



This response comprises the official response of both LGBT Consortium, the umbrella body for the LGBT voluntary and community sector, and its specialist network the Trans Organisations Network. This is a network of approximately 45 trans-led organisations and initiatives from across the country and the response has gathered the views of these organisations. We have also actively encouraged all of them to provide their expertise through their own organisational response.

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

**No**

1. Consistent with the responses of our member organisations, we do not believe that legal recognition of gender identity should depend on a diagnosis of gender dysphoria.
2. A diagnosis of gender dysphoria positions being trans as a medical condition.
3. The ICD-11 (2018), published by the World Health Organisation (WHO) re-frames 'gender identity disorder' as 'gender incongruence' and moves the diagnostic codes from the chapter on mental disorders to one on sexual health.
4. Transgender people have been fighting stigma and discrimination globally, much of which can be traced back to a medical system that historically has pathologised trans identities as mental illness. Therefore, a system that requires medical diagnosis for legal gender recognition reinforces stereotypes of trans individuals as 'mentally ill'.
5. LGBT Consortium Member organisation Stonewall found in its LGBT in Britain: Trans Report (2018) that many trans people experienced the medicalised process of gender recognition in the UK as 'invasive and humiliating' and may feel they have to "fit outdated stereotypes of what it is to be trans" in order to secure recognition.
6. The current process for getting a medical diagnosis and service from an NHS gender identity clinic is long and complicated. Waiting times from referral to first appointment often take up to three years (please see Question 4). Private medical help is expensive. Both of these avenues present unnecessary obstacles to trans people.
7. LGBT+ anti hate crime charity GALOP and Consortium Member reports in their GRA reform consultation response: 'The delays cause real distress and, in the experience of our clients, it is often during this time that they are vulnerable to experiencing hate crime and other forms of abuse, violence and discrimination.'
8. Moreover, the diagnosis process comes at significant cost for the NHS.
9. Intersex people, and those with variations of sex characteristics, find it almost impossible to gain a medical diagnosis which would allow them to gain gender recognition under the existing Act. While the GRO does correct birth certificates for those with a restricted set of recognised intersex conditions, there are a significant number of people stuck in a legal limbo with no mechanism to gain gender recognition. Removing the diagnostic requirement would make gaining gender recognition possible for these people.
10. A simple administrative process based on self-determination does not need a medical diagnosis. This is in line with international best practice, for example in Ireland, Malta, Argentina and Norway.
11. With the Irish Gender Recognition Act (2015) applications for a Gender Recognition Certificate require completion of an application form, which includes a 'standard' statutory declaration, signed by a witness (e.g. solicitor), and supporting documents such as passport, birth certificate



- and name change deed poll. The process requires a supporting statement by a medical practitioner but no details of care such as medical history or confirmation of a diagnosis.
12. The lack of abuse of process in this jurisdiction highlights that a non-medicalised system of self-determination can be implemented successfully.
  13. Supporting this is the recent reformulation of the Yogyakarta Principles (Yogyakarta Principles plus 10, Principle 31(B) [http://yogyakartaprinciples.org/wpcontent/uploads/2017/11/A5\\_yogyakartaWEB-2.pdf](http://yogyakartaprinciples.org/wpcontent/uploads/2017/11/A5_yogyakartaWEB-2.pdf). There is specific inclusion of a right to legal gender recognition on the basis of “self-determination of the person.”
  14. This builds upon an earlier Resolution of the Parliamentary Assembly of the Council of Europe which recommended that State Parties “develop quick, transparent and accessible procedures, based on self-determination, for changing the name and registered sex of transgender people” (Parliamentary Assembly of the Council of Europe, ‘Discrimination against Transgender People in Europe’ (22 April 2015) Resolution No. 2048(2015), [6.2.1].)
  15. The House of Commons Women and Equalities Select Committee called for “proposals to update the Gender Recognition Act, in line with the principles of gender self-declaration that have been developed in other jurisdictions.” (House of Commons Select Committee on Women and Equalities, Transgender Equality (The Stationary Office Limited 2016) [45]).

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

**No**

16. Further to our response in Question 3, our view is that trans people should not be required to submit a medical report before being able to access legal recognition.
17. Such a report, detailing treatment, would reinforce a medicalised view of being trans.
18. A report is not a requirement in other countries such as Ireland, Malta, Argentina and Norway, which have simple non-medicalised systems in place that have reportedly worked effectively.
19. The pathway for transitioning differs from person to person. The requirement of a medical report disempowers those individuals that have made non-medical choices or who are unable to access medical interventions for various reasons.
20. Gender recognition should be based on a process of self-determination, and it should not be up to a medical professional to decide whether someone is trans or not. There is no objective test that any medical professional can use to determine this.
21. Under the current gender recognition process the applicant must also send a report that includes details of any treatment received e.g. hormones or surgery from a qualified medical professional. Standard applicants must also ask their GP or surgeon to complete a second report, with at least one of the reports including details of their diagnosis of gender dysphoria. Medics who are defined as able to submit reports have to be recognised as such by the panel. This means that the medics who diagnosed or gave treatment a number of years are unlikely to be currently registered – meaning that long-term transitioned people will have to try to obtain a repeat diagnosis of something they no longer have simply to satisfy a bureaucratic need.
22. It is not always possible for all applicants to obtain such a report. For instance, we have heard from voices in the trans community that GPs are not always available and some GPs reportedly not helpful with the referral process. Chrysalis conducted a [community survey in Hampshire](#)



- (2015): ‘There appears to be a lack of knowledge amongst the respondents’ GPs. Forty-one percent stated their GP did not understand or know what to do; 48% had to take matters into their own hands; 37% stated their GP did not know the referral process. Such issues can lead to delays in accessing appropriate treatment. This is highlighted by 30% of respondents thinking the time taken to process them was unacceptable and that 40% of respondents had self-medicated. Those clients interviewed by Chrysalis also stated how GPs have little knowledge of the gender dysphoria referral system. Overall, 29% stated that their GPs actions / inactions had made them feel depressed or frustrated, and for some of these even suicidal.’
23. The administrative process of obtaining and upkeeping such a report would also be another burden for the already over-stretched NHS services. Evidence from the National LGBT Survey helps to highlight this point.
    - a. 26% of trans respondents had accessed specialist gender identity services in the 12 months preceding the survey. A further 10% had tried without success.
    - b. Trans women (43%) and trans men (50%) were much more likely to have accessed specialist services than non-binary respondents (7%).
    - c. 80% of those who had accessed or tried to access these services said it was not easy (scoring ease of access as 1, 2 or 3 out of 5) with 68% saying they had to wait too long to access them.
    - d. 16% of trans respondents who had started or completed transitioning had used or paid for services or treatment outside of the UK to support their transition, with a further 50% saying they had considered it.
    - e. 73% of these respondents cited Gender Identity Clinic waiting times as one of the reasons.’ (Research Report, Key Findings, page 214).
  24. Stonewall’s [LGBT in Britain: Trans Report \(2018\)](#) corroborates these findings. One interviewee describes the impact of this on their mental health: “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 (North West).
  25. The Gender Recognition Act 2004 indicates that medical intervention is not required to obtain a Gender Recognition Certificate. Yet, some applicants have reported to some of our Member organisations they felt pressured into committing to medical interventions to satisfy the gender recognition panel.
  26. James Morton, manager of the Scottish Trans Alliance, submitted oral evidence to the Women’s and Equalities Committee about users’ testimonies: “A number of trans people [who] have been really traumatised and humiliated by the process [...], the gender recognition panel has insisted on really intrusive levels of detail about surgeries that people have undergone or their intentions for future surgery.”
  27. He recalled a young trans person who was interviewed in a very intense manner about their intentions around surgery (House of Commons Women and Equalities Committee, “Transgender Equality Report”, 2015, p13): “A young person in their early 20s who has not yet had any sexual relationships being forced to decide whether or not they want genital surgery, and being questioned over the fact that initially they wanted 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.”



28. Such questioning can pressure individuals into medical procedures that they do not want, as well as deterring them from seeking legal recognition.
29. The World Professional Association for Transgender Health (WPATH), an international organisation made up of experts in the field of trans healthcare, have stated in their Identity Recognition Statement that “medical and other barriers to gender recognition for transgender individuals may harm physical and mental health”. Barriers could include “requirements for diagnosis, counselling or therapy, puberty blockers, hormones, any form of surgery (including that which involves sterilization), or any other requirements for any form of clinical treatment or letters from doctors.” (WPATH.com, 2017).
30. In view of the above, a requirement for a report detailing treatment would be a regressive measure.

**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**

31. LGBT Consortium and its Trans Organisations Network (TON) do not believe evidence of living in an acquired gender for any period of time should be required.
32. What constitutes evidence of living as any gender is culturally, socially and historically specific. It is also subject to individual interpretation and preference.
33. There is a growing acceptance that the only person who can identify an individual’s gender identity is themselves (House of Commons Women and Equalities Committee, “Transgender Equality Report”, 2015, p12).
34. For the great majority of trans people they say understanding or realising their gender is a lifelong process. Many applicants will have identified as their preferred gender for many years prior to engaging with the legal process of transitioning.
35. Evidence of living in an acquired gender is particularly difficult for non-binary people to gather. Most aspects of life are binary and therefore non-binary people may be forced to use an expression of binary gender because alternatives are not available.
36. It is unsafe and disempowering to leave it to organisations to define what is legitimate evidence of gender. For example, someone may feel it is unsafe to come out at the workplace whilst on the waiting list for an appointment at the gender identity clinic. This person may not be able to express their acquired gender in a way that it would count as ‘lived experience’.
37. Adopting a self-determination process would respect individual circumstances and it is less bureaucratic, cost and time effective.
38. Under the current gender recognition system, in order to prove the applicant has lived in their acquired gender, a huge amount of information, detail and official documents must be provided. These documents should be in the applicant’s acquired name and gender, and the earliest document must be dated before the beginning of the required time. Many of these documents are costly to update and may require professional input.
39. Consortium Member GALOP notes “there may be GDPR implications for the current requirement of submitting a substantial amount of personal and financial information to provide evidence of living in an acquired gender.”



40. The requirement to submit this amount of information can cause a significant amount of emotional distress, as outlined in the Women and Equalities Committee Report (House of Commons Gender Recognition Act: Stonewall Scotland Consultation Response Page4 Women and Equalities Committee, “Transgender Equality Report”, 2015, p12, 13)
41. The Yogyakarta Principles maintains that States should “take all necessary legislative, administrative and other measures to fully respect and legally recognise each person’s self-defined gender identity” and “ensure that procedures exist whereby all State-issued identity papers which indicate a person’s gender/sex — including birth certificates, passports, electoral records and other documents — reflect the person’s profound self-defined gender identity”.
42. The figure of 2 years before one could apply for a Gender Recognition Certificate was derived solely from the NHS’s practice of waiting for 2 years from an individual’s initial appointment with a gender specialist before that individual was eligible for surgery. Medical evidence at the time was that, after 3 months, there was hardly any change in the desistance from transition – the NHS’s timescales were completely arbitrary.

**(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**

43. Providing evidence that one has lived a stipulated amount of time in the preferred gender is commonly referred to as the ‘real life experience’ test (RLE). The idea of a ‘trial-run’ living as a man or woman is highly problematic; it suggests that there is only one, identifiable way of living in a particular gender.
44. This reinforces biased and stereotypical assumptions about male and female conduct, which is not expected of any other citizen.
45. Back in 2015, MP Jess Philips questioned the idea of the real life test during the fourth and final session of the UK Parliament Women & Equalities Committee’s inquiry into transgender equality, quizzing Ministers and NHS England representative Will Huxter: “I wonder if you can tell me – clinically – what ‘living like a woman’ – or alternatively, man – actually means?” [...] “Do you think that there is a clinical way to live as a woman? Or a man? [...] what I’m looking to hear, is that you recognise that there is not a single list of attributes that represents what it is to be a woman and/or a man; and therefore, there cannot be a clinical list of things that a person can be told to do by a doctor in order to tick those boxes. Do you recognise that fact?”  
<https://bit.ly/2xR0sbH>
46. Nowhere else in UK law are men and women denied recognition of their gender simply because they do not conform to gendered assumptions. Once a trans person completes the legal transition process, they may have no intention and are under no legal obligation to conform to any notional standards of ‘maleness’ and ‘femaleness’. This means that trans people are the only people who are expected to conform to gendered assumptions, which may change over time, in order to gain recognition. This is not acceptable.
47. In contrast to other European jurisdictions, which have recently reformed or implemented their gender recognition laws, as well as the Yogyakarta Principles right to self-determination, have omitted RLE conditions without any issues and no evidence of abuse of the system. In the UK, the current need for evidence raises the question why there is in the first place an assumption that trans people’s identities pose a risk that the State needs to protect its citizen’s from?



48. Norway introduced the 'Legal Gender Amendment Act' in 2016, based on self-declaration. Any person over the age of 16 can change their legal gender and name by way of filling in a short document and registering it with the local tax office. There is no reflection period, and no diagnosis or compulsory medical intervention or surgical requirements are needed.
49. Hence, a simple administrative process based on self-determination does not need a medical diagnosis, RLE or 'period of reflection'.
50. A requirement for evidence is not an effective safeguard against potential abuse and should not be retained in the GRA.

### **Question 6 Currently, applicants for a gender recognition certificate must make a statutory declaration as part of the process.**

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

##### **Yes**

51. The LGBT Consortium/TON have consulted extensively with its membership on this. The great majority, including Stonewall, agrees that including a statutory declaration as part of a system of self-determination is a sensible approach, as long as it is the only requirement to obtain a Gender Recognition Certificate.
52. The process for statutory declaration is simple and straightforward and is used very commonly by people applying to change their legal name. The process is fully accessible and can be done by printing off a basic format from several locations online.
53. This would create a system that would be 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.
54. 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".
55. A simple statutory declaration system is widely recognised as best practice internationally, having been implemented in a number of countries.
56. The Republic of Ireland introduced the Gender Recognition Act in 2015, which enables trans people to obtain a Gender Recognition Certificate by way of statutory declaration. It resulted from 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 Irish Government adopted this best practice approach after widespread consultation with trans communities and other stakeholders including medical professionals. The process does not 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.
57. Malta passed the Gender Identity, Gender Expression and Sex Characteristics Act in 2015. The process follows also a model of self-determination, and is achieved by way of 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, and although they are 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, stating that Malta showed leadership on the world stage in safeguarding trans people. We believe that Britain should follow this example of best practice.
58. In 2016, Norway launched the 'Legal Gender Amendment Act', which is based on self-declaration. Any person over the age of 16 can change their legal gender and name by way of filling in a short document and registering it with the local tax office. There is no reflection period, and no diagnosis or compulsory medical intervention or surgical requirements are needed. It can be seen as the most progressive piece of legislation in this respect in the world.
59. These international examples show that statutory declaration systems, based on the principle of self-determination, can be implemented straightforwardly. It has significant benefits to trans people, as it removes invasive requirements on applicants to 'prove' their identity.
60. A statutory declaration also provides for legal intervention in the unlikely event of fraudulent application for gender recognition. It is a criminal offence under the Fraud Act to knowingly make a false statement through a statutory declaration. The LGBT Consortium and the great majority of its membership believe this offers an appropriate and effective and proportionate deterrent to anyone who might seek to make a fraudulent claim.
61. In countries that have already adopted a system of statutory declaration, namely Argentina, Denmark, Ireland, Malta and Norway, there is no known 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 applicant intends to 'live permanently in the acquired gender until death'?**

**No.**

62. While it is important that individuals looking to change their legal gender intend their declaration to be permanent, we believe that the inclusion of an 'until death' clause is unnecessary.
63. Any person should consider their application to be a solemn and honest statement of intent to live in their gender identity in good faith, as would be the norm with other legally recognised documents.
64. Fraudulent changes are already illegal and people seeking legal recognition of their gender do so with an understand of the implications of their decision.
65. Legal gender recognition simply needs to be monitored adequately. A properly maintained and administered self-determination system can avoid widespread fraud.
66. The Irish Government has flagged no issues with Self Declaration since 2015 with some 240 GRC's issued.
67. It is also important to note that this requirement does not reflect that some trans identities fall outside of 'male' and 'female' classifications. This is why LGBT Consortium and many Member organisations believe a reformed Gender Recognition Act must recognise non-binary identities (as discussed in our response to Question 20).



**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?**

**If you think the provisions should change, how do you think they should be altered?**

**No**

68. Current law allows spouses to block an application for gender recognition thus denying trans people in this situation the right to determine their own gender.
69. The system must enable a trans person to obtain GRC without needing the permission of their spouse. As evidenced in the National LGBT Survey, “Some respondents also noted difficulties in getting consent from their spouse before getting a Gender Recognition Certificate. If the spouse does not give their agreement to the legal gender recognition process, the applicant receives an interim Gender Recognition Certificate until the marriage or civil partnership is annulled, which was perceived as a ‘spousal veto’ to legal transition by some respondents.” (p221)
70. A poignant account was recognised in the National LGBT Survey, by a Trans woman, pansexual, 65+, from Wales (p.221): “The ‘spousal veto’ in the GRA [Gender Recognition Act] as amended by the Same Sex Marriage Act is unacceptable and was the cause of my harassment by my spouse. At first she withheld her approval so I could only be awarded an interim GRC [Gender Recognition Certificate]. [...]I strongly believe that there are grounds for a time limited requirement for spousal consultation but NOT for the current veto. My identity is just that. Mine. Nobody but me should be able to police my identity.’
71. Both the Matrimonial Causes Act 1973 (clause 12 (h)) and the Civil Partnership Act 2004 (50e)) also contain wording which acts specifically against trans people. It requires a burden of proof on the trans person to show that they had disclosed information.
72. These requirements are unacceptable and reads as treating trans people as someone to protect others from, and that trans people are essentially deceivers. Both these requirements must be removed from current legislation.
73. Our member organisation GIRES recommends: ‘[...] in view of the obligatory changes to marriage, same-sex marriage and civil partnerships that flow from the grant of a new birth certificate, it will be necessary for the spouse to be informed of the inevitable legal changes to their relationship. BUT that process should not give the spouse a tool with which to impede the human rights of the trans person. An indication from the spouse that they have been ‘informed’ is all that is necessary. Where their spouse is deliberately avoiding contact in an attempt to thwart the trans person’s legal confirmation of their gender identity or for any other reason, a time limit should be imposed - say, 3 months. Similarly, if there is clear evidence of a breakdown in the marriage (same-sex-marriage, civil partnership) and the couple are not together, and the spouse cannot be found, an automatic annulment within 3 months must be permitted.’
74. As our member organisation Gendered Intelligence rightly notes in their GRA guidance: ‘When equal marriage was being introduced, Scotland had the foresight to remove the spousal veto from the statute books. England and Wales now need to catch up, not fall even further behind.’

**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 fee should be removed or substantially reduced.

Gendered Intelligence states in their guidance: 'This is particularly important for younger trans people, who will be excluded if the process is costly, but also more widely as trans people are at a crossroads of financial disadvantage and social exclusion.'

60% of trans respondents to the Government Equality Office (2018) National LGBT Survey reported earning less than £20,000 a year. This number may underestimate the number of low earners, as a further 10% of trans respondents 'did not know' their income, and 7% preferred 'not to say'. Stonewall's (2018) research indicated that 25% of trans people have experienced homelessness. In Ireland, the gender recognition process is free.

GIRES explains in their response that the certificate fee is linked to additional cost arising from the need to provide irrelevant information to the GRC panel: 'If the cumbersome and unwarranted Panel system were abolished, and replaced by a Statutory Declaration, the fee would be reduced substantially. For instance, the fee for a replacement birth certificate is under £10. In addition, the substantial costs of obtaining medical information would be eliminated.'

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

75. Acquiring medical and other documents for the required 'evidence' involves costs.
76. According to BMA guidelines (<https://www.bma.org.uk/advice/employment/fees/gender-recognition-work>), typical costs may be: Passport £75.00, letter from GP for passport £25.00, medical report 1 £80.00, medical report 2 (GP) £80.00 statutory declaration £5.00 (although many solicitors charge more); costs totalling £405, plus possible private re-diagnosis at a typical cost of £300 (if the applicant's diagnosing clinician for example has died, retired or is overseas).
77. Costs for replacement of official documents such as birth certificates and passports should be significantly reduced.

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

**No**

78. Section 22 of the Gender Recognition Act is seen as unenforceable. There have been few successful prosecutions and enforcement is reliant on the CPS.
79. The time limits on bringing about a prosecution are short and it there can be long periods of time before a trans person becomes aware of any breach of their identity.



80. The system also doesn't always recognise the seriousness of the disclosure of information and doesn't seem to consider it as a serious offence and takes no action.
81. The press have on more than numerous occasions 'dead-named' trans people in the media. This is a serious breach of an individual's identity but despite the rules constantly being breached, there are few repercussions or deterrents for this re-occurring.
82. GIRES highlights in their GRA response what many member organisations have said: 'Section 22 is apparently unable to overcome the difficulty of IT systems that cannot completely obliterate a person's previous history. Some organisations, e.g. Companies House, just refuse to remove evidence of a person's previous name and title. More emphatic instructions should be issued to ensure that organisations, employers, clubs etc cannot rely on, for instance, the fact that they have an Intranet which is private, because it still allows others within that private system to see a person's unchanged record. The rules should be tightened so that , for instance, all educational certificates issued, will be replaced automatically by new certificates using new names, titles and pronouns. This should occur regardless of a GRC.'
83. GDPR requirements needs to be examined in connection with section 22 to better understand rules governing the ownership of data.

**Question 11: Is there anything you want to tell us about how the current process of applying for a GRC affects those who have a protected characteristic?**

**Yes**

84. Trans people aged under 18 currently cannot apply for a Gender Recognition Certificate.
85. Many of our Member organisations, including Mermaids and Gendered Intelligence, who provide services for and with young trans and non-binary people and their families, have voiced their disappointment at the omission of any specific question relating to young trans people under the age of 18 in this Gender Recognition Act consultation document.
86. This as an issue of human rights. A trans or non-binary individual should not have to wait to be 18 years old. 16-year-olds in the UK can work, pay taxes, make medical decisions, marry, become parents and even enlist in the armed services. Gillick competent individuals who can be as young as 12 can access contraceptives without parental consent.
87. In 2016, the Women and Equalities Select Committee recommended that the age for gender recognition should be lowered to 16, with appropriate support. This is an important step, and in line with the ability of adolescents to consent to medical treatment in the United Kingdom (per s.8 of the Family Law Reform Act 1969, which requires that any consent given by a minor of 16 years of age shall be as effective as it would be if they were of full age).
88. United Nations Convention on the Rights of the Child (UNCRC) (United Nations Office of the High Commissioner on Human Rights, "Convention on the Rights of the Child", 1990). These include Article 2 (that children and young people should be protected against all forms of discrimination), Article 8 (the right to identity, including gender identity and sexual orientation), Article 12 (the right to express opinions and be listened to) and Article 14 (the right to freedom of expression).
89. Recognising the right to protection from harm, the right to self-expression and identity, and the right to an opinion means that all trans young people under 16 should have the right to the legal recognition of their gender identity, however they choose to express it. This is further enforced by Article 3 – that the best interests of the young person be respected.



90. Legal recognition would ensure that no young person suffers because of the discrepancy between their legal and social identities.
91. It is vital that trans young people under 16 are able to access gender recognition. It is known that young trans people are aware of their identity early in life. The Kennedy/Hellen study in 2008 showed that the median age that trans people became aware they were different was 7.
92. This is not about access to medical treatment, but recognition of who they are and supporting them to be themselves. Many recent studies show that bullying, discrimination and harassment is wide-spread, and poor mental health have critically high rates in young trans people. Please see, for example:  
<https://nationallgbtpartnershipdotorg.files.wordpress.com/2017/08/lgbt-ypmh.pdf>
93. Whether or not parental approval should be required, particularly for those under 16 who are not independently competent, needs to be carefully considered.
94. A workable compromise in respect of those under 16 who lack “independent competence” could be to create a discretion to allow (but not require) parents/guardians to be consulted, and permit their views to be taken into account when deciding approval by the court/authority. Mermaids stresses that ‘Those without supportive households and a lack of independent competence should still have access to a back-up mechanism which ideally will be administrative rather than a court-based process’, [and there was a desire to ] work with the government and allies to develop a vision as to what this mechanism would look like.’
95. Parental approval or otherwise should not however be determinative of whether a child’s identity should be recognised.
96. In circumstances where a trans young person under 16 years old were refused consent for gender recognition by a parent or guardian, there must be a process for them to apply for legal recognition in their best interests.
97. This is the model under which Malta (Transgender Europe, “Gender Identity, Gender Expression and Sex Characteristics Act 2015”, 2015, tgeu.org) and Argentina (Transgender Europe, “Argentina Gender Identity Law”, 2012, tgeu.org) operates. This is considered international best practice, and at the moment, the most appropriate method of implementation.
98. It is vital that services providing access to emotional support and guidance throughout this period are accessible by young trans people.
99. UNISON notes that the current GRA process is ‘too complicated for many trans people to navigate, especially if they have poor literacy, are disabled or have lost old paperwork (for example, while homeless or fleeing domestic violence).’
100. Trans men with the protected characteristic of ‘pregnancy and maternity’ may be left in legal limbo due to existing contradictions between the GRA and laws relating to fertility, childbirth, maternity and paternity.
101. People with the protected characteristics of ‘race’ and ‘religion and belief’ from cultural or religious backgrounds that recognise more than two genders may be discriminated against by the lack of recognition for non-binary genders.  
Trans people with the protected characteristic of ‘race’ (which legally includes individuals with a non-British nationality) who have updated their birth certificates in countries outside of the EEA need to reapply at full cost to gain recognition in the UK.  
Following Brexit, more people may be placed in a legal ‘grey’ area. The wording of the EEA provisions means that it is currently ambiguous what will happen after the UK leaves the EU.



102. For trans people who are also disabled, there is added disadvantage. A pre-existing health condition may mean a trans person is unable to take hormones or undergo surgery.
103. We have heard from our Member Regard that supporting information about the application process for those applying for a GRC is not available in accessible formats. Advisors are not trained to communicate with disabled people, adding further barriers to an already complex process.
104. We also heard from Regard that some trans people using social care are put in a situation where they are unable to apply for a GRC due to not living in their true gender for two years, but are unable to access appropriate social care to support them with this without having a GRC in the first place.

**Question 12: Do you think that the participation of trans people in sport, as governed by the Equality Act 2010, will be affected by changing the Gender Recognition Act?**

**No**

105. The current provisions in the GRA 2004 does not require any medical intervention such as hormonal therapy or gender reassignment surgery. The medicalised elements in the existing provisions consist of the requirement of a medical diagnosis of gender dysphoria.
106. For this reason, moving to a self-determination model for legal gender recognition, which is entirely de-medicalised, will not have any particular impact in respect of the exemption relating to gender affected sports.
107. The current provisions do not necessarily entitle for example a trans athlete with a GRC to compete in gender-affected sports, where the exemption in s.195 of the Equality Act 2010 applies.

**Question 13:**

**(D)Do you think that the operation of the single-sex and separate-sex service exceptions in relation to gender reassignment in the Equality Act 2010 will be affected by changing the Gender Recognition Act? Yes No Please give reasons for your answer.**

**No**

108. Reforming the GRA 2004 is most likely not going to reduce male-pattern violence, and neither would it assist nor encourage the commission of such violence. Such crimes are usually not pre-meditated.
109. A GRC or its lack has no bearing on anyone committing crimes such as sexual assault or rape. Possession of a GRC would offer no defence in such cases. There would be no material benefit to anyone in acquiring a GRC before committing a crime such as rape or sexual assault, and possibly some considerable loss as it could be deemed that acquiring a GRC was a fraudulent act incurring additional penalties under the Fraud Act.
110. Section 7 (particularly in conjunction with ss. 13, 16 and 19) of the Equality Act 2010 establishes that persons who have the protected characteristic of 'gender reassignment' have broad non-discrimination protections i.e. a general right already exists for trans women, irrespective of their medical status or whether they even have a GRC, to access appropriate goods and services (such as single-gender hospital wards, etc.).



111. Government Equalities Office Guidance for Employers on the Recruitment and Retention of Transgender Staff states that a trans person should be free to select the facilities appropriate to the gender in which they present (at page 14)  
<https://www.gov.uk/government/publications/recruiting-and-retaining-transgender-staff-a-guide-for-employers>
112. The 2010 Act does contain two significant exceptions which entitle providers of single sex services, and communal accommodations, to exclude a trans person as a “proportionate means of achieving a legitimate aim” (Schedule 3, Part 7 (paragraph 28); Schedule 23 (paragraph 3)).
113. The prime example of such a scenario, referred to in the Explanatory Notes, is a counselling service for vulnerable women, where service users may refuse to attend sessions if trans women are permitted to attend. Equality Act 2010, Explanatory Notes, p. 120
114. LGBT Consortium Member Stonewall released a report looking at the experiences of professionals delivering support to trans women in domestic and sexual violence  
[https://www.stonewall.org.uk/sites/default/files/stonewall\\_and\\_nfpsynergy\\_report.pdf](https://www.stonewall.org.uk/sites/default/files/stonewall_and_nfpsynergy_report.pdf).
115. Key findings show that:
- a. Domestic and sexual violence services in England and Wales have been supporting trans women in their single-sex women-only services for some time with many taking proactive steps to ensure their services are trans-inclusive
  - b. Services take a personalised, client-centred approach
  - c. Many participants said that reform of the Gender Recognition Act would have no relevance to how they deliver their services
  - d. Several participants expressed concern that there are trans survivors who are being let down when seeking support, with some likening their experiences to the struggles faced by many black, Asian and minority ethnic (BAME) women, lesbians, bi women and disabled women seeking support.
116. Maria Miller MP, Chair of the UK Parliament Women and Equalities committee, made clear the attitude of those on the frontline of women’s services: “There is no evidence that trans women are a threat to anybody else. If anything, they are the victims of a great deal of hate crime, and very high levels of sexual assault themselves. I have sat down with Rape Crisis; I have sat down with Women’s Aid; I’ve sat down with Refuge, and all of them are already incredibly supportive of trans women and the appalling situations they find themselves in.”
117. Assuming that Parliament retains the relevant provisions of the 2010 Act (which currently appears to be the case), self-declaring one’s preferred legal gender would still—where the high bar of a “legitimate aim” is satisfied—allow exemptions for the right to access gender-specific spaces (guaranteed by the 2010 Act) to continue.

**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**

118. The General Occupational Requirement is rarely used and the government should be promoting inclusive employers, citing best practice where services have overcome potential “complex” situations where General Occupational Requirements might arise.



119. Since there is no distinction made under the Equality Act between trans people who have GRCs, and those who do not, there is no way GRA reform could impact how the Equality Act is implemented.

**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**

120. The Equality Act 2010 does contain two significant exceptions which entitle providers of single sex services and communal accommodations to exclude a trans person as a “proportionate means of achieving a legitimate aim” (Schedule 3, Part 7 (paragraph 28); Schedule 23 (paragraph 3)). Self-declaring one’s preferred legal gender would still—where the high bar of a “legitimate aim” is satisfied—allow exemptions for the right to access gender-specific spaces, which are guaranteed by the Equality Act 2010 to continue. Please also refer back to our answers in Question 13.

121. In addition, we recommend to the Government Equalities Office to 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**

122. The Government’s notes on the Consultation indicate that the armed forces view that inclusion of trans people in its ranks is having no adverse effect on battle readiness. This will apply to those with and without GRCs, so there is no evidence that changing the GRA will have any effect on the Equality Act in this instance.

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

**Yes**

In accordance with opinions and expertise within our membership, we would argue that this exemption be removed as far as the requirement to provide functions such as marriage for the state remains. The existence of this exemption is, as we understand, sometimes used as affirmative reason to deny marriage – because the law says it. We do not allow religious exemptions for those who provide civil ceremonies, such as registrars.

For those trans people who have faith, the refusal of a vicar, rabbi or mullah to conduct gendered ceremonies like marriage on these grounds must be incredibly hurtful.

**Question 18 Do you think that the operation of the insurance exception as it relates to trans people in the Equality Act 2010 will be affected by changing the Gender Recognition Act? Yes No Please give reasons for your answer**



**No.**

As Government notes that it is not aware of any insurance companies who take advantage of the existing exception, there will be no impact if the Gender Recognition Act changes. Indeed, the Government's statement gives good grounds for removing this exemption.

**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?**

**No.**

Under the PSI/17 2016 which was issued to revise HMPPS policy on where trans prisoners were placed, the existence of a gender recognition certificate is one element assessed. The PSI allows counter-evidence, based on the risk to an individual prisoner or the risk that the individual prisoner may pose to others, which can override the existence of the GRC in determining which estate is used. Changing the GRA will not affect the HMPPS instruction.

However, a reformed GRA provides good opportunities for improvements in the delivery of public services.

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

**Yes.**

123. People with non-binary genders are currently unable to have their gender identity legally recognised. We believe GRA reform should provide a legal recognition for non-binary identities.

124. Within the trans cohort, The National LGBT Survey results identified marginally more respondents as non-binary than it did those identifying as binary: 'thirteen percent of the respondents were transgender (or trans). Of the total sample, 6.9% of respondents were non-binary [...] Younger trans respondents were more likely than older respondents to identify as non-binary.'

125. In the National LGBT Survey (page 223), respondents with non-binary genders noted that the gender recognition process currently makes no provision for the recognition of a gender other than man or woman. *"The biggest problem I have living as an LGBT+ person in the UK is that non-binary gender is not recognised as a legal gender. Every time I fill in a form, with a few notable exceptions, I am forced to choose a binary gender and title, which is incorrect and upsetting. [...] I would like to be able to get a GRC [Gender Recognition Certificate] for my gender identity and have an X on my passport and marriage certificate, rather than an M or and F, and I know that I am not the only one."* (Non-binary person, pansexual, 18-24, South East)

126. Non-binary recognition is in line with international best practice. The third gender marker "X" has already been introduced in Canada (CBC News, "Transgender N.W.T., residents can now change birth certificates to reflect gender", 2017) and in New Zealand (New Zealand Government, "What you need to renew or apply for a passport – Information about Changing



Sex/Gender Identity”, 2017) on official identification documents, including passports. A recent case heard by the UK’s Supreme Court held that there was a human rights case to answer regarding the provision of X markers on passports, although ruled that Government could continue its current policy because of cost reasons. We think it inevitable that this human rights case will be further explored.

127. The World Professional Association for Transgender Health (WPATH) released a statement on legal gender recognition on November 15th 2017, which states: “WPATH recognizes that there is a spectrum of gender identities, and that choices of identity limited to Male or Female may be inadequate to reflect all gender identities. An option of X, NB (non-binary), or Other (as examples) should be available for individuals who so choose” (WPATH.com, 2017).
128. Changes to identity documents and records to include non-binary gender identities would strengthen the legal recognition of people with non-binary genders in the UK.
129. Regardless of whether options other than Male and Female become available through changes to the Gender Recognition Act, a general move to remove gender from official documents is vital and should not raise any particular problems. It is rarely important for documents to include information on a person’s gender for example, there is no reason why a driving licence should include a gender indicator in the driver’s number. The removal of gender markers from documents and records reduces the administrative burden related to changing them (notwithstanding any changes that be made if someone changes their name) and additionally reduces the risks associated with using documents which do not accurately reflect one’s gender for those in transition or with a non-binary gender.
130. Removing gender from official documents and records would show commitment by the government to the accommodation and recognition of people with non-binary genders.

**Question 21: (C) What other changes do you think are necessary to the GRA in order to benefit intersex people?**

131. We have consulted with established UK and international intersex organisations, including Intersex UK, and we, in line with the majority of our membership concur the following:
132. Intersex UK call for intersex VSC (variations of sex characteristics) people appropriately included in the reformed Act, offering a specific pathway to them.
133. The name GRC could be changed to Gender and Intersex Recognition Act or G and IVSC Recognition Act if both pathways are to be opened up as an additional option for both intersex/VSC people as well as trans and non-binary people.
134. Restricting an intersex/VSC/DSD person to one change or ‘correction’ of a GRC, due to having noted intersex variations or a correction of one’s birth certificate through the General Registrar’s Office (GRO) process, is dangerous and can cause mental health problems.
135. Intersex /VSC people should not be enforced and restricted to an arbitrary lower age limit permitting correction of their birth certificate, especially considering many have already been subjected to far greater limitations and traumas in life due to non-consented medical cosmetic surgeries.
136. Intersex / VSC bodied people should be permitted to correct their birth certificates using Gillick competence to determine their own gender - whether his is via the GRO option or the GRA pathway, as requested.



137. An adequate model would be The Malta Gender Identity, Gender Expression and Sex Characteristics Act (2015).

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

**Yes**

**Gender Recognition Panel**

138. In line with the great majority of our membership, LGBT Consortium and its Trans Organisations Network (TON), believes that the Panel as part of the gender recognition process should be discontinued.
139. Submitting of evidence to the Gender Recognition Panel - a group of strangers who will never meet the applicant have the final say over their legal gender recognition – is seen as dehumanising, demeaning, and distressing by many individuals and organisations. And there is no right of appeal of the decision.
140. In Stonewall’s LGBT in Britain: Trans Report, trans respondents described the panel system as an “archaic, sexist and ... deeply offensive, unnecessary gatekeeper”.
141. GRA applicants must provide a significant amount of information, including birth certificate, copies of any official documents that show their birth name has changed to their current name, proof they’ve lived in their acquired gender for the required time -2 years for standard route, 6 years for alternative route-, and any medical reports (UK Government, “Apply for a Gender Recognition Certificate”, Section 4 – “Documents You Must Provide”). This can cause a significant amount of distress, as outlined in the Women and Equalities Committee Report (House of Commons Gender Recognition Act: Stonewall Scotland Consultation Response Page 4 Women and Equalities Committee, “Transgender Equality Report”, 2015, p12, 13).
142. Many of our member organisations have reported that their service users do not apply for this reason. The Women and Equalities Select Committee found that the process required for obtaining a Gender Recognition Certificate puts trans people off applying for one. (House of Commons Women and Equalities Committee, ‘Transgender Equality’, First Report of Session 2015-16, 8 December 2015).
143. According to the GEO’s National LGBT Survey, ‘the most frequently given reasons for not having applied for a Gender Recognition Certificate were: not satisfying the requirements (44%), finding the process too bureaucratic (38%), and the process being too expensive (34%). Only 7%, however, said they were not interested in getting one.’ (National LGBT Survey: Research report Key findings, p.214).

**The Gender Recognition Register**

144. The existence of a national register of people who have obtained gender recognition potentially violates the privacy of individuals on the list. No similar register exists for members of any other marginalised group. Ideally, this register would be destroyed as part of any reform to the GRA.

**Asylum Seekers:**

145. Many trans asylum seekers escape transphobic discrimination and violence in their country of origin so it is vital their gender identity is legally recognised here in the UK.
146. Many of those people seeking asylum will be unable to access translated or original documentation from within detention centres.



147. 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.
148. This research showed that trans asylum seekers face particular threats of violence and discrimination while in detention, with one report revealing that trans women are often placed in male detention centres.
149. Trans detainees face particular danger in having to share bedrooms and communal showers with other detainees, which exposes them to considerable threat. Having their gender identity documents automatically recognised would allow them to avoid this with greater ease.
150. 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. (please refer back to Q20).

**International:**

151. According to ILGA (Map 2017), LGBT identities are still criminalised in 72 States. For this reason, UK Gender Recognition Certificates should contain protections for international travel.

**Monitoring:**

152. FOCUS: The Identity Trust, is one of LGBT Consortiums' Northern Ireland trans-specific member organisations has put forward recommendations on Monitoring to our Trans Organisations Network (TON):
  - a. We concur with TON's overarching response and share other organisations' concerns; further, in our recent response to OFMDFM NI's draft discussion document on a Gender Equality Strategy for Northern Ireland, 2015-2020, we advised that reliable and robust data is an essential tool in achieving the effective monitoring of progress towards agreed outcomes and even in setting baselines against which we may measure achievement and progress.
  - b. Gender Equality Unit (GEU) has created a Gender Advisory Panel (GAP) made up of the various stakeholder organisations in the gender sector within Northern Ireland, The Monitoring Committee will report annually to Ministers within OFMDFM NI, produce an annual report on achievement of outcomes and update the stakeholders on GAP at least twice per annum and revise outcome expectations or set new/revised targets as necessary.
  - c. The Monitoring Committee will operate on the basis of Outcome Based Accountability (OBA) which is a process designed to focus on the delivery of outcomes rather than outputs. Focus would recommend that the Women and Equalities Committee could benefit from adopting a similar Outcome Based Accountability model across all its activities, not least in addressing Transgender Issues, the essential ingredient being the creation of the appropriate Monitoring Group(s) which should obviously be representative of stakeholder representatives such as those represented on TON.



## Closing Comments

LGBT CONSORTIUM/TON, along with its membership and associate organisations including Amnesty International are concerned by the rise of a transphobic climate in public opinion, including widespread misinformation on the GRA reform process itself. This misinformation has moved the public discourse on areas that will not be affected by legislative change, for example the use of public toilets and single sex spaces.

The GRA dates back to 2004 and has fallen out of step with best practice legislation putting the rights of trans people at risk. There was a fear, which has turned out to be completely ungrounded, that the gender recognition process would be abused. The same narrative resurfaced as soon as Government announced its intention to consult on changing the gender recognition process last year. In fact, because of how the law was written and the process was applied, it was under-used.

For years Government insisted that there were around 5,000 transitioned trans people in the UK. It is only in the last couple of years that Government has accepted that the proportion of trans people is, indeed, likely to be around 1% of the population as a whole, some 600,000 people, in line with international studies and research within the UK over many years. I expect that the majority of those will not need to undergo transition, but even 10% equates to a population of around 60,000 – a considerable amount more than Government figures only 4 years ago.

The societal climate in 2004 was different to what it is now. Most people were unaware of trans people and the issues they faced. Over the past few years, more trans people have appeared on media, more trans people are “out” in society, and society’s attitude has changed – people generally are no longer afraid or suspicious of trans people. A recent survey showed that 87% of London women believed that trans women should have the same rights as them.

Additionally, legal gender recognition procedures have been updated around the world, so that the UK’s current law is no longer leading-edge but appears somewhat restrictive compared to our neighbours. It is worth re-stating that no abuse of self-declaration procedures has been found in any of the jurisdictions which use them.

We urge the government to reform the GRA by bringing it in line with international human rights standards.

END of Response