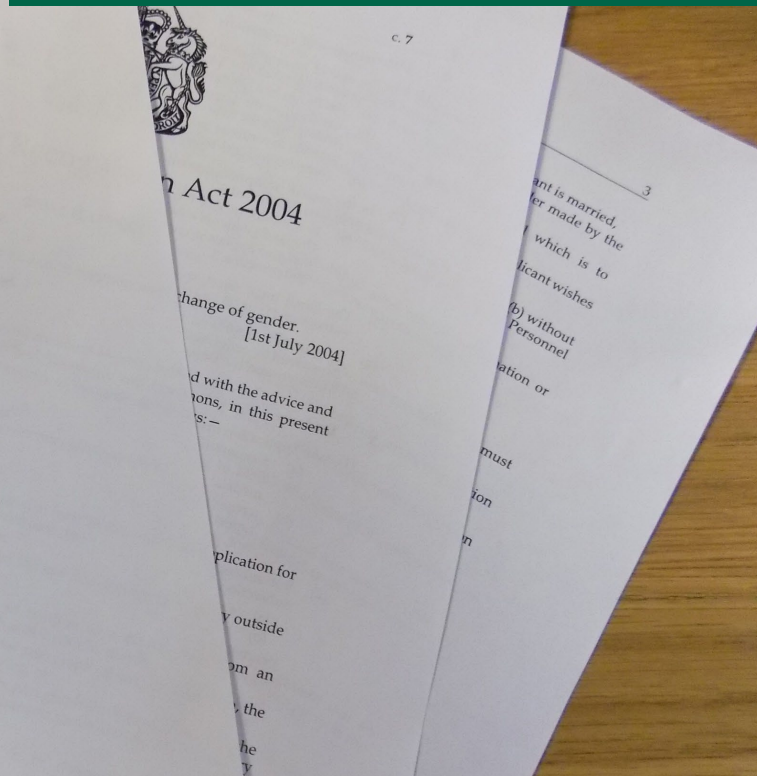
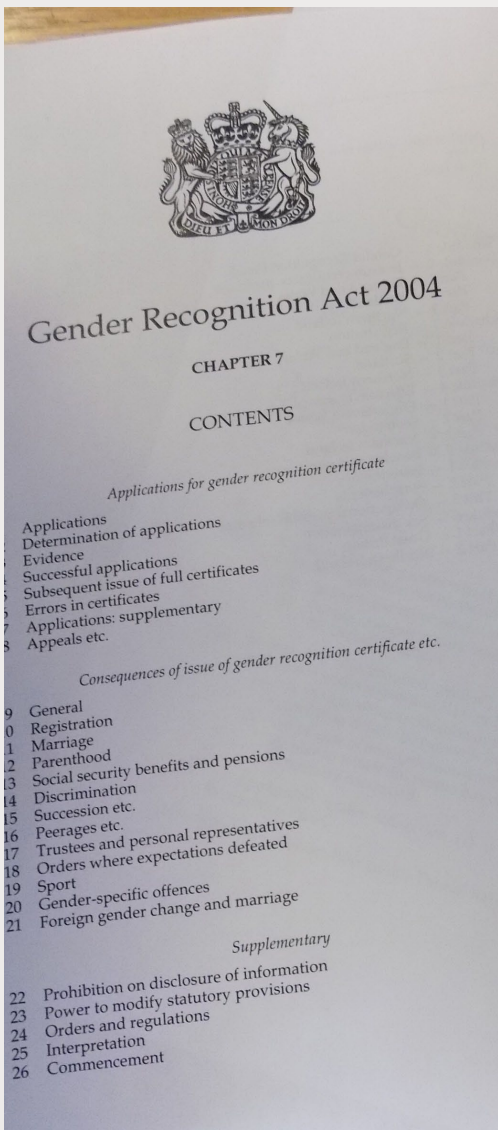


## Research Briefing

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# Gender Recognition Act reform: Consultation and outcome



## Summary

- 1 Background
- 2 UK Government consultation: Reform of the Gender Recognition Act
- 3 Response to the consultation
- 4 Independent review of gender identity services: The Cass Review
- 5 Reaction in Parliament
- 6 Scottish Government consultation on reform of the GRA

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# Contents

<b>Summary</b>	<b>4</b>
<b>1 Background</b>	<b>9</b>
1.1 Gender recognition	9
1.2 Equality Act 2010	13
1.3 Access to medical treatment for gender dysphoria	16
1.4 Referral waiting times	18
<b>2 UK Government consultation: Reform of the Gender Recognition Act</b>	<b>21</b>
2.1 Background	21
2.2 The consultation	21
2.3 The debate on potential reform	28
<b>3 Response to the consultation</b>	<b>30</b>
3.1 Written ministerial statement	31
3.2 Analysis of the consultation responses	32
<b>4 Independent review of gender identity services: The Cass Review</b>	<b>36</b>
<b>5 Reaction in Parliament</b>	<b>38</b>
5.1 Parliamentary debate	38
5.2 Women and Equalities Committee inquiry	43
5.3 Westminster Hall petition debate	45
<b>6 Scottish Government consultation on reform of the GRA</b>	<b>46</b>
6.1 Scottish Government consultation	46
6.2 Scottish Government response	47
6.3 Draft Bill and consultation	49
6.4 Scottish Government Programme for Government	51

## Summary

This briefing paper deals with the UK Government's consultation on reforming the Gender Recognition Act 2004 (GRA) and, more briefly, with consultations conducted by the Scottish Government. These consultations asked whether the process for transgender people to gain legal recognition in their acquired gender should be reformed.

The paper also includes some information about medical treatment for gender dysphoria. Although this area did not form part of the UK Government's consultation, the Government said in its consultation response that research had shown [improving healthcare support was a priority for transgender people](#).

## Overview

The GRA describes “acquired gender” as the gender in which an applicant is living and seeking legal recognition. The [Government has explained](#) (PDF) that it is different from the sex (male or female) recorded at birth and is instead, the gender the individual identifies with. The GRA enables transgender people to achieve legal recognition in their acquired gender and change their recorded sex on their birth certificate from male to female or vice versa.

At present, there is no process in any part of the UK by which transgender people may achieve legal recognition of their acquired gender based on self-declaration only.

Following consultation, the UK Government has decided not to introduce a non-assessment/self-identification process for legal gender recognition in England and Wales.

After consulting separately, the Scottish Government intends to bring forward legislation in 2021-22 to change the process for achieving legal gender recognition in Scotland. Under the process proposed in the [draft Gender Recognition Reform \(Scotland\) Bill](#), applicants would no longer be required to provide medical evidence of their diagnosis of gender dysphoria but would still have to make a statutory declaration.

## Gender recognition

The GRA allows transgender adults to apply to the Gender Recognition Panel for a Gender Recognition Certificate (GRC). In most cases, applicants must provide medical evidence of a diagnosis of gender dysphoria and details of any treatment received; evidence of living in their acquired gender for at least two years; and a statutory declaration that they will continue to do so permanently. There is no requirement for applicants to have undergone gender reassignment surgery or hormone treatment.

The Government has explained (PDF) that applicants who are granted a full GRC are, from the date of issue, considered in law [“to have the gender they identify with \(man or woman only\) rather than the gender that accords with the sex that was recorded at birth.”](#)

## UK Government 2018 consultation on reform of the GRA

In July 2018, the UK Government published a consultation on reform of the GRA in England and Wales. The consultation closed on 22 October 2018. It focused on the process for achieving legal recognition of someone’s gender. One option on which views were sought was the removal of the requirement for a medical diagnosis.

In the consultation paper, the Government said it [wanted to make it easier for transgender people to achieve legal recognition](#). It said many transgender people feel the current process is: “overly intrusive, humiliating and administratively burdensome,” and they argue “by requiring a diagnostic psychiatric report, the process perpetuates the outdated and false assumption that being trans is a mental illness.”

The Government also said concerns had been raised about the potential implications of reform on the exceptions in the Equality Act 2010 associated with gender reassignment discrimination. The Government confirmed, where it is a proportionate means of meeting a legitimate aim, it would still be possible to exclude transgender people from single-sex services.

There were over 100,000 responses to the consultation.

## Government response to the consultation 2020

On 22 September 2020, Elizabeth Truss, Minister for Women and Equalities, made a written ministerial statement and the Government Equalities Office

published an Analysis Report of Consultation Responses by researchers at Nottingham Trent University.

The Government does not intend to change the criteria in the GRA for legal gender recognition, meaning [a system based on self-declaration is not being introduced](#). Elizabeth Truss said: “it is the Government’s view that the balance struck in [the GRA] is correct, in that there are proper checks and balances in the system and also support for people who want to change their legal sex.”

The Minister acknowledged the need to improve the process and experience transgender people have when applying for a GRC, to make it: “kinder and more straightforward.” She said the Government’s proposed changes would address the main concerns transgender people had expressed. The GRC application process is to be moved online and the fee has been reduced from £140 to £5.

Elizabeth Truss said the Government would improve access to healthcare for transgender people, who had reported that waiting lists at NHS gender clinics are too long.

## Parliamentary debate on response

On 24 September 2020, the Government’s response was [debated in the House of Commons](#).

Crispin Blunt (Conservative) spoke of the “crushing disappointment of trans people,” and Marsha De Cordova, then-Shadow Secretary of State for Women and Equalities, expressed disappointment that the Government had “let trans people down.”

Elizabeth Truss reiterated the Government’s view that “the settlement we have reached balances and upholds the rights of transgender people and of women” and “protects access to single-sex spaces”.

## Women and Equalities Committee inquiry

On 28 October 2020, the House of Commons Women and Equalities Committee launched an inquiry, Reform of the Gender Recognition Act. The [Committee published its report on 21 December 2021](#).

Among other things, the Committee recommended a diagnosis of gender dysphoria should no longer be a requirement for obtaining a GRC, moving the process closer to a system of self-declaration. The Committee further recommended “robust guidance” should be developed on how a system of self-declaration would work in practice. The Committee considered appropriate safeguards were essential [“to ensuring that the rights of natal](#)

[women and the use of the single-sex and separate-sex exceptions in the Equality Act 2010 are protected”](#).

The Committee urged the Government Equalities Office and the Equality and Human Rights Commission to publish better guidance on the single-sex and separate-sex exceptions.

## Westminster Hall petition debate

An online petition, which closed in January 2021, called for the GRA to be reformed to allow transgender people to self-identify their gender without a medical diagnosis, to streamline the administrative process, and to allow non-binary identities to be legally recognised. The petition attracted over 100,000 signatures.

The House of Commons will debate this petition on **21 February 2022**.

## The position in Scotland

The GRA extends across the UK. However, gender recognition is a devolved matter, meaning legislation in this area may be made by the Scottish Parliament.

The Scottish Government’s consultation, [Review of the Gender Recognition Act 2004](#), ran from 9 November 2017 to 1 March 2018. It sought views on whether and how the GRA should be amended in relation to the law in Scotland. It 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.

The Scottish Government subsequently consulted on a draft Gender Recognition Reform (Scotland) Bill. This ran from 17 December 2019 to 17 March 2020. It proposed:

- removing the current requirement for people to apply to the UK Gender Recognition Panel. Instead, people seeking legal gender recognition would apply to the Registrar General for Scotland;
- removing the current requirement for applicants to provide medical evidence of their diagnosis of gender dysphoria;
- retaining the requirement that applicants must make a solemn statutory declaration they have been living in their acquired gender – but for a minimum of three months rather than the current two years – and intend to do so permanently;
- introducing a minimum three-month period of reflection between applying for a Gender Recognition Certificate and confirming the

- application. This means the applicant must have lived in their acquired gender for a minimum of six months before a certificate is granted;
- retaining the position that a false statutory declaration is a criminal offence and introducing a new offence of false application – each with a potential punishment of up to two years’ imprisonment;
  - reducing the minimum age of application from 18 to 16.

The Scottish Government paused its work on reform of the GRA during the pandemic. However, its Programme for Government 2021-22 (published September 2021) says legislation to reform the gender recognition process in Scotland will be brought forward “[within the next year.](#)”

The Bill has not been introduced at the time of this publication.



# 1 Background

## 1.1 Gender recognition

### The current position

The GRA describes “acquired gender” as the gender in which an applicant is living and seeking legal recognition.<sup>1</sup> The [Government has explained](#) (PDF) that it is different from the sex (male or female) recorded at birth and is instead, the gender the individual identifies with.<sup>2</sup>

The [Gender Recognition Act 2004](#) (GRA) enables transgender people to achieve legal recognition in their acquired gender and change their recorded sex on their birth certificate from male to female or vice versa. Legal recognition has no bearing on access to medical treatment.<sup>3</sup> The GRA makes no provision for the recognition of any other gender.<sup>4</sup>

The GRA process involves applying to the Gender Recognition Panel (GRP) for a Gender Recognition Certificate (GRC). In almost all circumstances, the applicant will not appear in person before the GRP.<sup>5</sup>

In most cases, applicants must provide:

- two medical certificates, including a medical diagnosis of gender dysphoria and details of any treatment received;<sup>6</sup>
- evidence of living in their acquired gender for at least two years; and
- a statutory declaration that they will continue to do so permanently.<sup>7</sup>

There is no requirement for applicants to have undergone gender reassignment surgery or hormone treatment.

<sup>1</sup> The Government’s consultation paper, [Reform of the Gender Recognition Act – Government Consultation](#) (PDF), July 2018, says (p7): “While some people prefer to use ‘experienced’ or ‘confirmed’ gender rather than acquired gender, ‘acquired’ is used in this document due to its specific use in the Gender Recognition Act.”

<sup>2</sup> Ibid, p7

<sup>3</sup> [Reform of the Gender Recognition Act – Government Consultation](#) (PDF), July 2018, p16

<sup>4</sup> [Reform of the Gender Recognition Act – Government Consultation](#) (PDF), July 2018, paragraph 131, p51

<sup>5</sup> [Gender Recognition Act 2004 Schedule 1](#) paragraph 6(4) (introduced by section 1) specifies: “A Panel must determine an application without a hearing unless the Panel considers that a hearing is necessary”

<sup>6</sup> See section 1.3 of this briefing paper for information about gender dysphoria and medical treatment

<sup>7</sup> The different evidence criteria for each of the three application routes are set out in the next section of this briefing paper (pp10-12)

Successful applicants who are granted a full GRC are, from the date of issue, considered in law "to have the gender they identify with (man or woman only) rather than the gender that accords with the sex that was recorded at birth".<sup>8</sup>

GOV.UK provides information about [applying for a Gender Recognition Certificate](#).<sup>9</sup> More detailed information is provided in a [general guide to the GRA](#) (PDF)<sup>10</sup> published by HM Courts and Tribunals Service and in the [Government's 2018 consultation paper on reform of the GRA](#) (PDF).<sup>11</sup>

A transgender person can make some changes in their life without obtaining full legal recognition, including:

- their name
- the gender in their passport<sup>12</sup>
- their driver's licence
- their gender details with their bank and other service providers.

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

## Application routes for legal gender recognition

There are three application routes (tracks) for legal gender recognition. The circumstances of each case determine which route is appropriate.

Each route has different evidence criteria but all applicants for a GRC must be aged 18 or over and pay a fee of £5 – this was reduced from £140 in May 2021.<sup>13</sup> It is sometimes possible to get help to pay the fee.<sup>14</sup>

### The standard route

The standard route is used by about 95% of applicants<sup>15</sup> and is for people who:

- have been diagnosed with gender dysphoria and are able to provide two medical reports:

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<sup>8</sup> [Reform of the Gender Recognition Act – Government Consultation](#) (PDF), July 2018, para 3, p10

<sup>9</sup> Accessed 16 February 2022

<sup>10</sup> HM Courts and Tribunals Service, [T455 The General Guide for all Users Gender Recognition Act 2004](#) (PDF), May 2021

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

<sup>12</sup> HM Passport Office, [Applying for a passport - information for transgender and transsexual customers](#), GOV.UK, 15 August 2013 [accessed 16 February 2022]

<sup>13</sup> Government Equalities Office Press release, [Gender Recognition Certificate fee reduced](#), GOV.UK, 4 May 2021 [accessed 16 February 2022]

<sup>14</sup> GOV.UK, [Apply for a Gender Recognition Certificate. How to apply](#) [accessed 16 February 2022]

<sup>15</sup> Percentages set out in [Reform of the Gender Recognition Act – Government Consultation](#) (PDF), July 2018, pp18-19

- **Report A** - Must be made by a registered medical practitioner or registered psychologist practising in the field of gender dysphoria and must include the details of their diagnosis of gender dysphoria.
- **Report B** – Must be made by a registered medical practitioner who may, but need not, practise in the field of gender dysphoria (so could be provided by, for example, the applicant’s GP or surgeon) and must include specific details of any treatment that the applicant has received. For example, this could cover what treatments (e.g. hormones) they are receiving and whether they have undergone, are undergoing or are planning to undergo surgery. If the applicant has not undergone surgery the report may explain why.<sup>16</sup>
- can prove they have lived in their acquired gender for at least two years;<sup>17</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 transitioned some time ago) is used by around 1% of applicants. It is for people who:

- have been diagnosed with gender dysphoria or had surgery to change their sexual characteristics;<sup>18</sup>
- live in England, Wales, Northern Ireland or Scotland most of the time;
- intend to live in their acquired gender for the rest of their life;
- are in (or have been in) a “protected marriage” or “protected civil partnership” before 10 December 2014 (16 December 2014 for Scottish marriages and civil partnerships);
- have lived in their acquired gender for at least six years before 10 December 2014 (16 December 2014 for Scottish marriages and civil partnerships).<sup>19</sup>

A marriage or civil partnership is protected if it is one of the following:

- registered under the law of England, Wales or Northern Ireland
- 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

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<sup>16</sup> [Reform of the Gender Recognition Act – Government Consultation](#) (PDF), July 2018, para 22, p79

<sup>17</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 (on p79) that, typically, five or six different documents need to be included with an application

<sup>18</sup> “Sexual characteristics” is not defined in the GRA

<sup>19</sup> GOV.UK, [Apply for a Gender Recognition Certificate Overview](#) [accessed 16 February 2022]

- a marriage on UK consular premises or in an armed forces base, if you elected England, Wales, Northern Ireland or Scotland as the relevant part of the UK.<sup>20</sup>

Applicants using the alternative route must provide one medical report (rather than the two needed for the standard route) – either confirming the applicant has, or has had, gender dysphoria or that they had surgery for the purposes of modifying their sexual characteristics.<sup>21</sup>

The [Marriage \(Same Sex Couples\) Act 2013](#) (the 2013 Act) legalised the marriage of same sex couples and introduced the terms ‘protected marriage’, ‘protected civil partnership’ and the spouse’s ‘statutory declaration of consent’.<sup>22</sup>

A consequence of one person in a marriage gaining legal gender recognition may be to change a marriage from being that of an opposite sex couple to that of a same sex couple. Before the 2013 Act was in force, it was not possible for same sex couples to be married, so married transgender people who wanted legal recognition had to end their marriage.

Baroness Stowell of Beeston, who led the Bill which resulted in the 2013 Act through the House of Lords, explained how the new provisions would assist transgender people who had transitioned to their acquired gender 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 trans people 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>23</sup>

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<sup>20</sup> Ibid

<sup>21</sup> [Reform of the Gender Recognition Act – Government Consultation](#) (PDF), July 2018, p18

<sup>22</sup> See section 2.2 (p24) below of this briefing paper for information about “spousal consent”. The Marriage (Same Sex Couples) Act 2013 extends to England and Wales

<sup>23</sup> [HL Deb 10 July 2013 cc296-7](#)

## Overseas route

In the overseas route, used by about 4% of applicants, the applicant must provide evidence they have been legally recognised in their acquired gender by a country or territory listed in legislation.<sup>24</sup>

## 1.2 Equality Act 2010

The [Equality Act 2010](#) (the 2010 Act) prohibits discrimination on the basis of gender reassignment, which it defines in [section 7](#):

(1) 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.

People who hold a GRC will have the protected characteristic of gender reassignment, but the protections go much wider than this.

The point at which a person is deemed to be “proposing to undergo” was explained by the Solicitor General in 2009 during the Equality Bill’s consideration by Parliament:

“proposing” suggests a more definite decision point, at which the person’s protected characteristic would immediately come into being. There are a lot of ways in which that can be manifested—for instance, by making their intention known. Even if they do not take a single further step, they will be protected straight away.

Alternatively, a person might start to dress, or behave, like someone who is changing their gender or is living in an identity of the opposite sex. That, too, would mean that they were protected.

...

If what is going on is an internal cogitation, with no external manifestation, it is difficult to see how this can work practically. We want to ensure that people start their personal journey.<sup>25</sup>

The 2010 Act prohibits gender reassignment discrimination in various areas of life, including:

- the provision of services and public functions
- the disposal and management of premises
- employment
- education

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<sup>24</sup> [Reform of the Gender Recognition Act – Government Consultation](#) (PDF) July 2018, p19. The latest list is in the [Gender Recognition \(Approved Countries and Territories\) Order 2011](#)

<sup>25</sup> [Equality Bill Deb 16 June 2009 c204](#)

- membership of clubs and associations.

Within these areas, it is generally unlawful to treat a person less favourably because they have the protected characteristic of gender reassignment, or to apply policies or practices that would put them at a particular disadvantage, compared to people without that characteristic.

## Limits on the 2010 Act's protections

The 2010 Act contains several **exceptions** to the prohibition of gender reassignment discrimination. These are set out in [Annex C](#) (PDF) of the Government's 2018 consultation paper on reform of the GRA and are summarised below.<sup>26</sup>

### Sport

[Section 195](#) allows sports competition organisers to exclude transgender people from participating in “gender-affected activity” where this is necessary to ensure fairness or the safety of other competitors.

Gender-affected activity is defined as:

a sport, game or other activity of a competitive nature in circumstances in which the physical strength, stamina or physique of average persons of one sex would put them at a disadvantage compared to average persons of the other sex as competitors in events involving the activity.<sup>27</sup>

### Services

[Schedule 3](#), Part 7 provides exceptions relating to **separate and single-sex services**. It states service providers can provide separate services for men and women where a joint service would be less effective, and the limited provision is a “proportionate means of achieving a legitimate aim”.<sup>28</sup>

Single-sex services are lawful in several circumstances, including where only people of one sex require it; where there is joint provision for both sexes but that is not enough on its own; or the services may be used by more than one person and a woman might reasonably object to the presence of a man (or vice versa).<sup>29</sup> In order to rely on any of the exceptions, the service provider must be able to show the single-sex service provision is a proportionate means of achieving a legitimate aim.

There is also an exception to the general prohibition of **gender reassignment discrimination** in relation to the provision of single and separate sex services.<sup>30</sup> Not allowing a transgender person to access such services must,

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<sup>26</sup> [Reform of the Gender Recognition Act – Government Consultation](#) (PDF), July 2018, p72

<sup>27</sup> Equality Act 2010, section 195(3)

<sup>28</sup> Equality Act 2010, [Schedule 3](#), Part 7, para 26

<sup>29</sup> Equality Act 2010, [Schedule 3](#), Part 7, para 27. Also see discussion in [Reform of the Gender Recognition Act – Government Consultation](#) (PDF), July 2018, p72

<sup>30</sup> Equality Act 2010, [Schedule 3](#), Part 7, para 28

however, be justified.<sup>31</sup> The [Explanatory Notes on the Equality Act](#) give the following example:

A group counselling session is provided for female victims of sexual assault. The organisers do not allow transsexual people to attend as they judge that the clients who attend the group session are unlikely to do so if a male-to-female transsexual person was also there. This would be lawful.<sup>32</sup>

### Occupational requirements

The 2010 Act allows for the possibility that having a protected characteristic might be deemed essential for employment in a post.<sup>33</sup> This means what would otherwise be unlawful discrimination is deemed lawful if a “genuine occupational requirement” has been identified, and applying the requirement is a proportionate means of achieving a legitimate aim.

Under the occupational requirement provisions, an employer<sup>34</sup> may impose a “requirement not to be a transsexual person”. The Explanatory Notes [provide the following example](#):

A counsellor working with victims of rape might have to be a woman and not a transsexual person, even if she has a Gender Recognition Certificate, in order to avoid causing them further distress.<sup>35</sup>

An organised religion is permitted to require an employee “not to be a transsexual person” if this is to comply with the doctrines of the religion (known as ‘the compliance principle’).<sup>36</sup>

Similarly, an organised religion may impose this requirement if this seeks to avoid conflicting with strongly held religious convictions of a significant number of the religion's followers (the ‘non-conflict principle’).<sup>37</sup>

### Communal accommodation

[Schedule 23](#) allows someone to exclude transgender people from communal accommodation where this is a proportionate means of achieving a legitimate aim. For these purposes “communal accommodation” is defined as:

residential accommodation which includes dormitories or other shared sleeping accommodation which for reasons of privacy should be used only by persons of the same sex.<sup>38</sup>

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<sup>31</sup> Equality Act 2010, [Schedule 3](#), Part 7, para 28(1)

<sup>32</sup> [Explanatory Notes to the Equality Act 2010](#), para 740. That Act uses the term ‘transsexual’ to denote a person who has the protected characteristic of gender reassignment: see [section 7\(2\)](#)

<sup>33</sup> Equality Act 2010, [Schedule 9](#), Part 1

<sup>34</sup> Alongside an employer, this includes principals, in relation to contract workers; members of limited liability partnerships; and other similar positions.

<sup>35</sup> [Explanatory Notes to the Equality Act 2010](#), para 789

<sup>36</sup> Equality Act 2010, [Schedule 9](#), para 2(5)

<sup>37</sup> Equality Act 2010, [Schedule 9](#), para 2(6)

<sup>38</sup> Equality Act 2010, [Schedule 9](#), para 3(5)

When applying the exception, account must be taken of whether and how far it is reasonable to expect the accommodation to be altered or extended, or that further accommodation should be provided, and the frequency of use of the accommodation by persons of one sex compared with those of another.

### Armed forces

[Schedule 9](#) paragraph 4 allows the armed forces to exclude transgender people from service if this is deemed to be proportionate, to ensure combat effectiveness. It says:

(1) A person does not contravene section 39(1)(a) or (c) or (2)(b) by applying in relation to service in the armed forces a relevant requirement if the person shows that the application is a proportionate means of ensuring the combat effectiveness of the armed forces.

(2) A relevant requirement is—

(a) a requirement to be a man;

(b) a requirement not to be a transsexual person.

## 1.3

## Access to medical treatment for gender dysphoria

### Terminology

The NHS defines ‘gender incongruence’ as “a discrepancy between birth-assigned sex and gender identity.”<sup>39</sup> It further explains:

[This] term is preferable to the formerly-used terms of gender identity disorder and transsexualism. Gender incongruence is frequently, but not universally, accompanied by the symptom of gender dysphoria.<sup>40</sup>

Gender dysphoria describes a “sense of unease that a person may have because of a mismatch between their biological sex and their gender identity.”<sup>41</sup>

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<sup>39</sup> NHS England, [Service specification for gender identity service for adults \(non-surgical interventions\)](#), No 1719

<sup>40</sup> Ibid

<sup>41</sup> NHS website, Gender dysphoria, [Overview](#), accessed 8 February 2022



## Treatment for gender dysphoria

Treatment for gender dysphoria aims to help people live the way they want to, in their preferred gender identity or as non-binary.<sup>42</sup>

There have been revisions to the World Health Organisation's International Statistical Classification of Diseases and Related Health Problems to reflect "evidence that trans-related and gender diverse identities are not conditions of mental ill health".<sup>43</sup>

NHS England commissions three components of the 'gender dysphoria pathway', each of which relates to a separate service route:

- A therapeutic service for children and young people up to 18 years of age, and their families; including a linked paediatric endocrinology service.
- Gender Dysphoria Clinics for people 17 years of age and over, offering assessment, diagnosis, overall care coordination, hormone treatments, voice and communication therapies and talking therapies.
- Certain surgical interventions of the chest and genitals for adults.<sup>44</sup>

In response to concerns about long waiting times for referrals to gender dysphoria services, the Government announced in September 2020 that it would open three new gender clinics (discussed below in section 1.4).

## Further information

- The NHS website includes information about gender dysphoria, and includes an [overview](#), and sections on [signs](#), [how to get help and support](#) and [treatment](#).
- Information on the [NHS Gender Dysphoria Clinical Programme](#) is also available on the NHS England website. This includes the work of the [Gender Dysphoria Programme Board](#), which is responsible for leading the future delivery and configuration of specialised services for people with gender dysphoria across England.
- A diagram of the full NHS care pathway is set out at Appendix A of the [NHS England Service Specifications for Gender Identity Services for Adults \(PDF\)](#).
- The [Gender Identity Development Service \(GIDS\)](#) website has information for young people, their parents and carers. The [NHS service specification for the GIDS for Children and Adolescents](#) (PDF) has detailed information about GIDS.

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<sup>42</sup> NHS website, [Treatment](#), Gender dysphoria [accessed 8 Feb 2022]. The NHS website notes some people do not define themselves as having a "binary" gender identity (i.e. male or female). They may use different terms, such as agender, gender diverse, gender non-conforming, to describe their identity. However, as a group, they are often called "non-binary".

<sup>43</sup> World Health Organization, [WHO/Europe brief – transgender health in the context of ICD-11](#), accessed 10 Feb 2022

<sup>44</sup> NHS England, [Gender Dysphoria](#), accessed 8 Feb 2022

- The NHS website provides information on [how to find an NHS gender dysphoria clinic](#).<sup>45</sup>

## 1.4

## Referral waiting times

### National Institute of Social and Economic Research review

The Government Equalities Office (GEO) commissioned a review to identify the nature of inequality and disadvantage experienced by LGBT people in the UK. The National Institute of Social and Economic Research (NISER) examined a range of sectors, such as employment and access to healthcare, and published its findings in a [2016 report](#).<sup>46</sup>

The review found evidence of long waiting times for a first referral to a gender identity clinic, affecting transgender people's mental health.<sup>47</sup>

### Gender identity clinics pilot sites

In May 2021, John Stewart, National Director of Specialised Commissioning at NHS England gave oral evidence during a Women and Equalities Committee evidence session on the Reform of the Gender Recognition Act. Mr Stewart told the Committee that new pilot clinics for gender dysphoria had been established, whilst a fourth clinic was due to open:

That is what led us to developing and designing these three new pilot clinics that you will be aware of. They are up and running in London's Dean Street, which Leigh will be able to say more about, in Greater Manchester and in Merseyside. I am also really pleased to be able to let the Committee formally know today that there is a fourth pilot in the east of England that will be going live this summer.

Combined, we are expecting these pilots to see, over the next two to three years, about 3,500 patients. We are deliberately targeting those patients who have already been waiting for access to one of our seven gender dysphoria clinics.<sup>48</sup>

In a [written ministerial statement](#) in September 2020, the Minister for Women and Equalities, Elizabeth Truss, outlined measures the Government was taking to address long waiting times for gender identity services. This includes opening three new clinics. She said:

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<sup>45</sup> The Tavistock and Portman NHS Foundation Trust are commissioned to run two service clinics – a GDC for adults and a GIDS for children and young people.

<sup>46</sup> NISER, [Inequality among lesbian, gay bisexual and transgender groups in the UK: a review of evidence](#), July 2016

<sup>47</sup> Ibid, pp39-40

<sup>48</sup> Women and Equalities Committee, [Oral evidence: Reform of the Gender Recognition Act](#), HC 129, 12 May 2021

Trans people tell us that waiting lists at NHS gender clinics are too long. I agree, and I am deeply concerned at the distress it can cause. That is why we are opening at least three new gender clinics this year, which should see waiting lists cut by around 1,600 patients by 2022. The full benefit of the increases in clinical capacity that we've been able to secure will lead to greater patient choice, shorter waiting times, better geographical coverage and easier access. It will also make it easier to fulfil the medical requirements of obtaining a GRC.

It is why we last year provided funding for the UK's first National LGBT Health Advisor to help improve transgender people's experience.<sup>49</sup>

On 29 September 2020, Crispin Blunt (Conservative) tabled a written question asking the Secretary of State for Health and Social Care whether the three clinics announced by the Minister for Women and Equalities in her written ministerial statement of 22 September 2020 were originally identified as pilot clinics by his Department. Jo Churchill, who was then Parliamentary Under-Secretary (Department of Health and Social Care) replied on 14 January 2021:

The clinics are based in London, Manchester, and Cheshire and Merseyside. The first of these services began in July 2020 in London. These services will be evaluated as pilots over a period of up to three years to determine how they could be expanded nationally.

These services were referenced by the Minister for Women and Equalities in her response of 24 September.<sup>50</sup>

A response to a parliamentary question on 9 February 2022 noted that a fourth new clinic had been opened in the East of England, and a further clinic in Sussex is planned to open in 2022. The reply also said the Government forecast that the current four clinics will reduce the current waiting list by around a quarter by 2024.<sup>51</sup>

## LGBT Action Plan

In 2018, the GEO published a [LGBT Action Plan](#) (PDF), which included the results of a national LGBT survey carried out the previous year.<sup>52</sup> The national survey reported similar findings to the 2016 NISER review: "80% of trans respondents who accessed or tried to access gender identity clinics said it was not easy, with long waiting times the most common barrier."<sup>53</sup>

The Action Plan included a Government commitment to appoint a national LGBT health adviser to "provide leadership on reducing the health inequalities that LGBT people face."<sup>54</sup> Dr Michael Brady, an HIV and Sexual Health

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<sup>49</sup> [HCWS462](#), 22 September 2020. Further information about this statement is set out in section 3.1 of this briefing

<sup>50</sup> [PQ 96743 \[on Gender Recognition: Clinics\], 14 January 2021](#)

<sup>51</sup> [PQ 116067 \[on Gender Recognition: Clinics\], 9 February 2022](#)

<sup>52</sup> Government Equalities Office, [LGBT Action Plan](#) (PDF), July 2018

<sup>53</sup> *Ibid*, p14

<sup>54</sup> *Ibid*, p2

consultant at Kings College Hospital in London and the Medical Director of the Terrence Higgins Trust, was appointed as the National Advisor for LGBT Health in April 2019. The [NHSEI announcement](#) of the appointment said Dr Brady would:

...focus on reducing the health inequalities that LGBT people face, and advise on ways to improve the care LGBT people receive when accessing the NHS and public health services. They will work across the NHS to ensure that the needs of LGBT people are considered throughout the health system.

The National Adviser will work to improve healthcare professionals' awareness of LGBT issues so they can provide better patient care. The National Adviser will work with relevant statutory organisations and professional associations to embed LGBT issues into physical and mental health services.<sup>55</sup>

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<sup>55</sup> NHS England, [LGBT health](#), accessed 8 February 2022

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## 2 UK Government consultation: Reform of the Gender Recognition Act

### 2.1 Background

In its 2016 report on [Transgender Equality \(PDF\)](#), the House of Commons Women and Equalities Committee said, although the GRA was considered to be “world-leading” at the time it was enacted, some now considered it “outdated”. It asked the Government to propose updates to the Act:

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>56</sup>

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 improve it in order to streamline and de-medicalise the gender recognition process”.<sup>57</sup>

### 2.2 The consultation

In July 2018, the UK Government launched a consultation on possible reforms to the GRA: [Reform of the Gender Recognition Act – Government Consultation \(PDF\)](#).<sup>58</sup> This consultation, which ended on 22 October 2018, concerned the legal gender recognition system in England and Wales only, though the

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<sup>56</sup> Women and Equalities Committee, [Transgender Equality \(PDF\)](#), 14 January 2016, HC 390 2015-16, paras 44 and 45

<sup>57</sup> [Government Equalities Office, Government Response to the Women and Equalities Committee Report on Transgender Equality \(PDF\)](#) July 2016, p11

<sup>58</sup> [Reform of the Gender Recognition Act – Government Consultation \(PDF\)](#) July 2018

implications of change for the whole of the United Kingdom were also considered.<sup>59</sup>

The consultation focused on the **process** for gaining legal recognition. [GOV.UK](#) summarised the purpose of the consultation:

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.<sup>60</sup>

## Arguments for change

The consultation paper set out arguments for reforming the GRA. It said:

Put simply, the case for change is as follows. Transgender individuals want legal recognition of their acquired gender and the dignity and respect that can come with it. They will often have already changed their name, and other documents, such as any Government-issued forms of identification that they hold to reflect their acquired gender. This therefore creates a difficult bureaucratic situation where their legal status and birth certificate do not match the rest of their documentation and their identity.

To resolve this, however, they have to go through the current gender recognition process that is set out in the GRA. Many trans people feel that this process is overly intrusive, humiliating and administratively burdensome. Further they argue that by requiring a diagnostic psychiatric report, the process perpetuates the outdated and false assumption that being trans is a mental illness. 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 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>61</sup>

Ultimately, trans people argue that the system is denying too many people access to the legal recognition that they want. It amounts to an additional burden that trans people have to face when they already face a series of other

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<sup>59</sup> [Reform of the Gender Recognition Act – Government Consultation](#) (PDF), July 2018, p4

<sup>60</sup> GOV.UK, [Reform of the Gender Recognition Act 2004](#) [accessed 16 February 2022]

<sup>61</sup> Footnote in quoted text: “Appeals on a point of law can be made to the High Court or the Family Court. Appeals can be made if the individual believes that the panel has not followed the process set out in the Gender Recognition Act, for example by applying a different legal test or introducing new criteria. Individuals cannot appeal just because they do not agree with the panel’s decision. There is only one English reported case on a point of law since the Act’s provisions came into force in 2005, *Carpenter v Secretary of State for Justice*, but the appeal was dismissed.”

barriers to full participation in wider society and to achieving the respect that they deserve.<sup>62</sup>

The Government said it was persuaded by these arguments and wanted to make it easier for transgender people to achieve legal recognition.<sup>63</sup>

The consultation paper also said:

- whilst many transgender people want legal recognition, too few are able to get it;
- improving the GRA would help in advancing equality for transgender people, who continue to face a whole range of societal barriers;
- transgender respondents to the Government's LGBT survey were clear about the problems with the GRA process; and
- demand for Gender Identity Development Services was increasing.<sup>64</sup>

## Concerns about reform

The consultation paper recognised concerns had been raised about the potential implications of reform on exceptions in the Equality Act 2010 associated with gender reassignment discrimination.<sup>65</sup>

The Government confirmed that, where it is a proportionate means of meeting a legitimate aim, it would still be possible to exclude transgender people from single-sex services and that having a GRC is “not a complete answer”:

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.

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>66</sup>

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<sup>62</sup> [Reform of the Gender Recognition Act – Government Consultation](#) (PDF), July 2018, paras 23-25, p21

<sup>63</sup> Ibid, para 26, p21

<sup>64</sup> Ibid, paras 27-36, pp21-24

<sup>65</sup> Ibid, para 110, p44

<sup>66</sup> Ibid, paras 116-117, p45

In March 2020, in answer to a parliamentary question, the Government addressed concerns raised about potential abuse of the system:

This Government has been clear that we must take the right steps to protect safe single-sex spaces for women and girls; their access should not be jeopardised. Some women's organisations have expressed concern that predatory men may abuse the gender recognition system, intended to support transgender adults. We have heard these concerns and are considering carefully our next steps.<sup>67</sup>

Information about the protection of rights of transgender people under the Equality Act 2010 and the limits on those protections is included in section 1.2 of this briefing.

## What the consultation covered

The Government said it wanted to make the legal recognition process less intrusive and bureaucratic for transgender people. The consultation sought views on how this might be achieved.<sup>68</sup> It considered many aspects of the GRA process, including:

- the requirement for the transgender person to provide **two medical reports**.<sup>69</sup> The ministerial foreword said the removal of the requirement for a medical diagnosis in order to achieve legal recognition was one option on which views were sought, but no firm decision on the Government's eventual approach had been taken;
- the requirement for the transgender person to provide a range of documentation that proves they have **lived in their acquired gender** for at least two years;
- the requirement for the transgender person to submit a **statutory declaration** of their intention to live in their acquired gender until death;
- the requirement for married applicants to obtain the consent of their spouse or end their marriage (see below);
- the **cost** to the transgender person of using the GRA process;
- how the Act protects the **privacy of individuals** who have applied for a GRC.<sup>70</sup>

## Spousal consent

The [Marriage \(Same Sex Couples\) Act 2013](#), which legalised the marriage of same sex couples in England and Wales, amended the GRA in relation to those wishing to remain married after legal gender recognition. It is now possible, where both spouses want their marriage to continue, for a transgender person to gain a full GRC without having to end their marriage.<sup>71</sup> If either spouse does not consent to the marriage continuing, an interim

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<sup>67</sup> [HL PQ 2179 \[on Gender Recognition: Equality\], 17 March 2020](#)

<sup>68</sup> [Reform of the Gender Recognition Act – Government Consultation](#) (PDF), July 2018, para 7, p11

<sup>69</sup> This is a requirement of the standard application route, which is used by most applicants

<sup>70</sup> [Reform of the Gender Recognition Act – Government Consultation](#) (PDF), July 2018, p11

<sup>71</sup> The non-transgender spouse must consent, by way of a statutory declaration, to the marriage continuing after the date of legal recognition



certificate will be issued to an applicant who meets the other criteria for legal recognition of their acquired gender.

The interim certificate does not constitute legal recognition of an acquired gender.<sup>72</sup> It can be used to enable the applicant or their spouse to end their marriage and then a full GRC can be issued. In its 2016 report, the Women and Equalities Committee said it had received evidence demonstrating widespread hostility within the transgender community to the need for spousal consent.<sup>73</sup>

The position is different in Scotland. Where the marriage is a Scottish marriage (a marriage solemnised in Scotland), the party who is seeking recognition and is granted an interim GRC may then apply to the sheriff court for a full GRC. This enables them to achieve full legal recognition even if their spouse has not consented to the marriage continuing. Either spouse may also seek a divorce on the basis that an interim GRC has been issued.<sup>74</sup>

In the consultation paper, the Government said it was aware that, among many trans people, the need for spousal consent was a particular cause for concern. The Government said it understood the primary concerns to be:

- 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 GRP [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>75</sup>

The Government also set out the rationale for the requirement for spousal consent:

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

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<sup>72</sup> [Reform of the Gender Recognition Act – Government Consultation](#) (PDF), July 2018, para 75, p35

<sup>73</sup> Women and Equalities Committee, [Transgender Equality](#) (PDF), 14 January 2016, HC 390 2015-16, para 49 and see also paras 61-63

<sup>74</sup> Information about the position in Scotland is set out in the Scottish Government consultation, [Review of the Gender Recognition Act 2004](#) (PDF), November 2017, Part 5

<sup>75</sup> [Reform of the Gender Recognition Act – Government Consultation](#), (PDF), July 2018, para 78, p36

rationale behind introducing the spousal consent provisions in the same-sex marriage legislation...<sup>76</sup>

The Government asked for views on the spousal consent provisions.

### Other matters covered by the consultation

The consultation paper included questions on the effect of the current process on those with protected characteristics, and on wider considerations. These related to:

- gender recognition and **the Equality Act 2010** - the Government said it did not intend to amend existing exceptions in the Equality Act 2010 associated with the gender reassignment protected characteristic. However, it asked for views on what having a GRC might mean for each of those exceptions;<sup>77</sup>
- GRA reform and other legislation and **public services** that treat males and females differently;<sup>78</sup>
- **non-binary gender identities** – the consultation did not include proposals to extend the GRA to provide legal recognition to a third, or non-binary, gender but asked for respondents’ initial views “on this complex issue”.<sup>79</sup> The Government set out its position:

The Government wants individuals who identify as non-binary to be able to live discrimination-free lives in accordance with who they believe their true selves to be. We are working to determine what action it may be necessary for Government to take in order to achieve this. However, we are also mindful of the practical consequences for other areas of law and public-service provision referring to the gender binary, if non-binary genders were to be recognised in the GRA.

...In this consultation, we are specifically interested in respondents’ views on whether and how the GRA should change to accommodate recognition of those who identify as non-binary. Our call for evidence will encompass any wider considerations;<sup>80</sup>

- **intersex**<sup>81</sup> – the Government said it was interested in learning from and developing a better understanding of intersex people’s experiences of the current legal gender recognition process and their views on how the system could be improved. It said:

The Government recognises that intersex people who have had their sex incorrectly assigned at birth may want to apply for a GRC to make this amendment. We do not know how many people have done so or attempted to.

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<sup>76</sup> Ibid, para 79, p36

<sup>77</sup> Ibid, para 110, p44

<sup>78</sup> Ibid, para2 125-129, p50

<sup>79</sup> Ibid, para 136, p52

<sup>80</sup> Ibid, paras 142-3, p53

<sup>81</sup> In the consultation, the Government used the term ‘intersex’ but recognised that there are wide views about terminology and that there may be objections to this. It noted, for example, the term ‘variations in sex characteristics’ (VSC) was becoming more common, [Reform of the Gender Recognition Act – Government Consultation](#) (PDF), July 2018, para 147, p55

We recognise that intersex people may currently face barriers in attaining legal gender recognition because of the requirement for a diagnosis of gender dysphoria. We would like to understand more about how intersex people find this requirement.

The Government is consulting on whether to remove the diagnosis of gender dysphoria from the GRC process and we recognise that this would make it easier for intersex people to attain legal recognition. The Government is also interested in learning about other recommendations for change that will support intersex people in the legal gender recognition process.<sup>82</sup>

## Processes in other countries

The consultation paper gave information about processes related to legal recognition elsewhere:

[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>83</sup>

The consultation paper said:

- 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>84</sup>

## Access to specialist gender development services

The Government said it was aware that demand for services such as Gender Identity Development Services has “increased considerably” among under-18s since 2009:

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<sup>82</sup> Ibid, para 148, p55 and paras 155-6, p57

<sup>83</sup> Ibid, paras 7-9, p17

<sup>84</sup> Ibid, paras 42-47, p26

The service is commissioned by NHS England and supports children and adolescents who are experiencing difficulties with their gender identity. In 2009-10 the service received 96 referrals but this had increased to 2,016 by 2016-17, [...]. We do not know for sure what is driving this increase. It may be because more people are feeling able to publicly disclose that they are trans and seek support from the NHS. For the adult services, we know, for example, that there has been a 20% - 40% year on year increase in referrals for some services.<sup>85</sup>

However, the consultation paper did not deal with access to medical treatment and stated explicitly that its remit was only the **legal process** of gender recognition. For medical treatment, it said:

There is a separate pathway for accessing medical treatment such as hormone therapy and surgery for trans people who are seeking that medical support. This medical pathway is governed by separate guidelines and regulations, as set out by NHS England and your legal gender is not relevant in access to these services. This consultation does not propose any changes to these regulations, nor does it ask about any change to how a trans person might access medical treatment. It also does not ask about any change to the age at which young people can access medical treatment, which currently stands at 16 for hormone therapy on the NHS, and 18 for surgery on the NHS. The reference to removing the need for a diagnosis of gender dysphoria is only in terms of this being currently required in order to apply for a GRC. If, as a result of this consultation, the Government decides to change the legal gender recognition process, and to make it easier to obtain a GRC, that will not automatically entitle the holder to medical treatment. Medical treatment will continue to be at the discretion of medical professionals, on a case-by-case basis.<sup>86</sup>

Any questions about the removal of a requirement for a medical diagnosis in the context of the consultation were only posed regarding the legal recognition process.<sup>87</sup>

## 2.3

### The debate on potential reform

The issue of whether the requirement for a medical diagnosis of gender dysphoria should be removed from the legal gender recognition process has proved extremely controversial, with very strong views expressed both for and against reforming the GRA in this way. Much of the debate has been about people transitioning from man to woman.

The consultation paper drew attention to the nature of some of the debate when asking for views to be submitted, saying it was “open to all views and perspectives”:

We know that conversations around transgender equality can elicit a wide range of views. Everyone has a right for their voice to be heard and we will treat all responses with equal respect. The public debate in recent months has

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<sup>85</sup> Ibid, para 36, p24

<sup>86</sup> Ibid, paragraph 14, p13

<sup>87</sup> Ibid, Ministerial Foreword, p2

been at times unkind or even discriminatory. We urge all those who engage with this issue and respond to this consultation to treat each other respectfully. Abuse or hurtful comments are not acceptable.<sup>88</sup>

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<sup>88</sup> Ibid, para 17, pp13-14

## 3

## Response to the consultation

There were over 100,000 responses to the consultation and, despite indications the Government's response would be forthcoming in spring 2019, later that year, or over summer 2020, the response was eventually published on 22 September 2020.

This was not in the more common format of a response document published by the department, in this case the Government Equalities Office. Instead, Elizabeth Truss, Minister for Women and Equalities made a [written ministerial statement](#),<sup>89</sup> and the Government Equalities Office published an [Analysis Report of Consultation Responses](#) (PDF) by researchers at Nottingham Trent University.<sup>90</sup>

### Sources of responses

The analysis report commented on the sources of responses:

36% of the responses were submitted through official government channels, 39% through an online form hosted by Stonewall, 7% through an online form hosted by Level Up, and 18% through a template provided by Fair Play for Women. Other campaigns were also observed among those responses submitted through official government channels. In launching the consultation, the GEO noted that it was open to all perspectives. For this reason, each respondent who submitted a response via one of these campaigns has been counted individually in this analysis.<sup>91</sup>

The authors treated all responses from individuals equally, regardless of how they were submitted.<sup>92</sup>

An associated blog from the analysis [team comments on the team's role and methodology](#).<sup>93</sup>

<sup>89</sup> [HCWS462, \[Government Equalities Office Update\], 22 September 2020](#)

<sup>90</sup> Professor Daniel King, Professor Carrie Paechter, Dr Maranda Ridgway, and researchers at Nottingham Trent University [Gender Recognition Act Analysis of consultation responses](#) (PDF), CP 294, September 2020, commissioned by the Government Equalities Office

<sup>91</sup> Ibid, para 2, p7

<sup>92</sup> Ibid, paragraph 3, p7

<sup>93</sup> Nottingham Trent University, [Expert Blog: Analysing the GRA consultation: reflections by the analysis team](#), Professor Daniel King, Professor Carrie Paechter and Dr Maranda Ridgway [accessed 16 February 2022]

## 3.1

# Written ministerial statement

In her written ministerial statement, Elizabeth Truss set out how the Government intends to proceed. This does not include changing the criteria in the GRA for legal gender recognition, meaning that a system based on self-declaration is **not** being introduced:

...It is the Government's view that the balance struck in [the GRA] is correct, in that there are proper checks and balances in the system and also support for people who want to change their legal sex.<sup>94</sup>

The Minister acknowledged the need to improve the process and experience transgender people have when applying for a GRC, "making it kinder and more straightforward." She said the Government's proposed changes would address the main concerns that transgender people themselves had expressed. The application process would be moved online, and the application fee reduced to a "nominal amount":

In 2017, we conducted by far the largest survey ever of British LGBT people, with over 108,000 respondents, of whom 7000 were trans. Of those who had completed their transition, around 2 in 5 said that they had a Gender Recognition Certificate, a higher proportion than is often believed. The survey then asked those who had not applied what had prevented them from doing so. They were able to choose as many reasons as they wanted.

Thirty-eight per cent told us the process was too bureaucratic. So we will place the whole procedure online. Thirty-four per cent said the process was too expensive. This, too, we will address. We will reduce the fee from £140 to a nominal amount.<sup>95</sup>

Elizabeth Truss spoke of the importance of improving access to healthcare for transgender people:

We have also come to understand that gender recognition reform, though supported in the consultation undertaken by the last government, is not the top priority for transgender people. Perhaps their most important concern is the state of trans healthcare. Trans people tell us that waiting lists at NHS gender clinics are too long. I agree, and I am deeply concerned at the distress it can cause. That is why we are opening at least three new gender clinics this year, which should see waiting lists cut by around 1,600 patients by 2022. The full benefit of the increases in clinical capacity that we've been able to secure will lead to greater patient choice, shorter waiting times, better geographical coverage and easier access. It will also make it easier to fulfil the medical requirements of obtaining a GRC.

It is why we last year provided funding for the UK's first National LGBT Health Advisor to help improve transgender people's experience.<sup>96</sup>

<sup>94</sup> [HCWS462, \[Government Equalities Office Update\], 22 September 2020](#)

<sup>95</sup> Ibid

<sup>96</sup> Ibid

The Minister also spoke of individual freedom:

Our philosophy is that a person’s character, your ideas, and your work ethic trumps the colour of your skin or your biological sex. We firmly believe that neither biology nor gender is destiny.

The Equality Act 2010 clearly protects transgender people from discrimination. The same act allows service providers to restrict access to single sex spaces on the basis of biological sex if there is a clear justification.

We want every individual, regardless of their sex, sexual orientation, or gender identity to have the confidence and the freedom to be themselves. We will continue with our international leadership by hosting our International LGBT Conference to make sure LGBT people around the world are safe to be themselves.<sup>97</sup>

## 3.2 Analysis of the consultation responses

The [analysis of consultation responses](#) (PDF) by Professor Daniel King, Professor Carrie Paechter, Dr Maranda Ridgway, and researchers at Nottingham Trent University, published on 22 September 2020, was commissioned by the Government Equalities Office (GEO).<sup>98</sup>

It specifies that the “analysis and findings are those of the authors and do not represent the views of the GEO or government policy,” adding “while the GEO has made every effort to ensure the information in this document is accurate, the GEO does not guarantee the accuracy, completeness or usefulness of that information.”<sup>99</sup>

The report sets out detailed quantitative and qualitative analyses of the responses to each of the consultation questions.

The [executive summary](#) (PDF) gives an overview of the quantitative results to the multiple-choice questions, as well as themes emerging from the qualitative results to the free-text questions,<sup>100</sup> and includes the following (more detail on each point is provided in the executive summary and in the rest of the document):

### Experiences of trans people:

- ...Trans respondents overwhelmingly reported that the current GRA process was too bureaucratic, time consuming and expensive,

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<sup>97</sup> Ibid. The UK will host its first ever global LGBT conference in London on 29 June to 1 July 2022: Gov.UK, [Safe To Be Me: A Global Equality Conference](#) [accessed 16 February 2022]

<sup>98</sup> [Gender Recognition Act Analysis of consultation responses](#) (PDF), Professor Daniel King, Professor Carrie Paechter, Dr Maranda Ridgway, and researchers at Nottingham Trent University, CP 294, September 2020, commissioned by the Government Equalities Office

<sup>99</sup> Ibid, p1

<sup>100</sup> The executive summary states that, unless stated otherwise, percentages relate to the total number of valid responses per question



highlighting in particular that the process made them feel dehumanised and stressed. Another major topic raised was the long waiting lists for obtaining medical evidence...

- When asked about what having a GRC would mean to them, many trans people talked about the social and legal validation they would gain through an updated birth certificate...

### The GRA requirements

- Nearly two-thirds of respondents (64.1%) said that there should not be a requirement for a diagnosis of gender dysphoria in the future, with just over a third (35.9%) saying that this requirement should be retained...
- Around 4 in 5 (80.3%) respondents were in favour of removing the requirement for a medical report, which details all treatment received...
- A majority of respondents (78.6%) were in favour of removing the requirement for individuals to provide evidence of having lived in their acquired gender for a period of time...
- The majority of respondents (83.5%) were in favour of retaining the statutory declaration requirement of the gender recognition system. Of those who were in favour of retaining the declaration, around half (52.8%) did not agree with the current declaration wording that the applicant intends to “live permanently in the acquired gender until death” ...
- A majority of respondents (84.9%) disagreed with the spousal consent requirement in the GRA...
- 58.5% of respondents were in favour of removing the £140 fee from the process of applying for legal gender recognition...
- Nearly three-quarters (73.4%) of respondents said that they did not think the privacy and disclosure of information provisions in Section 22 of the GRA were adequate...

### Impact of applying for a GRC on people with protected characteristics <sup>[101]</sup>

- Trans respondents were asked which protected characteristics (under the Equality Act 2010) applied to them, and how these characteristics had affected their views on the GRC application process. The most commonly selected characteristics were sexual orientation, age and marriage. Key themes that emerged included debate about whether the minimum age for legal gender recognition should be lowered, the lack of legal recognition for non-binary people, and the lack of legal rights for people with variations of sex characteristics (intersex people) ...

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<sup>101</sup> Information about protected characteristics and Equality Act 2010 exceptions is provided in section 1.2 of this briefing paper

It also summarised responses to other questions, including about the operation of existing exceptions in the Equality Act 2010:

- The Equality Act permits restrictions on the participation of trans people in some sporting competitions, if necessary, to uphold fair competition or the safety of competitors. A majority (71.7%) of respondents said that the participation of trans people in sport would be affected by changing the GRA...
- Three in five respondents (60.2%) thought that single-sex and separate-sex service exceptions in relation to gender reassignment in the Equality Act 2010 would not be affected by changing the Gender Recognition Act...
- The consultation also asked providers of single or separate sex services whether they felt confident in interpreting the Equality Act 2010 with regard to the single-sex and separate-sex exceptions. Fewer than 1 in 10 respondents (8.5%) provided an answer to this question. Of the organisational responses, 60.0% said that they were confident, and 40.0% said that they were not...
- The consultation asked trans persons who had experienced domestic abuse or sexual assault if they were able to access support. A small proportion (3.1%) of consultation respondents answered this question, and of these, only a quarter (24.6%) reported being able to access support...
- Just over two thirds (68.4%) thought that the occupational requirement exception in relation to gender reassignment in the Equality Act 2010 would be affected by changes to the GRA...
- 69.2% of respondents thought that the operation of the communal accommodation exception in relation to gender reassignment in the Equality Act 2010 would be affected by changing the GRA...
- Three quarters of respondents (75%) thought that the armed forces exception as it relates to trans people in the Equality Act 2010 would not be affected by changes to the GRA...
- Around half of respondents (47.8%) thought that the marriage exception as it relates to trans people in the Equality Act 2010 would be affected by changing the GRA, and 52.2% stated that it would not...
- Three quarters (76.8%) thought that the insurance exception as it relates to trans people in the Equality Act 2010 would not be affected by changing the GRA, while 23.2% stated that it would be...
- Three-quarters (77.1%) thought that changes to the GRA would impact on areas of law and public services other than the Equality Act 2010, while 22.9% said that they would not...
- A majority (64.7%) thought that changes needed to be made to the GRA to accommodate individuals who identified as non-binary...

- Of the 31% of consultation respondents who provided an answer to the question about whether they had a variation in their sex characteristics (VSC), 2.8% said that they had.
- Respondents to the consultation were also invited to provide further comments. Key themes that emerged included concern that (non-trans) women had not been sufficiently consulted, and that there was a need for an assessment of the impact of GRA reform on additional groups, including women.<sup>102</sup>

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<sup>102</sup> [Gender Recognition Act Analysis of consultation responses](#) (PDF), Professor Daniel King, Professor Carrie Paechter, Dr Maranda Ridgway, and researchers at Nottingham Trent University, CP 294, September 2020, paras 6-28, pp 8-13

## 4

## Independent review of gender identity services: The Cass Review

On 22 September 2020, at the same time the analysis of consultation responses on reforming the Gender Recognition Act 2004 was published, NHS England announced an [independent review](#) into gender identity services for children and young people.

[The review](#) is being led by Dr Hilary Cass OBE, former President of the Royal College of Paediatrics and Child Health.

The [terms of reference](#) for the ‘Cass Review’ said it would be “wide-ranging in scope,” with a focus on improving services for children and young people experiencing issues with their gender identity or gender incongruence.<sup>103</sup>

Details on how people can participate in the review, which is independent of Government, will be published on its [website](#).<sup>104</sup>

### Immediate support suggestions

In May 2021, Dr Cass wrote to NHS England and NHS Improvement (NHSEI) with an update on the inquiry and to suggest interim arrangements to [provide immediate support for children and young people](#).<sup>105</sup> Her recommendations focused on improving referral and access to services, ensuring those referred receive a local multi-disciplinary assessment, and that sufficient data is recorded as part of the interim measures.

Dr Cass also described barriers local services might encounter when providing support outside of Gender Identity Development Service (GIDS), including: limited staff capacity, capability and confidence and the lack of a clear assessment framework for first contact professionals.

Dr Cass had intended to publish an interim report in summer 2021, although this does not appear to have been published on the Review website, followed by a report in 2022 with final recommendations.

<sup>103</sup> NHS England, [Terms of reference for review of gender identity development service for children and adolescents](#), 22 September 2020

<sup>104</sup> [PQ 88697](#), 14 Dec 2021

<sup>105</sup> Cass Independent Review website, [Letter to NHSEI](#), 10 May 2021

## NHSEI response

NHSEI [welcomed Dr Cass's early findings](#) and gave details of an interim regional professional support service to provide expert advice and support to healthcare professionals making referrals to GIDS.<sup>106</sup> NHS England published [additional support for healthcare professionals referring patients to GIDS](#) pending the establishment of the professional support service.

NHSEI also commissioned the National Institute for Health and Care Excellence (NICE) to carry out an [evidence review on gender-reaffirming hormones for children and adolescents with gender dysphoria](#). Published in March 2021, NICE has said its evidence will inform the Cass Review.<sup>107</sup>

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<sup>106</sup> Cass Review Independent Review website, [Letter from NHSEI](#), 13 July 2021

<sup>107</sup> NICE, [Evidence review: Gender-affirming hormones for children and adolescents with gender dysphoria](#), March 2021

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## 5 Reaction in Parliament

### 5.1 Parliamentary debate

#### 24 September 2020: Commons debate on urgent question

Two days after Elizabeth Truss made her written ministerial statement, Crispin Blunt (Conservative) asked an urgent parliamentary question requesting the Minister to make a statement on the Government's response to the consultation.<sup>108</sup>

Elizabeth Truss reiterated the Government's position as set out in her written ministerial statement. She also spoke of protecting single-sex spaces and supporting young people:

It is also important that we protect single-sex spaces in line with the Equality Act 2010. The law is clear that service providers are able to restrict access to single-sex spaces on the basis of biological sex. It is also important that under-18s are properly supported in line with their age and decision-making capabilities. That is why Dr Hilary Cass, former president of the Royal College of Paediatrics and Child Health, will lead an independent review into gender identity services for children and young people. The review will look to ensure that young people get the best possible support and expertise throughout their care, and it will report back next year. Together, this upholds the rights of transgender people and women, ensures that our system is kinder and more straightforward, and addresses the concerns of transgender people.<sup>109</sup>

Crispin Blunt spoke of the "crushing disappointment of trans people" with the content of Elizabeth Truss's statement "set against the consultation on which it was based". He asked the Minister several questions:

Does she appreciate that trans people cannot discern any strong or coherent reason for this screeching change of direction? They are aware of the fear being used against them and fears, void of evidence, to sustain them. Does she understand the anger at the prospect of their receiving their fundamental rights being snatched away?

The longer the uncertainty has been allowed to continue, the worse the fear and anger have become. Does my right hon. Friend understand that the delay in the statement helped to contribute to that? Does she see that the underlying trend of the majority of people in this country is following the path set by a change of attitude in society a generation earlier towards those with different

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<sup>108</sup> [HC Deb 24 September 2020 c1131](#)

<sup>109</sup> [HC Deb 24 September 2020 c1131](#)

sexualities? This time, despite the complexities of understanding around trans, younger people in particular are more starkly intolerant of the cruelty of wider society's inhumanity towards trans people. The vast, vast majority of lesbian, gay and bisexual people will stand in solidarity with trans people.

Does my right hon. Friend appreciate that her statement does not command a majority in this House? Will she confirm that that is one of the reasons why she cannot propose any legislation? She has presented the House with an inherently unstable settlement that will have to be addressed—hopefully sooner rather than later.<sup>110</sup>

Crispin Blunt also referred to the paper produced by the All-Party Parliamentary Group on Global Lesbian, Gay, Bisexual, and Transgender Rights, (which he chairs) which, he said, had been ignored:

I engaged with people who had different views to understand the compromises necessary to deliver reassurance around trans people, but also to be able to deliver trans rights. That work was done. It was given, quietly, in a comprehensive paper to the Government in early July and, tragically, it has been ignored.<sup>111</sup>

Elizabeth Truss reiterated her belief that “the settlement we have reached balances and upholds the rights of transgender people and of women,” and “protects access to single-sex spaces.” She noted “the number one concern of transgender people is improving healthcare services” and said the new clinics would be the first in the United Kingdom for 20 years. The Minister said she believed the Government had come to the right conclusion “which is in line with other major nations.”<sup>112</sup>

Marsha De Cordova, then-Shadow Secretary of State for Women and Equalities, expressed disappointment that the Government had “let trans people down”:

After three years of toxic debate, it is deeply disappointing that the Government have let trans people down and dropped their plans to reform the Gender Recognition Act. The debate around reform of the Act has been intensely fought and has caused great harm to many. Trans people face daily discrimination and the average wait for a first appointment with a gender clinic is 18 months, so it is vital that steps are taken to tackle discrimination and provide the services and support that people need.<sup>113</sup>

Marsha De Cordova said the delay in responding to the consultation was “completely unacceptable”. She said Labour would “continue to support updating the GRA to include self-declaration for trans people” and asked a number of questions.<sup>114</sup>

Elizabeth Truss replied:

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<sup>110</sup> [HC Deb 24 September 2020 cc1131-2](#)

<sup>111</sup> [HC Deb 24 September 2020 c1132](#)

<sup>112</sup> [HC Deb 24 September 2020 c1132](#)

<sup>113</sup> [HC Deb 24 September 2020 cc1132-3](#)

<sup>114</sup> [HC Deb 24 September 2020 c1133](#)

I can assure the hon. Lady that I brought this decision forward as much as I was able, given that it is a complex issue that we needed to thoroughly examine. I feel that where we have got to is the right place; it maintains the rights of transgender people and improves the process to make it kinder and more straightforward, at the same time as protecting single-sex spaces.

The hon. Lady asked about healthcare. I agree that that is a priority. That is why we are opening the first new gender identity clinics in 20 years and we are committed to ensuring that transgender healthcare is improved and waiting lists are reduced. We have funded Dr Michael Brady, our LGBT health adviser. There is definitely more work that needs to be done to ensure that services operate fully right across the country and across the national health service, and of course I am working very closely with the Health Secretary on that.

The hon. Lady asked when the new fee arrangements and the new online arrangements will come into place. The answer is that we will be doing that as soon as possible; obviously, it is an IT process that we need to get online, but I aim to introduce the new fee, which will be nominal, as soon as possible.<sup>115</sup>

David Mundell (Conservative) asked the Minister to clarify whether there would be any new gender clinics, in addition to the pilot projects previously announced, and about their impact on NHS waiting lists.<sup>116</sup> This matter was clarified in a response to a parliamentary question tabled by Crispin Blunt on 29 September 2020. Jo Churchill, who was then Parliamentary Under-Secretary (Department of Health and Social Care) replied on 14 January 2021:

Three new clinics were announced earlier this year. The new services will provide the range of services available from an established gender dysphoria clinic. The clinics are based in London, Manchester, and Cheshire and Merseyside. The first of these services began in July 2020 in London. These services will be evaluated as pilots over a period of up to three years to determine how they could be expanded nationally.

These services were referenced by the Minister for Women and Equalities in her response of 24 September.<sup>117</sup>

## 25 September 2020: House of Lords

On 25 September 2020, the House of Lords considered the Minister's statement in response to the previous day's urgent question in the Commons (see above).<sup>118</sup>

Lord Collins of Highbury (Opposition Whip in the Lords, and Shadow Spokesperson for Foreign and Commonwealth Affairs and International Development),<sup>119</sup> asked: "What evidence does the Minister have that

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<sup>115</sup> [HC Deb 24 September 2020 c1133](#)

<sup>116</sup> [HC Deb 24 September 2020 c1137](#)

<sup>117</sup> [PQ 96743 \[on Gender Recognition: Clinics\], 14 January 2021](#). See also section 1.4 of this briefing

<sup>118</sup> [HL Deb 25 September 2020 cc2000-4](#)

<sup>119</sup> Since 20 October 2021, Lord Collins of Highbury has also been Shadow Deputy Leader of the House of Lords



medicalisation remains necessary from the jurisdictions that do not medicalise the process?”.

He also referred to the July 2020 report of the APPG on Global Lesbian, Gay, Bisexual and Transgender Rights and asked why it was rejected, “bearing in mind that it was also backed by the LGBT groups of the main political parties, including her own?”. Lord Collins said the decision “has caused huge hurt to the trans community” and that “Labour believes that it is simply wrong”.<sup>120</sup>

Baroness Berridge, then-Minister for Women, replied for the Government:

My Lords, there has indeed been an extensive consultation on this matter. There were numerous contributions, including those outlined by the noble Lord. The matter of medical diagnosis is one for clinicians. After due consideration, the balance has been taken that the issues were to do with cost, bureaucracy and access to healthcare. The system as outlined in the Statement has been changed: the fee has been reduced to a nominal amount and the process has been digitalised.<sup>121</sup>

Baroness Barker (Liberal Democrat Lords Spokesperson on the voluntary sector) asked whether the Government intended to amend the Equality Act or any of the guidance issued under it. Baroness Berridge replied: “it is clear from the response to the consultation that there will be no need for legislative action on this matter, so any guidance that is followed is as stands.”<sup>122</sup>

In answer to a question from Lord Triesman (Labour), Baroness Berridge said the Government hoped the response to the consultation would achieve: “time for feelings on both sides to be allayed and for people to speak to one another and exchange views on this matter with respect, compassion and dignity.”<sup>123</sup>

Lord Cashman (Non-affiliated) asked for some clarification:

[W]ill the Minister explain how the Government will address the real needs of trans people, as indicated overwhelmingly in the consultation, and will she clarify the statement by the Secretary of State that self-declaration would be abused by men? What evidence of widespread abuse does the Secretary of State have from other jurisdictions that have moved to self-ID, or does the Secretary of State believe that British men are uniquely abusive?<sup>124</sup>

Baroness Berridge replied:

My Lords, self-identification is a legal process that we believe needs formality. It is not something that anyone considers without giving due attention to that, so we do not believe that we need to move away from the current system. On the information that has been received and the increase in the numbers of, for instance, transphobic or hate crimes, the Law Commission has been asked to look at all aspects of this, including misogyny, and as the noble Lord will be

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<sup>120</sup> [HL Deb 25 September 2020 c2001](#)

<sup>121</sup> [HL Deb 25 September 2020 c2001](#)

<sup>122</sup> [HL Deb 25 September 2020 c2002](#)

<sup>123</sup> [HL Deb 25 September 2020 c2002](#)

<sup>124</sup> [HL Deb 25 September 2020 c2003](#)

aware, the Government have appointed Dr Michael Brady to advise NHS England and others about healthcare for LGBT people.<sup>125</sup>

## 19 October 2020: House of Lords

On 19 October 2020, Lord Hunt of Kings Heath (Labour) asked what further advice the Government intended to give to public bodies following the GRA review.<sup>126</sup>

Baroness Berridge said the Government was focusing on digitising and streamlining the process, and reducing the fee, adding:

At this stage, we are not proposing further legislative guidance, but we will keep this under review.<sup>127</sup>

Lord Hunt then spoke of freedom of speech and raised the issue of single-sex spaces:

My Lords, does the Minister accept that in sensitive discussions about the interaction between the Gender Recognition Act and the Equality Act, those most affected, namely women and transgender people, should have freedom to speak, and that intimidation and no-platforming are not acceptable? Will the Government reiterate their belief in the importance of single-sex places provided by the Equality Act, and make it clear to public bodies that it is not acceptable to insist on gender-neutral services at the expense of providing women-only safe spaces in refuges and rape crisis centres?<sup>128</sup>

Baroness Berridge agreed the debate should be respectful:

My Lords, I agree with the noble Lord that freedom of speech in this area, on all sides, needs to be conducted in a manner that is respectful of people with very differing views. Yes, the Equality Act has an exemption, so that single-sex spaces can be provided and, where justified, somebody can be refused access to that space.<sup>129</sup>

Lord Cashman spoke of transgender people being “vilified, deeply misrepresented and defamed, and seen, in total, as a threat, when all they want to do is get on with their lives, harming no one.” He asked what steps the Minister would take to ensure “that public services are equipped to support trans people, including through staff training.”<sup>130</sup>

Baroness Berridge regretted that there had been vilification on both sides of the debate and said, “We hope to move on from this consultation and that both sides can respect the differing views.” She spoke of specific training

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<sup>125</sup> [HL Deb 25 September 2020 c2003](#)

<sup>126</sup> [HL Deb 19 October 2020 cc1275-8](#)

<sup>127</sup> [HL Deb 19 October 2020 c1275](#)

<sup>128</sup> [HL Deb 19 October 2020 c1276](#)

<sup>129</sup> [HL Deb 19 October 2020 c1276](#)

<sup>130</sup> [HL Deb 19 October 2020 c1276](#)

available through the Royal College of Physicians to ensure that medical practitioners are more alert to the issues of transgender people.<sup>131</sup>

## 5.2 Women and Equalities Committee inquiry

On 28 October 2020, the House of Commons Women and Equalities Committee launched an inquiry, [Reform of the Gender Recognition Act](#).<sup>132</sup> The Committee Chair, Caroline Nokes (Conservative), asked if the Government's approach goes far enough and said the Committee would be seeking views on other changes, including to the Equality Act. She said:

The Government has said it wants to make the process of applying for a Gender Recognition Certificate “kinder and more straightforward”, make it a fully online process, and reduce the fee. Which is progress – but is it enough? We're seeking views about what other changes may be required to improve trans equality: to the Gender Recognition Act, or to other legislation - for example the Equality Act, to support services and facilities, and on legal reforms which could improve rights for gender fluid and non-binary people.<sup>133</sup>

The Committee's [terms of reference](#) were split into two sections:

- the Government's response to the GRA consultation, and
- wider issues concerning transgender equality and current legislation.<sup>134</sup>

The Committee published its report, [Reform of the Gender Recognition Act](#) (PDF), on 21 December 2021.<sup>135</sup>

In an online statement, Caroline Nokes criticised the Government's response and called for it to remove the time period someone must live in their acquired gender, and the need for a diagnosis of gender dysphoria:

The Government took nearly two years to respond to the consultation on an Act that was written at the turn of the millennium. The GRA is crying out for modernisation, and the Government has spectacularly missed its opportunity. This is an area of reform which has attracted strong opinions and debate, but there are areas- such as the removal a time period for living in an acquired gender- which many can agree on. The Government's failure to implement even these changes- made clear in its consultation- suggest its lack of willingness to engage.

Being trans is not an illness. It is imperative that the Government de-medicalise the process of gender recognition by removing the outdated requirement for a gender dysphoria diagnosis. The current response to the

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<sup>131</sup> [HL Deb 19 October 2020 cc1276-7](#)

<sup>132</sup> Women and Equalities Committee, [Women and Equalities Committee launches new inquiry into Gender Recognition Act reform and more](#), 28 October 2020 [accessed 16 February 2022]

<sup>133</sup> Ibid

<sup>134</sup> Women and Equalities Committee, [Reform of the Gender Recognition Act, Call for Evidence](#) [accessed 16 February 2022]

<sup>135</sup> Women and Equalities Committee, [Reform of the Gender Recognition Act](#) (PDF), 21 December 2021, HC 977 2021-22

2018 consultation has amounted to little more than administrative changes. We are now calling on the Government to enact real, meaningful change.<sup>136</sup>

Noting the nature of debate on this subject, the Committee said it took oral evidence from stakeholders with a range of views:

...including trans rights groups and women's rights groups, to ensure we heard arguments both for and against reform, and concerns with other areas including the Equality Act 2010. We are aware that debate in this area has sometimes become extremely toxic, and that many stakeholders disagree on elements of GRA reform.<sup>137</sup>

## Women and Equalities Committee recommendations

The report includes a summary of its recommendations for reform (emphasis in bold added):

There are ... areas within the Act where some stakeholders agree. For example, **removing the requirement for an applicant to live in the acquired gender for two years**, which only entrenches outdated gender stereotypes. The Government should remove this requirement immediately.

We used this inquiry to not only examine the Government's response to the GRA consultation but to explore what we believe reform of the GRA should look like. **The requirement of a diagnosis for gender dysphoria** in order to obtain a Gender Recognition Certificate (GRC) **should be removed**, moving the process closer to a system of self-declaration.

We have carefully considered the arguments for and against the spousal consent provision. The choice to transition by one spouse can, for some, fundamentally change the nature of the relationship and the marriage contract. **The spousal consent provision should be removed in favour of a new approach**, where a full GRC can be issued at the same time as an annulment, if necessary.

We also recommend a review be conducted of whether **the Gender Recognition Panel could be removed and replaced with the Registrar General for England and Wales**. In the interim, more needs to be done to improve the transparency around the operation and role of the Panel.

We reiterate our predecessor Committee's **recommendation for better guidance on the single-sex and separate-sex exceptions** and urge the Government Equalities Office and Equality and Human Rights Commission to **publish guidance immediately**, using worked examples and case studies. We also recommend that **language used across both the GRA and Equality Act be updated to ensure consistency**.

We were also keen to explore some of the wider issues affecting transgender people. We recommend that the Government Equalities Office and Department for Health and Social Care should **develop a healthcare strategy for**

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<sup>136</sup> Women and Equalities Committee, [Gender recognition process urgently in need of reform, say MPs](#), 21 December 2021 [accessed 16 February 2022]

<sup>137</sup> Women and Equalities Committee, [Reform of the Gender Recognition Act](#) (PDF), 21 December 2021, HC 977 2021-22, Summary, p3

**transgender and non-binary people within the next year.** We are extremely concerned that the Government Equalities Office appears to have abandoned the LGBT Action Plan and we urge the **Government to commit to continuing to implement the Plan** across all departments.<sup>138</sup>

While recommending the removal of the requirement of a diagnosis of gender dysphoria to obtain a Gender Recognition Certificate, the Committee recommended there should be appropriate safeguards including keeping the statutory declaration:

The legal recognition process should not involve medical scrutiny but strong legal safeguards. Appropriate safeguards are essential to ensuring that the rights of natal women and the use of the single-sex and separate-sex exceptions in the Equality Act 2010 are protected. Therefore, it is appropriate to retain the statutory declaration, as well as introduce additional legal tests. It would also be possible to police statutory declarations more strictly, and to bring prosecutions for fraudulent declarations if it becomes apparent that the person had no real intention of living in the acquired gender.<sup>139</sup>

The Committee recommended “robust guidance” on how a system of self-declaration would work in practice, adding:

For example, male prisoners with a record of sexual assault or domestic violence, who self-identify as a woman, should not be transferred to a woman’s prison.<sup>140</sup>

## 5.3

### Westminster Hall petition debate

A petition on the Government’s petitions website [calls for the GRA to be reformed](#) to allow transgender people to self-identify their gender without the need for a medical diagnosis, to streamline the administrative process, and to allow non-binary identities to be legally recognised.<sup>141</sup> It closed on 24 January 2021 with 137,271 signatures.

The Government responded on 7 October 2020, reiterating the view set out in response to its consultation on reform of the GRA.<sup>142</sup>

The House of Commons will debate this petition on 21 February 2022.

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<sup>138</sup> Women and Equalities Committee, [Reform of the Gender Recognition Act](#) (PDF), 21 December 2021, HC 977 2021-22, Summary, pp3-4

<sup>139</sup> Ibid, para 96. The Women and Equalities Committee uses the term ‘natal women’ in its report. This term generally refers to individuals whose sex at birth was recorded as female.

<sup>140</sup> Ibid, para 97

<sup>141</sup> UK Government and Parliament Petitions, [Reform the Gender Recognition Act](#) [accessed 16 February 2022]

<sup>142</sup> Ibid

## 6 Scottish Government consultation on reform of the GRA

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

The Scottish Government consulted separately on reforming the process for achieving legal gender recognition in Scotland.

### 6.1 Scottish Government consultation

The Scottish Government's consultation, [Review of the Gender Recognition Act 2004](#) (PDF), ran from 9 November 2017 to 1 March 2018.<sup>143</sup> It sought views on whether and how the GRA should be amended in relation to the law in Scotland.

The Scottish Government set out its initial view that, subject to views expressed during the consultation, Scotland should adopt a **self-declaration system** for legal gender recognition. This would mean removing the need for applicants to demonstrate a diagnosis of gender dysphoria and proving a period lived 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>[144]</sup> And the arrangements would be less intrusive and onerous from the perspective of applicants<sup>145</sup>

The Scottish Government's proposed reforms also included reducing the minimum age for applying for legal gender recognition from 18 to 16.

The consultation discussed what arrangements should be put in place in relation to applications by, or on behalf of, those aged under 16, and what

<sup>143</sup> Scottish Government, [Review of the Gender Recognition Act 2004 A Consultation](#), November 2017

<sup>144</sup> Scottish Government, [Review of the Gender Recognition Act 2004 A Consultation](#), November 2017, para 3.09 provides information about Resolution 2048 of the Parliamentary Assembly of the Council of Europe

<sup>145</sup> Scottish Government, [Review of the Gender Recognition Act 2004 A Consultation](#), November 2017, para 3.26

recognition should be given to non-binary people. In both these areas, the consultation outlined several potential options and sought views.<sup>146</sup>

There were over 15,500 responses to this consultation. In November 2018, the Scottish Government published an [independent analysis of consultation responses](#).<sup>147</sup>

## 6.2 Scottish Government response

In June 2019, Shirley-Anne Somerville, then-Cabinet Secretary for Social Security and Older People, outlined the next steps the Scottish Government intended to take “both to deliver dignity for trans men and women and continue to address concerns raised about, for example, access to women only spaces”.<sup>148</sup>

The Minister spoke of the concerns raised about the effect of gender recognition reform on the provision and protection of single sex or women only spaces and services:

The Equality Act already allows trans people to be excluded, in some circumstances, from single sex services where that is proportionate and justifiable, including where a trans person has legal recognition. The Government’s proposals to reform the Act will not affect that position.

(...)

This government wants to protect and promote the rights of women. And we want to protect and promote rights of trans people too.

I am a feminist. And I am deeply and rightly proud that this government has taken such clear and concerted action to protect women’s rights and promote gender equality.

I have stated before, as has the First Minister, that I don’t feel a conflict between my support for women’s rights and for trans rights. But I know and I understand that many do.

It is important that we listen to, and address these concerns.

Of course, at their core, these concerns are not about trans women. Rather they are about men who seek to abuse women.

The fear is that some men will misuse trans equality to access women and do us harm. I understand that. I understand that predatory men will always seek to find ways to harm women.

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<sup>146</sup> Scottish Government, [Review of the Gender Recognition Act 2004 A Consultation](#), November 2017, Ministerial Foreword

<sup>147</sup> Scottish Government, [Review of the Gender Recognition Act 2004](#) [accessed 16 February 2022]

<sup>148</sup> Scottish Government, [Statement on gender recognition](#), 20 June 2019

That's not a new problem in Scottish or global society – nor is it a problem created by, or the fault of, trans people.

This government has a duty to address the concern that reforming the process for gender recognition will increase the risks women face from men.

This is something I have sought to do already and will continue to do as we seek to build confidence that achieving equality and dignity for trans men and women is possible without diminishing the rights of anyone else.

In my view, an important aspect of this is to be clear about what the proposed reform of the Gender Recognition Act actually entails - and just as importantly, what it does not entail.<sup>149</sup>

Shirley-Anne Somerville confirmed the Scottish Government's commitment to reforming the GRA and "ensuring the process for trans people to access a gender recognition certificate is in line with international best practice" and, that it should not "result in unnecessary stress".<sup>150</sup>

However, she said she was "acutely aware of how divided opinion is on this issue" and wanted to proceed in a way "that builds maximum consensus and allows valid concerns to be properly addressed".<sup>151</sup>

The Minister announced a draft Gender Recognition (Scotland) Bill would be published later in the year (2019). She said 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.

Shirley-Anne Somerville confirmed the draft bill would not propose legal gender recognition for those under 16 but said the Scottish Government would consider further whether the minimum age of applicants should be reduced from 18 to 16.<sup>152</sup> She said the consultation would also seek views on what support is needed generally for children and young people "uncertain of their gender identity".

Shirley-Anne Somerville also said she did not intend "at this time" to extend legal gender recognition to non-binary people but recognised the need to address issues that non-binary people face:

I intend to establish a working group to 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>153</sup>

The Minister said the Government would develop new guidance that "ensures that policy makers and service providers better understand how to ensure

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<sup>149</sup> Ibid.

<sup>150</sup> Ibid.

<sup>151</sup> Ibid.

<sup>152</sup> Ibid.

<sup>153</sup> Ibid.



that the hard won rights of both women and trans people can be collectively realised”.<sup>154</sup>

## 6.3 Draft Bill and consultation

The [draft Gender Recognition Reform \(Scotland\) Bill: consultation](#) ran from 17 December 2019 until 17 March 2020.<sup>155</sup> The draft Bill would amend the GRA as it applies in Scotland. Its proposals included (emphasis added):

- removing the current requirement for people to apply to the UK Gender Recognition Panel. Instead, people seeking legal gender recognition would apply to the **Registrar General for Scotland**
- **removing** the current requirement for applicants to provide medical evidence of their **diagnosis of gender dysphoria**
- retaining the requirement that **applicants must make a solemn statutory declaration** they have been living in their acquired gender for three months and intend to do so permanently
- introducing a minimum **three month period of reflection** between applying for a Gender Recognition Certificate and confirming the application. This means that the applicant must have lived in their acquired gender for a minimum of six months before a certificate is granted
- retaining the position that a false statutory declaration is a criminal offence and introducing a **new offence of false application** - each with a potential punishment of up to two years’ imprisonment
- reducing the **minimum age** of application from 18 to 16.<sup>156</sup>

Shirley-Anne Somerville said reforms were proposed because the current system was viewed by many wishing to apply for a GRC as “traumatic and demeaning”. She added:

A previous consultation on reform showed a majority in support for our proposals but also some concerns.

Consulting on the detail of a draft Bill and associated impact assessments will, I hope, clearly explain the need for reform and address those concerns.

There have always been trans people in society and for the past fifteen years they have been able to legally change their gender through obtaining a Gender Recognition Certificate.

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<sup>154</sup> Ibid.

<sup>155</sup> Scottish Government, [Gender Recognition Reform \(Scotland\) Bill: consultation](#), 17 December 2019

<sup>156</sup> Scottish Government news, [Gender recognition consultation opens](#), 17 December 2019 [accessed 16 February 2022]

We are proposing to make the current process less stressful whilst continuing to recognise the seriousness of the decision to live your life in a different gender.

Women's rights and protections will be as strong under this Bill as they are today, as we remain committed to protect, respect, and advance the rights of women and girls.

We are not proposing to change the Equality Act or the exceptions within it that protect single sex spaces and services.

Our proposals are in line with the approach taken in a number of other countries, including the Republic of Ireland which has had a similar system since 2015.

We will carefully consider all responses to the consultation and I urge everyone contributing to do so in a considered and respectful way.<sup>157</sup>

An associated [Scottish Government fact sheet](#) provides further information.<sup>158</sup>

There were around 17,000 responses to the consultation.<sup>159</sup> The Scottish Government's work on reform of the GRA was paused during the pandemic.<sup>160</sup>

## Gender Recognition Reform (Scotland) Bill: Analysis of responses to the public consultation

In September 2021, the Scottish Government published an [analysis of responses](#) (PDF) to the consultation on the draft Bill.<sup>161</sup> The document carries this statement:

The views expressed in this report are those of the researcher and do not necessarily represent those of the Scottish Government or Scottish Ministers.<sup>162</sup>

The executive summary identified overarching themes from the responses: views on the tone of the debate, the case for change and the potential impact of the changes proposed:

An area of shared concern was around the **nature and tone of the debate** and dialogue associated with trans issues more widely and the proposals in particular. There was a consensus that the debate has become highly polarised and, from some respondents' perspective, was seen as toxic and

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<sup>157</sup> Ibid

<sup>158</sup> Scottish Government factsheet, [Proposals to reform the Gender Recognition Act 2004](#), 17 December 2019 [accessed 16 February 2022]

<sup>159</sup> Scottish Government, [Gender Recognition Reform \(Scotland\) Bill: A consultation](#) [accessed 16 February 2022]

<sup>160</sup> [SP OR 1 April 2020, c45](#)

<sup>161</sup> Scottish Government, [Gender Recognition Reform \(Scotland\) Bill: Analysis of responses to the public consultation exercise](#) (PDF), September 2021

<sup>162</sup> Ibid, back cover

underpinned by a culture, and in particular a social media culture, in which people are being bullied and harassed by those taking a different view.

It was also suggested both that the Scottish Government has not listened to the concerns and needs of the trans community, and that the Scottish Government listens primarily to the trans community while failing to engage with those who have concerns about the impact of the proposed changes on women and girls or based on their beliefs.

Those who saw a clear and pressing **case for change** often considered that the current approach is outmoded and discriminatory. Both through their own stories and more generally, respondents spoke of the detrimental impact the current approach is having on trans peoples' health, wellbeing and life chances. Some of these respondents cited both international law and best practice in other countries in support of their case for change.

Other respondents took a very different view, namely that the Scottish Government has not provided sufficiently robust evidence to support its case for change and that the 2004 Act does not require amendment. It was frequently argued that the existing system provides important safeguarding measures, is compliant with both international law and human rights obligations, and meets European law. Far from being a minor change, the proposed reforms were seen as a fundamental change to encompass a larger and more diverse group of people than those originally envisaged by the 2004 Act.

A serious concern expressed by many respondents broadly opposed to a statutory declaration-based system was the **likely impact on women and girls**. It was often argued that the consultation paper fails to explain how abuses of a statutory declaration-based system will be prevented. There were particular concerns that the removal of the requirement for a diagnosis of gender dysphoria will make the system open to abuse, allowing predatory men to access women's safe spaces.<sup>163</sup> It was also argued that women's sex-based rights will be compromised, with potential effects on women's sport, medical services, rights to equal pay and women only shortlists.

However, many of those broadly supporting a statutory declaration-based system rejected the idea that the move would be harmful to women, with some of those making this point noting that they were women and feminists.<sup>164</sup>

## 6.4

### Scottish Government Programme for Government

In its Programme for Government 2021-22 published in September 2021, the Scottish Government said it would bring forward the Gender Recognition Reform (Scotland) Bill to reform the gender recognition process in Scotland

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<sup>163</sup> Footnote in quoted text: "Although respondents tended to refer to safe spaces, the Equality Act 2010 refers to separate services: see [Equality Act 2010 - Explanatory Notes](#)."

<sup>164</sup> Scottish Government, [Gender Recognition Reform \(Scotland\) Bill: Analysis of responses to the public consultation exercise](#) (PDF), September 2021, pp ii-iii

“[within the next year](#)” by introducing a system based on applicants making a **statutory declaration**:

The Bill will reform the Gender Recognition Act 2004 to provide a more streamlined process for trans men and women applying for legal gender recognition. Applications would be made to the Registrar General for Scotland instead of the Gender Recognition Panel, a UK tribunal. Applicants would make a statutory declaration that they have lived in the acquired gender for a minimum of 3 months before applying and that they intend to live permanently in their acquired gender. An application could then be determined by the Registrar General after a 3 month reflection period.<sup>165</sup>

The Scottish Government said: “The changes will improve the lives of trans people, while ensuring the legislation doesn’t affect the rights and protections that women currently have under the Equality Act”.<sup>166</sup>

The Bill has not been introduced at the time of this publication.

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<sup>165</sup> Scottish Government, [A fairer, greener Scotland Programme for Government 2021-22](#), 7 September 2021, [Chapter 2](#) and [The Legislative Programme 2021-22](#)

<sup>166</sup> Scottish Government, [A fairer, greener Scotland Programme for Government 2021-22](#), 7 September 2021, [Chapter 2](#)

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