

# The Gender Recognition Act reform

A guide for  
UCU members  
and reps

The aim of this document is to provide clarity in an important area of law reform that has significant impact in terms of gender identity/recognition. The intention is, also, to address potential intersections with other areas of the law.

## Overview

The Gender Recognition Act (GRA) enables trans people to change their legal gender by acquiring a gender recognition certificate, and to change their birth certificate. The GRC protects trans people from sex discrimination as it affirms their permanent legal gender/sex as different to the one assigned at birth.

### Reform of the Gender Recognition Act can provide:

- ➔ A more timely route to obtaining legal gender recognition. This acknowledges that for many trans people the decision to live in a gender other than the one that corresponds with the sex assigned at their birth is not sudden.
- ➔ The shorter waiting period (3 months, reduced from 2 years) decreases the time to change the birth certificate so that it is consistent with other paperwork such as passport, driving licence etc.
- ➔ Removal of medical diagnosis of gender dysphoria, consistent with the Equality Act 2010. A system with reduced bureaucracy in the process of changing legal gender.
- ➔ Removal of a fee for application to change legal gender.

### Current GRA provision

Allows a person to change legal gender 2 years after they have lived in the gender other than the one that corresponds with the sex assigned at their birth.

### What reform will provide

Reducing the time it takes to obtain a gender recognition certificate for trans people, within binary gender framework. There would also be a 3-month reflection period after initial application for a gender recognition certificate.

### Why this is beneficial

Most trans people have spent a considerable period of their lives living as their authentic self before choosing to obtain legal recognition. The time imposed by current GRA regulation forces unnecessary extra 'reflection' on a process trans people have been living with for many years already.

Current GRA provision	What reform will provide	Why this is beneficial
Requires diagnosis of gender dysphoria.	Removes the need for medical diagnosis consistent with the Equality Act 2010.	Trans people would not have to be subject to intrusive medical supervision. The Equality Act 2010 covers a trans person from discrimination from the moment they declare that they reassign their gender to that other than that which corresponds with the sex assigned at their birth.
Change to birth certificate.	A quicker route to changing gender on birth certificate.	All other paperwork can be changed without going through the process of changing legal gender. Reform would speed up the process of having consistent paperwork.

#### Reform of the Gender Recognition Act would not:

- ➔ change provisions in the Equality Act (2010) including exemptions that allow for proportionate exclusion in relation to an organisation's legitimate aims, for example in single sex services, prisons, religion, and sport
- ➔ affect rights for trans people to change other paperwork covered by the Equality Act such as driving licence, bank accounts and passport
- ➔ change the binary gender framework to include more than two genders.

### WHAT IS GENDER RECOGNITION REFORM ABOUT?

The 2004 Gender Recognition Act (GRA) was groundbreaking legislation providing trans people with a way to have their 'acquired' gender recognised in law. The act provided the means for trans people to get a legal certificate, a Gender Recognition Certificate (GRC), and a new birth certificate that matched their legally recognised gender. The GRA preceded the 2010 Equality Act which recognised Gender Reassignment as a protected characteristic from the point of a person proposing to reassign their gender to one other than the one that corresponds with the sex registered at their birth.

The UK Government LGBT+ survey launched in July 2017 found that of the trans people who responded only 12% had a GRC. Those who had not gone through the process of getting a GRC said they found it to be too intrusive, too bureaucratic and too medicalised.

As a result, many trans people have birth certificates that do not match the rest of their paperwork. In 2018 the UK Government launched a consultation which was intended to lead to the reform of the GRA. Although the majority of responses were in favour of the proposed reforms no further action was taken in 2018. However, as GRA reform is a devolved matter in 2019 the Scottish Government undertook a further consultation on GRA reform. The government, in England and Wales, made minor changes to the GRA leaving in place the need

for medical evidence and two years living in the acquired gender. In 2022 the Scottish government issued a bill for reform of the gender recognition act.

The Scottish government reported on the findings of its consultation in September 2021.

Largely due to coverage in both traditional and social media there is much confusion about what is covered by the GRA. The aim of this document is to set out what is and isn't covered by the GRA.

UCU is a trans inclusive union and calls for reform of the GRA to enable trans and non-binary people to have their gender recognised in law.

## WHAT COULD A REFORMED GRA DO?

A reformed GRA would still be the way to get a GRC, make changes to the birth certificate, and obtain full legal gender recognition

Reform of the GRA as put forward in the 2019 consultation could reduce the time living in the gender other than the one that corresponds with the sex assigned at birth from 2 years to 3 months.

UCU supports this reform as it takes into account that prior to declaring the gender other than the one that corresponds with sex assigned at birth, trans people have already considered the implication of legally changing their gender. UCU recognises there is complexity and risk in living in a gender other than the one that corresponds with the sex assigned at birth. Therefore, UCU supports the reduced time proposed in the Scottish Gender Recognition reform bill.

Proposals in the UK for change in legal gender have, thus far, only been within the binary of man/woman.

After application for the gender recognition certificate the proposals include a 3-month reflection period before the change is confirmed. In terms of changing documents covered by the gender recognition act this is only within the established gender binary.

In terms of increasing access to gender recognition certificate it was proposed that this should:

- ➔ be in line with the age many other legal decisions can be made, that being 16
- ➔ be less bureaucratic by removing the Gender Recognition Panel which was seen to be off putting in the UK government LGBT+ survey. Additionally, Trans people have raised concerns the panel reinforced gender stereotypes and also reported a lack of clarity about what evidence was required.
- ➔ reduce the cost.

By removing the requirement for any medical intervention/diagnosis of gender dysphoria, GRA reform would bring parity with other countries that have already successfully adopted similar methods, including Ireland.

## WHAT WOULD A REFORMED GRA NOT DO?

Reform of the GRA does not change the right and provisions within the Equality Act 2010.

Currently, the 2004 Gender Recognition Act predates the 2010 Equality Act (EA) and as such does not reflect the rights within the 2010 EA. Trans (and non-binary, following the Taylor v Jaguar Land Rover court ruling) rights are covered by the Gender Reassignment characteristic in the Equality Act. The Equality Act 2010 covers these rights as soon as a person proposes that their permanent gender is other than the one that corresponds with the sex assigned at birth. People do not need a medical diagnosis of gender dysphoria or any medical intervention. This is different to the Gender Recognition Act 2004 and means that the current GRA provisions for legal recognition of gender are out of step with the wider rights. This has led to rights to change gender on passport, bank, and other documents but not on birth certificate, which can create significant difficulties e.g., situations when a birth certificate is required.

The Equality Act contains provisions for areas such as single sex spaces, sport and sets limited exemptions in those areas.<sup>1</sup>

Women's services can exclude trans women when it is proportionate and in pursuit of a legitimate aim. This would remain the case and has led to various service providers setting terms for their inclusion or not and this will continue to be the case irrespective of any changes to the Gender Recognition Act.

## SUMMARY OF THE RELATIONSHIP BETWEEN GENDER RECOGNITION ACT REFORM AND THE EQUALITY ACT

The proposals for reform to the Gender Recognition Act bring it in line with the provisions in the Equality Act. The areas that reform to the GRA would affect are limited yet profound. The discrepancy between the GRA and the broader Equality Act creates significant points of tension for trans people in terms of gender recognition.

Reform of the Gender Recognition Act only affects the person's name and sex on their birth certificate. The birth certificate is only one form of ID amongst many that can be used to prove identity. All other forms of identity are covered by provisions in the Equality Act and can be changed without reform of the GRA.

## WHAT IS THE RELATIONSHIP BETWEEN GENDER RECOGNITION ACT AND OTHER LEGISLATION?

In line with the Equality Act many single sex service providers are already making provisions for trans inclusion or, where it is proportionate to the aims of the organisation, adopting exclusions.

Exceptions do not rely on whether an individual has a gender recognition certificate or not.

In so far as sex discrimination is concerned a person is counted as their legal sex so possession of a GRC does have some effect but only when any discrimination on the grounds of gender are proportionate with the aim of the organisation.

<sup>1</sup><https://www.equalityhumanrights.com/en/advice-and-guidance/gender-reassignment-discrimination>

This same complex balance applies to sport, and many sporting bodies have done and are doing quite a lot in relation to trans inclusion and possible exemptions. The Equality Act 2010 gives sporting bodies the power to make their own rules on and around trans inclusion based on their expertise and understanding of their game.

Exemptions proportionate to aims also apply to religious, communal and criminal areas, such as prisons. A significant part of considering trans inclusion is the discrimination faced by trans people on the grounds of gender and whether exemption would lead to further experience of discrimination.

Such safeguarding on the grounds of protected characteristic is covered by the Equality Act 2010.

Assessing risk when it comes to where a person can be housed / imprisoned may or may not be decided on basis of legal gender. Risk to others would be part of that consideration.

The Data Protection Act, 2018, is an important piece of legislation. This Act has an aim of empowering individuals to be able to control their own data. Data that is held should always be subject to privacy and consent regulations. However, there may be circumstances where transparency is a proportionate action, in this case if someone has a GRC their history should not be revealed without consent.

Under the Equality Act 2010, all organisations must respect a trans person's acquired / affirmed gender and any associated change of name. Failure to change and use correct pronouns, names and gender markers (including honorifics and pronouns) on records in respect of a trans person would constitute unlawful direct discrimination under the Act. There is no legal requirement to produce a GRC (or a new birth certificate issued after the granting of a GRC) in order to have a change of name and gender recorded in an organisation's records. Nor is there any requirement to have undergone any form of gender-reassignment / confirmation treatment for this purpose.<sup>2</sup>

There is a complex relationship between gender recognition and other pieces of legislation which needs balancing when proportionate exemptions are sought. Legal cases continue to be heard and set precedents. This situation will remain the same if the GRA is reformed.

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<sup>2</sup> <https://publications.parliament.uk/pa/cm201516/cmselect/cmwomeq/390/39009.htm>

## Useful sites

<https://www.equalityhumanrights.com/en/our-work/news/our-statement-sex-and-gender-reassignment-legal-protections-and-language>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/974817/Gender\\_recognition\\_V8.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/974817/Gender_recognition_V8.pdf)

[https://lancslgbt.org.uk/web/wp-content/uploads/2013/03/PFC\\_Name\\_Changes\\_4\\_Orgs+Employer-guide.pdf](https://lancslgbt.org.uk/web/wp-content/uploads/2013/03/PFC_Name_Changes_4_Orgs+Employer-guide.pdf)

<https://www.airport-parking-shop.co.uk/blog/lgbtq-transgender-change-passport/>

[https://www.ucu.org.uk/media/10807/UCU-Scotland-Gender-Recognition-Reform-Scotland-Bill-submission-Mar-20/pdf/ucuscotland\\_gender-recognition-reform\\_submission\\_mar20.pdf](https://www.ucu.org.uk/media/10807/UCU-Scotland-Gender-Recognition-Reform-Scotland-Bill-submission-Mar-20/pdf/ucuscotland_gender-recognition-reform_submission_mar20.pdf)

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

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/987027/Guidance\\_on\\_Prisoners\\_who\\_are\\_Transgender.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/987027/Guidance_on_Prisoners_who_are_Transgender.pdf)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/987027/Guidance\\_on\\_Prisoners\\_who\\_are\\_Transgender.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/987027/Guidance_on_Prisoners_who_are_Transgender.pdf)

<https://www.sportengland.org/news/new-guidance-transgender-inclusion-domestic-sport-published>