

**BRIEFING PAPER**

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# The gender recognition process

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## Summary

This briefing paper considers the process for trans people to gain legal recognition in their acquired gender. It does not deal with medical treatment or NHS services for trans people.

### **Gender Recognition Act 2004**

The Gender Recognition Act 2004 (GRA) enables trans people to apply to the Gender Recognition Panel to receive a Gender Recognition Certificate (GRC). Successful applicants, who are granted a full GRC, are, from the date of issue, considered in law to be of their acquired gender. It is not a requirement for an applicant to have undergone gender reassignment surgery or hormone treatment, although many applicants do so.

The minimum age limit for GRC applications is 18. In November 2018, the Government stated that it had no intention of changing this position.

### **Single-sex spaces**

The Equality Act 2010 prohibits discrimination, for example in employment or the provision of public services, on the basis of protected characteristics, one of which is gender reassignment. However, this Act allows providers to offer single-sex services that exclude trans people, so long as it is proportionate to do so, and it achieves a legitimate aim.

### **Criticism of the current process**

The current process for legal gender recognition has been criticised by some people for its medicalised approach (it is necessary to submit medical evidence with most applications). Many trans people also consider the process to be overly intrusive, humiliating and administratively burdensome.

### **Consultation on reform of the GRA**

In a report published in 2016, the House of Commons Women and Equalities Committee recommended reform of the GRA process in line with the principles of gender self-identification.

In July 2018, the UK Government published a consultation document on reforms to the GRA: [Reform of the Gender Recognition Act – Government Consultation](#). This consultation, which ended on 22 October 2018, concerned the legal gender recognition system in England and Wales only, though the implications of change for the United Kingdom as a whole were also considered.

The Government stressed that the focus of the consultation was the process for achieving legal recognition, that removal of the requirement for a medical diagnosis in order to achieve legal recognition was one option on which views were sought, but that no firm decision had been taken yet.

The Government has stated that it does not intend to make any amendments to the existing exceptions in the Equality Act 2010 associated with the 'gender reassignment' protected characteristic. Recognising that concerns had been raised about the potential implications of reform of the GRA, the Government has confirmed that, where it is a proportionate means of meeting a legitimate aim, it would still be possible to exclude trans people from single- and separate-sex services.

### **The 'self-identification' debate**

There are strongly held views for and against self-identification for gender recognition.

Arguments by those in favour of self-identification include that the current process is intrusive, humiliating and administratively burdensome. Some trans people have argued that the requirement for a diagnostic psychiatric report perpetuates the assumption, which they consider to be outdated and false, that being trans is a mental illness. The fee and associated costs are seen as expensive and there is no right of appeal against the decision unless on a point of law.

Trans organisations are among those that argue that transphobia must be opposed.

Those against self-identification are concerned, for example, about creating a system which might be abused and about the potentially negative impact on women, and particularly on vulnerable women, in safe single-sex spaces. They do not consider their views amount to transphobia.

Concerns have also been raised that there has been intimidation of those organising and attending meetings to consider the Government's proposals, and that debate has been stifled.

### **What might happen next?**

The 2018 consultation received more than 100,000 responses. The Government has not yet published its own response. On 17 October 2019, Elizabeth Truss, Minister for Women and Equalities, said that the issue of the response to the consultation was very important and needed time for consideration.

The 2019 General Election manifestos of the Labour Party, Liberal Democrats and the Green Party included commitments related to gender recognition.

### **The position in Scotland**

The GRA extends across the United Kingdom. However, gender recognition is a devolved matter meaning that legislation in this area is within the competence of the Scottish Parliament.

The Scottish Government's separate consultation, [Review of the Gender Recognition Act 2004](#), ran from 9 November 2017 to 1 March 2018. This sought views on whether and how the GRA should be amended in relation to the law in Scotland and set out the Scottish Government's initial view that, subject to views expressed during the consultation, Scotland should adopt a self-declaration system for legal gender recognition.

In June 2019, Cabinet Secretary for Equalities, Shirley-Anne Somerville, announced that a draft Gender Recognition (Scotland) Bill, to reform the current process of obtaining a GRC, would be published by the end of the year. She said that a Bill would be formally introduced to Parliament only when there had been a full consultation on the precise details contained in the draft Bill.

The draft Bill is to propose removing the need for applicants for a GRC to provide medical evidence, but they would still need to provide a statutory declaration that they intend to live permanently as a man or a woman. It would remain a criminal offence to make a false statutory declaration. Applicants would need to live in their acquired gender for at least six months – three months before applying for a GRC and three months after applying – before a GRC could be granted.

# 1. Background

## 1.1 Trans identity

In its 2016 report on [Transgender Equality](#), the House of Commons Women and Equalities Committee gave this explanation of trans-identity:

Each of us is at birth assigned a sex (male or female), based on our physical characteristics. Most people's gender identity (the gender with which they associate themselves) and gender presentation (how they outwardly show their gender) will not differ from that typically associated with their assigned sex. Trans people, however, have a gender identity which differs from that of their (assigned) birth sex. Trans identities take a wide diversity of forms.

Trans identity can be "non-binary" in character, located at a (fixed or variable) point along a continuum between male and female; or "non-gendered", i.e. involving identification as neither male nor female.<sup>1</sup>

Many trans people change their gender presentation to bring it into alignment with their gender identity:

This process is known as "transition". Transitioning may involve various types of medical treatment, to bring a person's physical characteristics more into conformity with their gender identity and presentation. ...However, transitioning need not involve any form of medical intervention.<sup>2</sup>

## 1.2 Gender dysphoria

An HM Courts and Tribunals Service document, [The General Guide for all Users Gender Recognition Act 2004](#), defines gender dysphoria as:

a recognised medical condition variously also described as gender identity disorder and transsexualism. It is an overwhelming desire to live in the opposite gender to that which a person has been registered at birth.<sup>3</sup>

Diagnosis of gender dysphoria is an important part of accessing NHS assistance with medical transition and is currently required in order to fully transition legally.<sup>4</sup>

## 1.3 Number of trans people

While acknowledging that it does not know exactly how many trans people there are in the UK, the Government has estimated that between 200,000 and 500,000 people identify in this way. The Government's 2018 consultation paper on reform of the Gender Recognition Act 2004 discusses how this figure of the size of the trans

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<sup>1</sup> Women and Equalities Committee, [Transgender Equality](#), 14 January 2016, HC 390 2015-16, paragraph 2

<sup>2</sup> Ibid, paragraph 5

<sup>3</sup> HM Courts and Tribunals Service, T455, [The General Guide for all Users Gender Recognition Act 2004](#), 2019

<sup>4</sup> [Reform of the Gender Recognition Act – Government Consultation](#), July 2018, p16

population was reached and acknowledges that the approach is imperfect.<sup>5</sup>

## 1.4 Difficulties experienced by trans people

The 2018 consultation paper outlines some of the difficulties experienced by trans people:

Being trans is not a mental illness. Despite this, and despite the progress that we have made in recent years, trans people continue to face significant barriers to full participation in society. Rates of suicide and self-harm, particularly amongst young trans people, are too high. Trans people continue to face discrimination and harassment in the workplace, in school and on the street. Ultimately this can prevent many from fulfilling their potential, and finding the dignity and respect that they deserve.<sup>6</sup>

More detailed information is provided in Stonewall's [Trans Report](#), published in 2018.<sup>7</sup>

## 1.5 Trans persons and gender-segregated spaces

### Protection from discrimination

The [Equality Act 2010](#) prohibits discrimination on the basis of protected characteristics (listed in [section 4](#)), for example in employment or the provision of public services. One of the protected characteristics is gender reassignment, defined in [section 7](#):

A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.

This protection applies irrespective of whether the person has legal gender recognition.<sup>8</sup>

However, the prohibition on discrimination is not absolute. The Government's 2018 consultation paper sets out the circumstances where what might otherwise be discrimination against individuals with the protected characteristic of 'gender reassignment' is permitted.<sup>9</sup>

The exceptions in the Equality Act must be applied lawfully.

### Single-sex spaces

[Schedule 3, Part 7 of the Equality Act 2010](#) allows providers to offer single-sex services that exclude trans people, so long as it is proportionate to do so, and it achieves a legitimate aim.

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<sup>5</sup> [Reform of the Gender Recognition Act – Government Consultation](#), July 2018, Annex E. See section 5 of this briefing paper for information about the consultation

<sup>6</sup> Ibid, p12

<sup>7</sup> Stonewall, [LGBT in Britain – Trans Report](#), January 2018

<sup>8</sup> See section 2 of this briefing paper for information about legal recognition

<sup>9</sup> [Reform of the Gender Recognition Act – Government Consultation](#), July 2018, Annex C provides a full explanation of the exceptions

Not allowing a trans person to access a single-sex service has to be objectively justified:

As an example, refusing a transwoman with or without a GRC access to a female toilet<sup>10</sup> in a pub is likely to be unlawful,<sup>11</sup> but a female only domestic violence refuge may provide a separate service to a trans woman only if it can be shown there is a detriment to other service users from including the trans woman as part of the regular service.<sup>12</sup>

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<sup>10</sup> Footnote to text: "There are a range of serious criminal offences that can be charged against anyone of any gender who sexually harasses, threatens, attempts to assault or voyeuristically observes or records anyone else of any gender in a toilet"

<sup>11</sup> Footnote to text: "<http://www.lawcentres.org.uk/policy/news/news/kirklees-law-centre-wins-landmark-transgender-discrimination-case>"

<sup>12</sup> [Reform of the Gender Recognition Act – Government Consultation](#), July 2018, p45

## 2. Gender Recognition Act 2004

### 2.1 Background

On 11 July 2002, the European Court of Human Rights delivered two judgments which found that the UK had breached the rights of two trans people under Article 8 (right to respect for private life) and Article 12 (right to marry) of the European Convention on Human Rights (ECHR).<sup>13</sup>

### 2.2 The GRA

In order to meet the requirements of the ECHR, the law was changed by way of the [Gender Recognition Act 2004](#) (GRA) which came into force in April 2005. The GRA enables trans people to apply to the Gender Recognition Panel to receive a Gender Recognition Certificate (GRC). In almost all circumstances, the trans person will not appear before the panel in person.

Successful applicants, who are granted a full GRC, are, from the date of issue, considered in law to be of their “acquired gender” (man or woman).<sup>14</sup>

#### Married applicants

The Marriage (Same Sex Couples) Act 2013, which made the marriage of same sex couples legal in England and Wales, amended the GRA in relation to those wishing to remain married after gender recognition. It is now possible, if their spouse consents to the marriage continuing, for a trans person to gain a full GRC without having to end their marriage, as they had to do previously when there was a bar on the marriage of same sex couples.<sup>15</sup>

If the non-spouse does not consent to the marriage continuing, an interim certificate will be issued to an applicant who meets the other criteria for legal recognition of their acquired gender. The interim certificate can be used to enable the applicant or their spouse to end their marriage and then a full GRC can be issued.

#### Gender Recognition Register

The Registrar General must maintain a Gender Recognition Register (GRR). When a full GRC is issued, an entry is made in the GRR and the original birth register entry is also marked, to show that it has been superseded. The Registrar General makes the connection between the two registrations traceable, but this information is not open to public inspection or search. The successful applicant may then obtain a new

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<sup>13</sup> Goodwin v. United Kingdom App. No. 28957/95 and I. v. United Kingdom. App. No. 25680/94

<sup>14</sup> The GRA uses the term “acquired gender”, and this term is also used in this briefing paper. The House of Commons Women and Equalities Committee found that many people now prefer the term “affirmed gender”

<sup>15</sup> See section 4.3 below of this briefing paper for further information about “spousal consent”



birth certificate, and this does not disclose that it has been compiled from the GRR.<sup>16</sup>

### Further information

Gov.UK provides information about [applying for a Gender Recognition Certificate](#). More detailed information is provided in an HM Courts and Tribunals publication, [The General Guide for all Users Gender Recognition Act 2004](#).<sup>17</sup>

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<sup>16</sup> See [Gender Recognition Act 2004 Explanatory Notes](#), paragraph 32 for further information

<sup>17</sup> March 2019

## 3. The current process for gender recognition

### 3.1 Legal recognition

A full explanation of the gender recognition process is given at [Annex D](#) of the Government's 2018 consultation paper on reform of the GRA.

#### Application routes

There are three application routes. Each route has different evidential criteria but all applicants for a GRC must be aged 18 or over and must pay a fee of up to £140 (it is sometimes possible to get help to pay the fee). The circumstances of any particular case will determine which route is appropriate.

#### The standard route

The standard route is used by about 95% of applicants<sup>18</sup> and is for applicants who:

- have been diagnosed with gender dysphoria and are able to provide two medical reports, one confirming the diagnosis and another including details of any treatment the applicant has had to modify their body (eg hormone treatment or surgery). Applicants who have not yet had any treatment or surgery must send a report that includes details of any planned treatment or surgery;
- can prove that they have lived in their acquired gender for at least two years;<sup>19</sup> and
- provide a statutory declaration that they intend to live permanently in their acquired gender until death.

#### Alternative route

The alternative route (for people who socially and medically transitioned some time ago) is used by around 1% of applicants and is the same as the standard route except:

- only one medical report is needed confirming either that the applicant has been diagnosed with gender dysphoria or that they have had surgery to change their sexual characteristics;
- the applicant must live in England, Wales or Scotland most of the time;

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<sup>18</sup> Percentages set out in [Reform of the Gender Recognition Act – Government Consultation](#), July 2018, pp 18-19

<sup>19</sup> Applicants are given a range of suggested documents, including: Driving licences; Passports; Pay slips; Benefit documentation; Bank statements; Utility bills; Academic certificates; and Letters from official, professional or business organisations such as solicitors or accountants. The consultation paper states (at p79) that, typically, five or six different documents need to be included with an application

- the applicant must provide evidence that they lived in their acquired gender for at least six years before 10 December 2014 and continue to do so;
- the applicant must be in (or have been in) a protected marriage or protected civil partnership.<sup>20</sup>

The Marriage (Same Sex Couples) Act 2013 introduced the terms 'protected marriage', 'protected civil partnership' and the spousal 'statutory declaration of consent'.<sup>21</sup>

Baroness Stowell of Beeston, who led the Bill which preceded the 2013 Act through the House of Lords, explained how new provisions would assist trans people who had made their transition to their acquired gender some time previously but had not applied for gender recognition because they did not want to end their marriage:

The Bill now gives such people the opportunity to obtain gender recognition while remaining married, if their spouse is content for the marriage to continue. However, applicants who made their transition a long time ago may find it difficult to obtain the required medical reports from gender dysphoria specialists.

These amendments will assist such applicants by making the new fast-track procedure available to transpeople who are or were in protected marriages or civil partnerships and who transitioned six years prior to the commencement of these provisions and by reducing the amount of medical evidence they will be required to submit to the gender recognition panel. Such applicants for gender recognition will be required to submit one medical report, either from any medical practitioner, including a GP, or from a registered psychologist who practises in the field of gender dysphoria.<sup>22</sup>

### **Overseas route**

In the overseas track, used by about 4% of applicants, evidence is required that the applicant has been legally recognised in their acquired gender by a country or territory listed in legislation.<sup>23</sup>

### **No requirement for gender reassignment surgery**

It is not a requirement for an applicant to have undergone gender reassignment surgery or hormone treatment, although many applicants do so.

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<sup>20</sup> As set out in [Reform of the Gender Recognition Act – Government Consultation, p18 footnote 6](#), a marriage or civil partnership is protected if it is one of the following:

- registered under the law of England and Wales
- a marriage solemnised in Scotland
- a civil partnership registered in Scotland
- a marriage registered under the law of a country or territory outside the UK
- a marriage on UK consular premises or in an armed forces base, if the applicant elected England, Wales or Scotland as the relevant part of the UK

<sup>21</sup> See section 4.3 below of this briefing paper for information about "spousal consent"

<sup>22</sup> [HL Deb 10 July 2013 cc296-7](#)

<sup>23</sup> [Reform of the Gender Recognition Act – Government Consultation](#), July 2018, pp18-19. The latest list is in the [Gender Recognition \(Approved Countries and Territories\) Order 2011](#)

Legal recognition has no bearing on access to medical treatment.<sup>24</sup>

### Consideration of draft Bill which preceded the GRA

In 2003, the Joint Committee on Human Rights scrutinised the draft Gender Recognition Bill which preceded the GRA.<sup>25</sup> They commented on the proposed process:

The requirement to apply to a Panel for a gender recognition certificate, the set procedures to be followed, and the registration of acquired gender are essential elements in the scheme. They advance the aims of certainty and help to ensure that the Government's flexible approach to the stage at which an acquired gender should be recognized will not degenerate into giving legal recognition to lifestyle changes...<sup>26</sup>

The Joint Committee considered the procedural and evidential requirements and said:

Once it is decided to put in place a scheme for recognising an acquired gender by law, it is necessary to have some criteria by which to decide whether a person's gender has changed, and to have evidence relating to the change and its social implications, not least as it affects other people.<sup>27</sup>

The Joint Committee considered that the criteria for granting a GRC seemed to meet human rights requirements.<sup>28</sup>

## 3.2 Other recognition

In order to update their birth certificate, a trans person needs to obtain a Gender Recognition Certificate (GRC). However, a trans person can make some changes in their life without obtaining a GRC, including, for example:

- their name;
- the gender in their passport;<sup>29</sup>
- their driver's licence;
- their gender details with their bank and other service providers.

The Government's factsheet, [Trans people in the UK](#) (2018), provides an overview.

### Transgender prisoners

In the light of a case concerning a transitioning prisoner who assaulted women in a women's prison,<sup>30</sup> the Government reviewed both the content and application of the relevant prison service instruction.<sup>31</sup>

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<sup>24</sup> [Reform of the Gender Recognition Act – Government Consultation](#), July 2018, p16

<sup>25</sup> Joint Committee on Human Rights, [Draft Gender Recognition Bill](#), 20 November 2003, HL Paper 188-I & II, HC 1276-I & II

<sup>26</sup> Ibid, paragraph 52

<sup>27</sup> Ibid, paragraph 61

<sup>28</sup> Ibid, paragraph 76

<sup>29</sup> HM Passport Office, [Gender Recognition](#), 9 February 2010

<sup>30</sup> See, for example, Nazia Parveen, "[Transgender prisoner who sexually assaulted inmates jailed for life](#)", Guardian, 11 October 2018 [accessed 3 December 2019]

<sup>31</sup> 17/2016, The Care and Management of Transgender Offenders

A new Policy Framework, [The Care and Management of Individuals who are Transgender](#), was implemented on 31 October 2019. The aim of this Policy Framework is to detail the minimum mandatory requirements which are needed to care for and manage individuals who are transgender. [Gov.UK](#) provides further information:

In doing this there is an emphasis on adopting a balanced approach which considers the safety and needs of those who are transgender whilst ensuring that decisions do not have any negative impact on the wellbeing and safety of others, particularly in custodial settings such as in women's prisons.<sup>32</sup>

Individuals managed by HM Prison and Probation Service are able to self-declare that they are transgender, but this does not determine allocation. The headline requirements are:

- All individuals in our care must be supported to express the gender with which they identify.
- Their preference does not oblige us to allocate them to a men's or women's prison or approved premises accordingly; it is one of many factors that may influence such decisions.
- However, all individuals who are transgender must be initially allocated to part of the estate which matches their legally recognised gender (or best-known evidence where legal gender is not known).
- The only exceptions are when allocation decisions are approved by a Prison Group Director or the Community Interventions Deputy Director [or equivalent grade] via a Complex Case Board, or [Youth Custody Service] Head of Casework or Band 8 Senior Case Manager.
- A balanced approach must be adopted when making allocation, care and management decisions relating to transgender individuals, balancing the risks and well-being of the individual with the risks or impact on well-being that the person may present to others, particularly in custodial and residential settings.
- Additional structured risk assessments and resources are required before a person is allocated or transferred to part of the estate which does not match their sex assigned at birth, including where a person has gained legal recognition of the gender with which they identify.<sup>33</sup>

A Library briefing paper, [Transgender Prisoners](#), provides background information.<sup>34</sup>

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<sup>32</sup> Gov.UK from the Ministry of Justice and Her Majesty's Prison and Probation Service, "[The care and management of individuals who are transgender](#)", 22 July 2019 [accessed 3 December 2109]

<sup>33</sup> Ministry of Justice and HM Prison and Probation Service, [The Care and Management of Individuals who are Transgender](#), Re-Issue Date: 15 August 2019, p9

<sup>34</sup> [Transgender Prisoners](#), Number 07420, last updated 19 September 2018

## 4. Criticism of the current process

The House of Commons Women and Equalities Committee stated that, at the time it was enacted, the GRA was considered to be “world-leading” but that it is now regarded as being “outdated”:

When the GRA was drafted it was the first gender-recognition legislation in the world not to require individuals to have undergone surgical sterilisation prior to recognition in their acquired gender. At the time, it was thus considered to be world-leading. However, we were told by witnesses that it was now “outdated” and “in need of significant revision”. More recent gender-recognition legislation in several countries is widely regarded as providing a more enlightened model for the UK to follow.<sup>35</sup>

Specific aspects of the current process have been particularly criticised, including those set out below.

### 4.1 “Medicalised approach”

The Women and Equalities Committee criticised the GRA for its dated “medicalised approach” and recommended reform in line with the principles of gender self-identification:

While we recognise the importance of the Gender Recognition Act as pioneering legislation when it was passed, it is clear that the Act is now dated. The medicalised approach regarding mental-health diagnosis pathologises trans identities; as such, it runs contrary to the dignity and personal autonomy of applicants.

Within the current Parliament, the Government must bring forward proposals to update the Gender Recognition Act, in line with the principles of gender self-declaration that have been developed in other jurisdictions. In place of the present medicalised, quasi-judicial application process, an administrative process must be developed, centred on the wishes of the individual applicant, rather than on intensive analysis by doctors and lawyers.<sup>36</sup>

The Government’s 2018 consultation paper also states that many trans people object to the medicalised nature of the process:

...they argue that by requiring a diagnostic psychiatric report, the process perpetuates the outdated and false assumption that being trans is a mental illness.<sup>37</sup>

### 4.2 Intrusive and burdensome procedure

The consultation paper states that many trans people consider the current process to be “overly intrusive, humiliating and administratively burdensome” and that it is costly:

As part of the process, the trans person has to collect a range of personal documentation, including information about their medical history, finances and identity which they send to people

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<sup>35</sup> Women and Equalities Committee, [Transgender Equality](#), 14 January 2016, HC 390 2015-16, paragraph 30

<sup>36</sup> Ibid, paragraphs 44-45

<sup>37</sup> [Reform of the Gender Recognition Act – Government Consultation](#), July 2018, p21

who they do not meet who then make a decision about their gender identity.

The fee of £140 and associated costs are seen as expensive and there is no right of appeal against the decision unless on a point of law.<sup>38</sup>

The Government said that the process deterred some trans people from applying for legal recognition:

For many trans people, and organisations that support trans people, however, the legal recognition process is no longer delivering. Since the GRA came into force, 4,910 people have successfully acquired a GRC – this is fewer than the number of trans men and trans women who responded to the Government’s LGBT survey (around 6,900), and is far fewer than the estimated size of the trans population in the UK). The results of the survey show that only 12% of the trans survey respondents who had started or completed their transition had used the process set out in the GRA. Of those who were aware of the process, but did not have a GRC and had never applied for one, only 7% said they would not be interested in going through the process. This therefore suggests that there is interest in using the GRA system to obtain legal recognition of gender, but the process itself is not being used.<sup>39</sup>

The Government recognised the difficulty this could cause for trans people:

Whilst many trans people want legal recognition, too few are able to get it. In too many cases the current system prevents them from acquiring legal recognition of who they are, denying them the dignity and respect that comes with it. It often leaves trans people in the difficult situation of living in one gender, and holding Government-issued forms of identification, credit cards, driving licence and all other documents in that gender, but a birth certificate and legal status in another.<sup>40</sup>

## 4.3 “Spousal consent/veto”

### England and Wales

The Marriage (Same Sex Couples Act) 2013 enables an existing “protected marriage”<sup>41</sup> to continue, where one or both parties change their legal gender and both parties make a statutory declaration confirming that they agree to stay married. In these cases, a full GRC will be issued to the applicant.

An interim GRC will be issued if either spouse does not wish the marriage to continue or does not make a statutory declaration. The issue of an interim GRC enables either party to seek annulment of the marriage, following which a full certificate can be issued.

The Women and Equalities Committee received evidence which demonstrated widespread hostility to the need for spousal consent (also

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<sup>38</sup> Ibid

<sup>39</sup> [Reform of the Gender Recognition Act – Government Consultation](#), July 2018, pp10-11

<sup>40</sup> [Reform of the Gender Recognition Act – Government Consultation](#), July 2018, Ministerial foreword

<sup>41</sup> See footnote 20 of this briefing paper

referred to as the “spousal veto”), which some trans people feel affects their human rights:

We are very aware of the widespread and strongly felt opposition within the trans community to the provision on spousal consent which was introduced by the Marriage (Same Sex Couples) Act 2013. We understand that trans people feel this gives their spouses an effective “veto” on the acquisition of a full Gender Recognition Certificate.

The nature of marriage (whether same-sex or different-sex) is that of a legal contract between two consenting parties, the terms of which cannot be changed without the consent of both parties. This means that in a marriage where one party transitions, the non-trans spouse does have a legal right to be consulted if it is proposed to change the terms of the marriage contract in consequence—and this right must also be given due weight.

We do take very seriously the evidence that we have heard regarding the scope that the spousal-consent provision gives for married trans people to be victimised by spouses with malicious intent. Where this occurs, it is, of course, deplorable and inexcusable. The Government must ensure that it is informed about the extent of this and ways of addressing the problem.<sup>42</sup>

In its consultation paper, the Government acknowledged concerns about the need for spousal consent which it identified as follows:

- Requiring spousal consent extends the ability to make decisions over a trans person’s gender identity to someone else, beyond the power given to the [Gender Recognition Panel];
- If spousal consent is not forthcoming, this can substantially delay the legal gender recognition process whilst the dissolution of the marriage takes place. This can be particularly time-consuming if the dissolution is difficult, perhaps because it involves complicated financial or child contact arrangements. Complicated dissolution arrangements can also be costly;
- Withholding consent might potentially be used by an abusive spouse to perpetrate domestic abuse. It can give the spouse an additional means of control; and
- Spousal consent may not be possible, for example if the spouse cannot be contacted or lacks mental capacity.<sup>43</sup>

The Government explained the rationale for the requirement for the spouse to consent and asked for views on whether, and if so, how, the law in this respect should be changed:

On the other hand, it could be argued that as marriage is an agreement between two individuals, it is appropriate that both spouses should have an equal say in the future of that contract in the event of a fundamental change like a change in the gender of one of the parties to it. This was the principal rationale behind introducing the spousal consent provisions in the same-sex marriage legislation. It could be argued that this could be

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<sup>42</sup> Women and Equalities Committee, [Transgender Equality](#), 14 January 2016, HC 390 2015-16, paragraphs 61-63

<sup>43</sup> [Reform of the Gender Recognition Act – Government Consultation](#), July 2018, p36



achieved with a requirement to inform your spouse if you apply for a GRC, rather than a requirement to gain their consent.

The Government is keen to use the consultation as a way of gathering evidence about the spousal consent provisions, with a view to amending them in line with the overarching intention of streamlining the legal gender recognition process.<sup>44</sup>

## Scotland

The position is different in Scotland. The Marriage and Civil Partnership (Scotland) Act 2014 enables a married applicant, who does not have written spousal consent, and who therefore obtains only an interim GRC, to apply to the Sheriff Court to convert to a full certificate. The application must be made within six months of the issue of the interim certificate. The Sheriff must notify the trans person's spouse that the application for the full certificate has been made and that it has been granted. That gives the spouse the grounds, at any time in the future, to seek a divorce.

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<sup>44</sup> Ibid, paragraphs 79-80

## 5. Consultation on reform of GRA

In its [response](#) to the Women and Equality Committee's report, published on 7 July 2016, the Government committed to review the GRA to determine whether changes could be made to streamline and de-medicalise the gender recognition process.<sup>45</sup>

### 5.1 The consultation paper

In July 2018, the UK Government published a consultation document on reforms to the GRA: [Reform of the Gender Recognition Act – Government Consultation](#). This consultation, which ended on 22 October 2018, concerned the legal gender recognition system in England and Wales only, though the implications of change for the United Kingdom as a whole were also considered.

### 5.2 The purpose of the consultation

[Gov.UK](#) has a summary of the purpose of the consultation which stresses its focus on the process for achieving legal recognition:

This consultation does not consider the question of whether trans people exist, whether they have the right to legally change their gender, or whether it is right for a person of any age to identify with another gender, or with no gender. Trans and non-binary people are members of our society and should be treated with respect. Trans people already have the right to legally change their gender, and there is no suggestion of this right being removed. This consultation simply asks how best government might make the existing process under the Gender Recognition Act a better service for those trans and non-binary people who wish to use it.

The Ministerial Foreword to the consultation outlined the nature of the consultation, indicating that removal of the requirement for a medical diagnosis in order to achieve legal recognition was one option being considered, but that no firm decision had been taken yet:

This consultation seeks views on how the Government might make it easier for trans people to achieve legal recognition. The way this has been achieved in some other countries around the world is to remove the requirement for a medical diagnosis and to streamline other parts of the process. This is one option that the Government wishes to ask for views on but no firm decisions on our eventual approach have been taken. The legal recognition process is separate from the pathway that trans people follow to obtain medical treatment that they may wish to have, such as hormones or surgery. The questions about any removal of a requirement for a medical diagnosis in the context of this consultation is only with regard to the legal recognition process.

### 5.3 Focus on process for legal recognition

The Government stated that it wanted to make the legal recognition process less intrusive and bureaucratic for trans people and the

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<sup>45</sup> [Government Equalities Office, Government Response to the Women and Equalities Committee Report on Transgender Equality, July 2016, p11](#)

consultation sought views on how this might be achieved. The consultation considered many aspects of the GRA process, including:

- a) The requirement for the trans person to provide two medical reports, one evidencing a diagnosis of gender dysphoria and the other outlining details of any treatment received;
- b) The requirement for the trans person to provide a range of documentation that proves they have lived in their acquired gender for at least two years;
- c) The requirement for the trans person to submit a statutory declaration of their intention to live in their acquired gender until death;
- d) The requirement for married applicants to obtain the consent of their spouse or end their marriage;
- e) The cost to the trans person of using the GRA process;
- f) How the Act protects the privacy of individuals who have applied for a GRC.<sup>46</sup>

The consultation paper set out information about different models of process:

[The process set out in the GRA] is known as an ‘assessment’ based process, as it currently requires the trans person to bring together evidence and submit it to a panel who will determine whether the evidence meets the criteria for recognition as set out in law.

Other countries adopt a ‘treatment’ model, whereby the trans person can only get legal recognition if they have had some form of medical treatment. This could be surgery, gender-affirming hormone therapy, or a mixture of these. In some countries it can include a demand that the trans person undergoes sterilisation, something that the UK does not approve of, and which has serious and upsetting consequences for trans people.

The final model of legal recognition is a ‘non-assessment based’ model. This essentially allows the trans person to fill out a form themselves that changes their gender identity and be recognised on that basis, though usually with some kind of statutory declaration to show the seriousness of the intent. This is a relatively new approach, and one that many trans people and LGBT groups have welcomed, and are keen to see the UK adopt.<sup>47</sup>

The consultation paper stated that:

- countries that have adopted a non-assessment-based model include: Norway, Denmark, Malta, Colombia, Argentina, and the Republic of Ireland;
- other countries and territories, such as France, Germany and British Columbia have an assessment-based model, but one that does not require a medical diagnosis.<sup>48</sup>

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<sup>46</sup> [Reform of the Gender Recognition Act – Government Consultation](#), July 2018, p11

<sup>47</sup> *Ibid*, p17

<sup>48</sup> *Ibid*, p26

## 5.4 No change intended to Equality Act 2010

The Government has stated that it does not intend to make any amendments to the existing exceptions in the Equality Act 2010 associated with the 'gender reassignment' protected characteristic. Recognising that concerns had been raised about the potential implications of reform of the GRA, the Government has confirmed that, where it is a proportionate means of meeting a legitimate aim, it would still be possible to exclude trans people from single- and separate-sex services:

115. The Government is aware that, following the announcement of this consultation, there has been a lot of comment and discussion about the potential impacts of reforming the GRA on the single-sex service exception in the Equality Act.

116. We want to be absolutely clear – we are not proposing to amend the existing equality exceptions relating to single- and separate- sex services in the Equality Act. It will still be possible to exclude individuals with the protected characteristic of gender reassignment from single or separate sex services where doing so is a proportionate means of meeting a legitimate aim. The fact a trans person has legal gender recognition will form part of a service provider's decision as to whether to provide a different, or even no service to a trans person, but having a GRC is not a complete answer.

117. Trans people with a GRC can still be excluded from single sex services, or provided with a different service if it is proportionate to do so on the facts of the individual case. Although reliance on this exception should be rare, it is most likely to be needed in particularly difficult and understandably sensitive areas, such as the provision of women's domestic violence refuges. Whether it is proportionate to exclude a trans person would have to be judged by the service provider on a case by case basis, considering the trans person's needs and the impact on other service users. Refuges will continue to make sensible risk-assessments of potential service users. Such assessments are required of all users, whether or not they are trans: for example the refuge might want to prevent an abusive lesbian from entering when her abused female partner is inside, or it may exclude a woman with a history of violence and instability.<sup>49</sup>

## 5.5 Government consultation response awaited

The 2018 consultation, which closed on 22 October 2018, received more than 100,000 responses.<sup>50</sup> The Government has not yet published its own response.<sup>51</sup> On 17 October 2019, the Minister for Women and Equalities, gave this update:

The issue of the response to the consultation on the Act is very important. It needs time for consideration, and I will want to study it closely.

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<sup>49</sup> Ibid

<sup>50</sup> [PQ 290436 \[on Gender Recognition Act 2004: Public Consultation\]](#), 1 October 2019

<sup>51</sup> Gov.UK, [Closed consultation Reform of the Gender Recognition Act 2004](#) [accessed 5 December 2019]

(...)

I completely condemn bullying or violence towards trans people, but I do not think that that could be confused with the complex piece of work that is the reform to the Gender Recognition Act. In particular, I will not be rushed into it. I am very keen that we protect single-sex spaces and vulnerable women, and that we do not rush into reform before we have had full, proper discussion.<sup>52</sup>

## 6. The 'self-identification' debate

There are strongly held views for and against self-identification for gender recognition. The debate has centred largely around male to female trans people.

Arguments by those in favour of self-identification include that the current process is intrusive, humiliating and administratively burdensome. Trans people have argued that the requirement for a diagnostic psychiatric report perpetuates "the outdated and false assumption" that being trans is a mental illness. The fee and associated costs are seen as expensive and there is no right of appeal against the decision unless on a point of law.<sup>53</sup>

Trans organisations are among those who argue that transphobia must be opposed.

Those against self-identification are concerned, for example, about creating a system which could be abused and about the potentially negative impact on other women, particularly vulnerable women in single-sex spaces intended to be safe.<sup>54</sup> They do not consider their views amount to transphobia. Some have argued that, as biological sex differences are immutable, a trans woman (whether or not she has had gender reassignment surgery) is not a woman.

Concerns have also been raised that there has been intimidation of those organising and attending meetings to consider the Government's proposals, and that debate has been stifled.<sup>55</sup>

### 6.1 Parliamentary debate

In November 2018, there was a Westminster Hall debate on self-identification of gender, led by David Davies (Conservative).<sup>56</sup>

David Davies expressed concern about the consequences of self-identification:

People who might outwardly appear to be male and possess a male body would, if they legally redefined their gender, suddenly gain access to women's toilets, hospital wards, changing rooms, refuges and prisons. They would have the right to undertake roles that people would normally expect to be done by someone of the same sex as those the service is being offered to, such as nurses or carers conducting intimate procedures, prison or police officers carrying out searches or staff working in refuges for victims of domestic violence.<sup>57</sup>

David Davies also drew attention to the stifling of debate on the issue:

Women's rights activists who have met to discuss the impact of the changes have faced verbal and physical harassment. Those

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<sup>53</sup> See also section 4 of this briefing paper for criticisms of the current process

<sup>54</sup> For example, David Batty, "[Transgender law reform has overlooked women's rights, say MPs](#)", Guardian, 17 October 2018

<sup>55</sup> For example, Jamie Doward, "[Women's groups claim 'silencing' on transgender concerns](#)", Observer, 14 October 2018 [accessed 5 December 2019]

<sup>56</sup> [HC Deb 21 November 2018 cc323-343WH](#)

<sup>57</sup> [HC Deb 21 November 2018 cc324-5WH](#)

who have resisted... have been subject to ludicrous, vexatious legal action and dragged into court to defend themselves for speaking freely about their concerns.

I arranged a meeting in Parliament for a women's group after a venue in London ... had been cancelled. Numerous complaints were made to the House of Commons authorities before the meeting, and I was called into a meeting with the Serjeant at Arms. As the Minister knows, I have been an MP for 13 years and, like most MPs, I have organised numerous meetings for numerous groups. I have never before had to go and spend an hour with the Serjeant at Arms explaining myself. I have no problem with the conversation that we had, but it is very unusual for that to happen.

I tried to organise another meeting afterwards. Again, I was contacted by the Serjeant at Arms' office. After the meeting took place, numerous complaints were made, mostly vexatious, but they resulted in a three-month investigation by the Parliamentary Commissioner for Standards. Again, I have no problem with that and with the conclusion that she reached, but such investigations are very unusual. I was even told by another Member of Parliament that I could face police action because of what had taken place, because of the potential that a public order offence had been committed. This matter is one for debate, such as the one we are having now. We have a right to discuss these issues. If people know that meetings will result in investigations and legal action against them, even if it amounts to nothing, they will obviously be far less inclined to hold them.<sup>58</sup>

David Davies spoke of the women objecting to the law being changed:

Women who want safe same-sex spaces are not transphobic and are not committing hate crimes. They are simply reflecting a concern for their own safety, which, as a man, I have to say is based on a valid fear for far too many.<sup>59</sup>

Layla Moran (Liberal Democrat) set out why some trans people choose not to have medical treatment:

It is probably worth mentioning the sorts of interventions and operations that some trans people choose not to have. First, that is their medical choice to make. Secondly, think for a moment of the extensive operations that would need to happen. Many trans people are put off simply because it is painful, and in some cases expensive. Sometimes they feel unable to have operations because only a certain number of licensed practitioners in the country are allowed to perform them. Some trans people prefer to go abroad to have them, but that is not recognised in this country. ...The proposed reforms would go some way to removing some of those barriers.<sup>60</sup>

Layla Moran supported reform of the GRA and maintained support for women-only services. She did not consider there to be any conflict between being a feminist and being a supporter of trans. Layla Moran

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<sup>58</sup> [HC Deb 21 November 2018 cc326-7WH](#)

<sup>59</sup> [HC Deb 21 November 2018 cc327-8WH](#)

<sup>60</sup> [HC Deb 21 November 2018 c329WH](#)

added: “trans women are women. Moreover, trans rights are human rights”.<sup>61</sup>

Hannah Bardell (SNP) considered that changing gender is not something that anybody would do lightly and said, “Should it be done for nefarious reasons, it would be very rare and should be dealt with appropriately”.<sup>62</sup> Hannah Bardell supported reform:

We must recognise that there are concerns and we must address them, but we absolutely must hold a mirror up to those who are marginalising and attacking trans people and their rights. There is a groundswell of support for equality and for a change in the law to ensure that gender identification and the processes that trans people have to go through are not discriminatory at their core. We absolutely must change the law to ensure that they are properly supported, that the law reflects that and that our society reflects that.<sup>63</sup>

Dawn Butler, Shadow Secretary of State for Women and Equalities, confirmed that Opposition Members would support the Government in amending the GRA.<sup>64</sup> She said that reform of the GRA would not affect access to single-sex services and facilities, and recognised the right to debate the issue:

Labour recognises the rights of all group to debate the implications of reforming the Gender Recognition Act 2004. All views should be listened to and supported, and we have listened to various groups that have vastly different opinions. That does not mean that we will be bullied into taking one side or the other. Decisions and law should be made on the basis of facts and take into consideration the majority, not just people who are sensationalising certain aspects of a particular case.<sup>65</sup>

Victoria Atkins, Minister for Women, regretted that debate on this issue “sometimes gets taken over by loud and sometimes aggressive campaigning by activists”:

I am sure they hold their beliefs very strongly, but they perhaps lose sight of the fact that we have to be able to talk about this issue in a reasoned, respectful and caring fashion. The vast majority of the public—and, I am sure, parliamentarians—are in the middle. We want to talk about this issue in a caring and careful way so society gets to a position in which we are all comfortable with the consequences of the changes to legislation and so on.

(...)

We do not want to close down the debate. We absolutely do not agree with those who seek to vilify the views of people who do not agree with them. I, for one, have been on the record for some time as having grave concerns about the development of things such as no-platforming in our universities. It seems to me that we should have the confidence to talk about this issue, to express our

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<sup>61</sup> [HC Deb 21 November 2018 c332WH](#)

<sup>62</sup> [HC Deb 21 November 2018 c335WH](#)

<sup>63</sup> [HC Deb 21 November 2018 c335WH](#)

<sup>64</sup> [HC Deb 21 November 2018 c337WH](#)

<sup>65</sup> [HC Deb 21 November 2018 c337WH](#)



concerns, to ask questions and to do so in a way that is met with respect so our questions are answered.<sup>66</sup>

The Minister specifically refuted that women's refuges would no longer be able to provide safe spaces for women:

Domestic abuse services, including refuges, have robust risk assessment procedures and may exclude anyone who might threaten a safe environment for victims and their children, as well as signposting sources of support for those people whose needs they might not be able to meet. I am very conscious from my conversations with refuge organisations that they take different approaches, which I welcome. We have to be in a situation in which we can offer support and refuge services to people regardless of their lifestyle, background and so on. I absolutely understand people's concerns and I hope I have been able to offer reassurance to them.<sup>67</sup>

Victoria Atkins confirmed that the Government would maintain protections for single-sex services and would consider, as part of their response to the consultation, whether any further action was needed to reaffirm that approach:

To be clear, the single-sex exceptions under the Equality Act 2010 allow a service provider to provide a service for women or men if an organisation needs to define it in a way that does not allow a trans person to access their services, or to provide a service to them in a different way. They are able to do that as long as they can show that it is a proportionate means of meeting a legitimate aim.<sup>68</sup>

At the end of the debate David Davies reiterated concerns about single-sex spaces:

Many people do not accept the proposition that a trans woman is a woman. A trans woman is a trans woman, worthy of respect, absolutely deserving of protection under the law against discrimination, or physical or verbal assault, but not necessarily eligible to access single-sex areas.<sup>69</sup>

## 6.2 Views expressed outside of Parliament

A selection of articles on the issue is provided below. This is not intended to be exhaustive.

- ["Gender identity: what do legal changes have to do with women's rights?"](#), BBC News, 31 July 2017;
- Sally Campbell, ["Gender Recognition Act: Trans rights versus feminism?"](#), Socialist Review, September 2017, (427);
- Debbie Hayton, ["Open Future, Gender identity needs to be based on objective evidence rather than feelings"](#), The Economist, 3 July 2018;

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<sup>66</sup> [HC Deb 21 November 2018 cc339-40WH](#)

<sup>67</sup> [HC Deb 21 November 2018 c342WH](#)

<sup>68</sup> [HC Deb 21 November 2018 c342WH](#)

<sup>69</sup> [HC Deb 21 November 2018 c343WH](#)

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- Rachel Bowyer, "[Gender Recognition Reform – The Current Debate is Misconceived](#)", Oxford Human Rights Hub, 4 October 2018;
- Southall Black Sisters, [Pragna Patel signs letter supporting need for free and open debate on gender politics](#), 14 October 2018;
- "'Shifting sands': six legal views on the transgender debate", Guardian, 19 October 2018;
- Ellie Mae O'Hagan, "[Back the Gender Recognition Act reform. It's the feminist thing to do](#)", Guardian, 19 October 2018;
- Nicola Slawson, "[How Possible Changes To The Gender Recognition Act Prompted A Toxic Debate](#)", Huffpost, 20 October 2018;
- Julian Norman, "[Gender recognition, self-ID and next steps](#)", Counsel, December 2018;
- Prof Joanne Conaghan (University of Bristol Law School), "[Sex, Gender and the Trans Debate](#)", University of Bristol Law School Blog. posted 18 December 2018;
- Lucy Cotter and Amy Hitchcock, "[Line 18: Gender debate sparks bitter divide among trans and feminist groups](#)", Sky News, 10 April 2019.<sup>70</sup>

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<sup>70</sup> All links accessed 5 December 2019

## 7. Gender recognition and minors

### 7.1 Legal recognition

Under the GRA, the minimum age limit for GRC applications is 18. In November 2018, the Government stated that it has no intention of changing this position:

The issue of children is of concern outside the walls of this Chamber. We have no intention of lowering the age at which people may legally change their gender, namely the age of 18. We recognise the increase in referrals of children and adolescents to gender-identity services for people aged under 18, so we have committed to improve our understanding of the impacts on children and adolescents of changing their gender, and to gather evidence on the issues faced by people who were born female and who transition in adolescence. We are not the only country to witness and experience the increase, and we need to understand why it is happening.<sup>71</sup>

### 7.2 Other recognition

In June 2019, David Davies asked the Minister for Women and Equalities whether people under the age of 18 can transition gender through routes other than under the GRA. Victoria Atkins gave this written reply on 23 July 2019:

The only method of legally changing gender is through the process set out in the Gender Recognition Act 2004. This involves applying for a Gender Recognition Certificate, which can then be used to obtain a new birth certificate. This process is only open to those aged 18 and over.

Medical transition is governed by the NHS, and surgery is not available to those under the age of 18. Cross-sex hormones can only be prescribed under strict clinical supervision from the age of 16.

Social transition, such as changing the name you are known by, and the pronouns you use, can be done by anyone at any age, and is often subject to a discussion between a child and their parents if it happens before age 18.<sup>72</sup>

The Department for Education has committed to updating guidance for schools:

The Department publishes guidance to help schools understand how the Equality Act affects them and how to fulfil their duties under the Act. This includes a duty on schools not to discriminate unlawfully due to the protected characteristics of sex and gender reassignment. As part of the government's LGBT Action Plan, the Department has committed to updating this guidance and this will be published in due course. The LGBT Action Plan also contains a commitment that Government Equalities Office will work with the Equality and Human Rights Commission to publish comprehensive guidance for schools on how to support transgender pupils. The Equality Act guidance is available here:

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<sup>71</sup> [HC Deb 21 November 2018 c342WH](#)

<sup>72</sup> [PQ 260601 \[on Gender Recognition: Children\], 23 July 2019](#)

<https://www.gov.uk/government/publications/equality-act-2010-advice-for-schools>.<sup>73</sup>

## 8. General Election manifestos 2019

- The [Labour Party manifesto](#) stated:

Labour is committed to reforming the Gender Recognition Act 2004 to introduce self-declaration for transgender people, but we are not complacent about the culture shift required to make LGBT+ inclusivity a reality.<sup>74</sup>
- The [Liberal Democrats' manifesto](#) committed to “removing the spousal veto”,<sup>75</sup> and “complete reform of the Gender Recognition Act to remove the requirement for medical reports, scrap the fee and recognise non-binary gender identities”.<sup>76</sup>
- The [Green Party manifesto](#) stated that the party would:

Remove the spousal veto so that married trans people can acquire their gender recognition certificate without having to obtain permission from their spouse. We will also change the law so an X gender marker can be added to passports for non-binary and intersex people who wish to use it, and update the Gender Recognition Act to allow trans youth and non-binary people to get legal recognition through self-declaration.<sup>77</sup>

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<sup>74</sup> Pp68-9

<sup>75</sup> P74

<sup>76</sup> P75

<sup>77</sup> P63

## 9. The position in Scotland

The GRA extends across the United Kingdom. However, gender recognition is a devolved matter meaning that legislation in this area is within the competence of the Scottish Parliament.

In the [Fairer Scotland Action Plan](#) (2016), the Scottish Government committed to “review and reform gender recognition law so it is in line with international best practice for people who are transgender or intersex”.

### 9.1 Scottish Government consultation

The Scottish Government’s separate consultation, [Review of the Gender Recognition Act 2004](#), ran from 9 November 2017 to 1 March 2018. This sought views on whether and how the GRA should be amended in relation to the law in Scotland. It covered establishing new arrangements for dealing with applications for legal gender recognition, the minimum age at which applications for gender recognition could be made, and related matters.

[Part 3](#) of the consultation paper covered reforming the legal gender recognition system in Scotland, and set out the Scottish Government’s initial view that, subject to views expressed during the consultation, Scotland should adopt a self-declaration system for legal gender recognition:

3.26 ...This would mean that applicants under a Scottish system would not have to demonstrate a diagnosis of gender dysphoria or that they had lived for a period in their acquired gender. This would align Scotland with the best international practice demonstrated in countries who have already successfully adopted self-declaration systems. We would be ensuring our compliance with Resolution 2048.<sup>[78]</sup> And the arrangements would be less intrusive and onerous from the perspective of applicants.

3.27. In one aspect, we think that Scotland could build on the existing arrangements in the 2004 Act. All applications made under the 2004 Act must be accompanied by a statutory declaration, [21] witnessed by a person authorised to administer oaths and which includes a statement that the applicant intends to live in their acquired gender until death. In Scotland, oaths may be administered by a notary public or a justice of the peace. Paragraphs 3.30 to 3.34 discuss retaining the requirement for a statutory declaration under the proposed self-declaration system.

3.28. Streamlining the existing processes would also allow for applications to be considered by an administrative body, rather than by a tribunal such as the Gender Recognition Panel. The proposed self-declaration system could be administered by officials based in the Scottish Government or by officials at National Records of Scotland. The Registrar General for Scotland (the Registrar General) who heads National Records of Scotland is responsible for the Register of Births and the Gender Recognition Register under the 2004 Act...

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<sup>78</sup> Resolution 2048 of the Parliamentary Assembly of the Council of Europe – information about this is provided in Part 3 of the Scottish Government consultation

The Scottish Government has since published the [responses](#) from organisations which gave permission to publish.

## 9.2 Draft Bill expected

In June 2019, Cabinet Secretary for Equalities, Shirley-Anne Somerville, announced that a draft Gender Recognition (Scotland) Bill, to reform the current process for obtaining a Gender Recognition Certificate, would be published by the end of the year.<sup>79</sup> She said that a Bill would be formally introduced to Parliament only when there had been a full consultation on the precise details contained in the draft Bill.

An associated [Scottish Government fact sheet](#) summarises what is proposed:

The Bill will propose that applicants for a gender recognition certificate:

- Will no longer need to provide medical evidence to the Panel.
- Will continue to have to provide a statutory declaration that they intend to live permanently as a man or a woman. It is, and will remain, a criminal offence to make a false statutory declaration.
- Will need to state in the statutory declaration that they have already been living as a man or woman for at least 3 months.
- Will be given a mandatory 3 month reflection period after an application has been made and checked to ensure the necessary information and statutory declaration has been provided. The gender recognition certificate will only be granted once the 3 months have passed and the applicant has confirmed that they still wish to proceed.

This means that applicants will need to live in their acquired gender for at least 6 months – 3 months before applying for a gender recognition certificate and 3 months after applying – before a gender recognition certificate can be granted.

The consultation will seek views on the proposals in the draft Bill.

The Scottish Government does not intend to make gender recognition available to those aged under 16 but the consultation will seek views on what further support is needed generally for children and young people uncertain of their gender identity.

The consultation will also seek views on whether the minimum age of applicants for legal gender recognition should be reduced from 18 to 16.

The Scottish Government does not intend to make gender recognition available to non-binary people (who do not identify as either male or female) but does intend to set up a working group on non-binary people. This will consider possible changes to procedures and practice and what we can learn from best practice internationally, as well as from within Scotland and the rest of the UK...<sup>80</sup>

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<sup>79</sup> Scottish Government, [Statement on gender recognition](#), 20 June 2019

<sup>80</sup> Scottish Government factsheet, [Gender Recognition Act 2004 review](#), 20 June 2019 [accessed 5 December 2019]

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