trans people change gender on medical records before their birth certificates. Methods already exist to enable screening to continue.
- **GRA reform would not permit anyone to 'flip-flop' legal genders** across different situations or days. The self-declaration process is a statutory declaration of the intention to live permanently in their gender identity

## International best practice

International best practice has been identified by the Council of Europe, World Professional Association of Transgender Health, International Commission of Jurists and other bodies. Best practice is already in place in the following places.

### Self-declaration:

- Countries with simple self-declaration administrative process for gender recognition:
  - Since 2012 – Argentina
  - Since 2014 – Denmark
  - Since 2015 – Ireland, Malta, Norway, Colombia

- Since 2018 – Pakistan and Portugal
- Governments, single-sex service providers and the criminal justice sectors in these countries have not reported any negative impacts in implementation.

## Age:

- In Argentina, Australian Capital Territory, British Columbia (Canada) and Malta there is no lower age limit for parental application for legal gender recognition for a child.
- In Norway, parental application is accepted for children with a minimum age of six.
- Legislation in these countries refers to the United Nations Convention for the Rights of Children and taking the child's best interests and views into account. If the consent of parents or guardians is unobtainable, courts can rule that children should have their gender legally recognised if that would be in their best interest.
- Allowing legal gender recognition for young people does not affect the criteria for access to gender reassignment medical treatments such as cross-sex hormones (16+) and genital surgeries (18+).

## Non-binary recognition:

- Malta, Argentina, Australia (most states and territories) and Oregon and California (USA) all provide for non-binary people to have their gender fully legally recognised.
- Denmark, Australia, New Zealand, Bangladesh, India, Pakistan, Nepal, Canada, Iceland, Uruguay, 14 states in the United states of America and Germany all allow non-binary people to be recognised on some legal documents, such as passports, driver's licences or voter registration cards.

## What MPs and Peers can do

The controversy and misunderstandings in the debate on reforming the Gender Recognition Act have led to trans people feeling very much under attack. MPs and Peers can have a key role in being clear about their support for trans people and trans equality. They can reassure colleagues, constituents and others about proposed reforms and offer information in place of myths and unfounded fears. You can also add your name to letters in support of change, share information on social media and of course vote for positive amendments to the GRA.

## **What CLPs can do**

*It has never been more important for non-trans people to show that they want to be good allies to trans people. UNISON has produced guidance for its members on how to be a good trans ally, attached at the end of this briefing. CLPs may wish to agree a motion expressing, or reaffirming, their support for trans equality.*

## **Model CLP motion**

*“This CLP celebrates the role of women in the labour movement and the Labour Party’s commitment to women’s equality. We affirm our commitment to tackling sexism, discrimination and harassment of women. We note the diversity of women and the impact of intersectionality: race, age, disability, sexual orientation, gender identity, gender expression, poverty and other factors all impact on women’s experiences and risk of discrimination.*

*“This CLP notes that trans people face particularly high levels of discrimination at work, when receiving services and in public. We welcome Labour’s track record on trans equality, including encouraging trans participation in public life and in the Party and in working to strengthen trans equality laws.*

*“We welcome calls for the Gender Recognition Act 2004 to be updated, in line with international human rights best practice. This would base the legal process of gender recognition on the declaration of the individual concerned, rather than a person’s gender being ‘judged’ by a panel of medical and legal ‘experts’, as it is now. This would bring the process for updating birth certificates in line with the current process for updating all other UK ID.*

*“We are concerned at attempts to oppose reform which spreads doubt and confusion. Suggestions that trans rights and women’s rights are opposed to each other and that trans equality puts women’s safety at risk are not supported by evidence. However unintended, they contribute to the discrimination and harassment of trans people.*

*“They contrast sharply with inclusive and progressive voices within women’s movements who welcome the proposed reforms.*

*“This CLP resolves to:*

- 1. Reaffirm that trans women are women and trans men are men and that trans rights are no threat to women’s rights*
- 2. Encourage all members to be active allies for trans equality, supporting trans members and speaking up for trans equality*
- 3.*



*“The Labour Party is the party of equality, diversity and inclusion, and we must all act as such.*

Or

*“This CLP continues to celebrate the role of women in the labour movement and the Labour Party’s commitment to women’s equality. We reaffirm our commitment to tackling sexism, discrimination and harassment of women. We note the diversity of women and the impact of intersectionality: race, age, disability, sexual orientation, gender identity, gender expression, poverty and other factors all impact on women’s experiences and risk of discrimination.*

*“This CLP notes that trans people continue to face particularly high levels of discrimination at work, when receiving services and in public. We welcome Labour’s track record on trans equality, including encouraging trans participation in public life and in the Party and in working to strengthen trans equality laws.*

*“We continue to call for the Gender Recognition Act 2004 to be updated, in line with international human rights best practice. This would base the legal process of gender recognition on the declaration of the individual concerned, rather than a person’s gender being ‘judged’ by a panel of medical and legal ‘experts’, as it is now. This would bring the process for updating birth certificates in line with the current process for updating all other UK ID.*

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*“They contrast sharply with inclusive and progressive voices within women’s movements who welcome the proposed reforms.*

*“This CLP reconfirms its position:*

- 1. That trans women are women and trans men are men and that trans rights are no threat to women’s rights*
- 2. Encourage all members to be active allies for trans equality, supporting trans members and speaking up for trans equality*
- 3. That the Labour Party is the party of equality, diversity and inclusion, and we must all act as such.*

**For further information:**

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## HOW TO BE A GOOD ALLY TO TRANS PEOPLE AT WORK

### **Not special, different or vulnerable, just me**

‘For me good trans allies have proven to be people who never question my gender identity, they treat me according to how I identify. Not special, different or vulnerable, just as me, a woman. They publicly support my right to be the person I am and that solidarity gives me strength.’

**Jennifer**

### **How to be a good ally to trans people at work**

We all need people on our side, celebrating with us when things go well and supporting us when times are hard. Trans people and trans rights are becoming increasingly visible but many people still face real isolation. UNISON and trade unionism are all about solidarity, with no one left to face trouble alone. We are stronger together.

Every non-trans person can be an ally for trans equality, but not everyone feels confident doing this. It’s not complicated, so here are some tips on how to be a good trans ally.

It really comes down to three things:

- Listen to trans people
- Challenge transphobia
- Be a good person.

UNISON and trade unionism are all about solidarity, with no one left to face trouble alone. We are stronger together.

### **It can be very lonely**

‘It can be very lonely being a trans person be that in work, at home or in wider society. To have trans allies is so important, especially right now as we face hurtful negativity in the press and other media. Whenever I am down or struggling to cope, receiving support from those outside our community is a tremendous help.’

**Jenny**

### **Allies empower us**

‘When trans people challenge transphobia they become a target. Every time an ally stands up for us it can empower us to stand up to the shaming and stigma – and to viscerally feel the solidarity that is the cornerstone value that our trade union, socialist and feminist movements grew out of.’

**Sam**

## **A part of every community**

'Transgender people are a part of every community not apart from society. We are not seeking additional rights. We want to live in a society of equals where each is treated with dignity and respect and recognised for the unique contribution they make. We are your children, your siblings, your parents, your grandparents, your work colleagues, your neighbours and hopefully, your friends. I don't want to be merely "tolerated"; I expect my trans allies to speak out against every instance of transphobia, in all its guises, to help me and every transgender individual achieve the acceptance and respect we deserve!'

**Frances**

## **Tips for being a good trans ally**

### **In general**

- Speak up for trans people and trans equality and against transphobia.
- Speak up when there are trans people present. Don't leave it to the trans people to defend trans equality.
- Speak up when there are no trans people present. Transphobia is always wrong and shouldn't be ignored.
- Do this in meetings, on social media, with family and friends.
- Don't assume you know who is trans or who is affected by anti-trans discrimination. There may be people with a trans history in your branch or workplace who are now just living their lives. Other colleagues may have trans family members.
- Transphobia is no laughing matter. It's just as important to challenge it when it is presented in a jokey way.
- Attend relevant 'how to be a good trans ally' training

### **In your union**

- Raise trans equality in your union branch.
- Encourage your branch to run 'how to be a good trans ally' training.
- Check your employer's policies – do they have a trans equality policy? If no, propose UNISON's model policy. If yes, compare it to UNISON's model policy and seek improvements.
- Don't think you have to be an 'expert'. But do inform yourself. UNISON has some excellent and accessible resources at [www.unison.org.uk/out](http://www.unison.org.uk/out). Publicise UNISON's work for trans equality and our national trans network.

## Talking with trans people

- When you talk to a trans person, *listen*. Listen to how they talk about themselves and follow their lead.
- Don't worry too much about getting the right terminology – the most important thing is to show support.
- It is important to make every effort to use people's correct name and pronoun (she, he or they) when you are talking to them *and* when you are talking about them.
- Misgendering someone or using their previous name (sometimes called 'deadnaming') is hurtful and may be unlawful harassment.
- If you are speaking briefly with someone and are unsure how they wish to be addressed, it is best not to use gendered terms (such as 'sir' or 'madam').
- Remember that while most people transition to live solely and permanently as women or men, not everyone has a binary gender. Some trans people identify as non-binary – as both female and male, as neither or as something entirely different.
- If you do make a mistake, apologise and move on. Don't make a big thing of it, and don't make it about you.
- Never 'out' someone as trans unless they agree – never talk about someone's gender identity or gender history unless they have given you permission to do so. They may have told you in confidence.
- Don't assume that permission to talk about someone's gender identity or history once means that it's OK to do so on other occasions.
- Remember, they may be out in some circles, such as in an LGBT+ group, or with close colleagues, but not others.
- Be aware of the wide spectrum of issues that affect trans people.
- If you want information, there's plenty on the internet; it shouldn't always be up to trans people to answer questions and educate people
- Don't tell trans people that they're 'brave' or that they made a 'difficult decision' instead, ask them if they need support and what support they need.
- Recognise that trans people can be used to being excluded – make an effort to include them.

## People are people

- Try not to make assumptions. Although there aren't many trans people (which is why allies are so important) they are all individual. There is no one way of being trans.
- Don't ask personal questions that are more intimate than you would ask someone who is not trans. It is certainly inappropriate to quiz people about their bodies.
- Trans people have rights, but it's fine for you to have questions and try and understand the issues around gender identity. In fact, you have a responsibility to get yourself informed! There's lots of information around for you to do that, without having to quiz trans people in an intrusive way.

## And finally...

- Remember that being trans is just one part of a trans person's identity – talk to them about other stuff too!

## UNISON resources

We have lots of resources to help you understand and negotiate around gender and identity. Many are downloadable for free at [www.unison.org.uk/out](http://www.unison.org.uk/out). They include:

- A factsheet on transgender workers' rights
- Gender identity: an introductory guide for trade union reps supporting trans members
- How to be a good trans ally leaflet
- A model trans equality policy
- Gender equality - non-binary inclusion factsheet

Other sites for information include:

- Scottish Trans Alliance – [www.scottishtrans.org](http://www.scottishtrans.org)
- GIRES – [www.gires.org.uk](http://www.gires.org.uk)
- Mermaids – [www.mermaids.org.uk](http://www.mermaids.org.uk)

*If you are LGBT+ and want to get more involved in UNISON's work for equality or hear more about what we do then talk to your branch, or email [out@unison.co.uk](mailto:out@unison.co.uk)*