

Gender Recognition Act Consultation
Government Equalities Office
6th Floor
Sanctuary Buildings
20 Great Smith Street
London
SW10 3BT
GRA.consultation@geo.gov.uk

15th October 2018

Re: Response to the public consultation on changes to the Gender Recognition Act in England and Wales

To Whom It May Concern,

This is a response to the UK Government's consultation on changes to the Gender Recognition Act in England and Wales, and is submitted by TransgenderNI, a not-for-profit strategic human rights organisation based in Northern Ireland.

We are the organisation responsible for the running and funding of the Belfast Trans Resource Centre, the only trans community centre in the UK & Ireland, and delivery of consultancy and training services to public authorities on trans inclusion across Northern Ireland. We are members of Transgender Europe and have been expert consultants & contributors on projects at EU/European Commission level and at United Nations level.

This response represents the views of the organisation, as developed through community interaction over the past 24 months in collaboration with other trans community organisations in the region.

Yours faithfully,



Ellen Murray
Executive Director
TransgenderNI

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Response from TransgenderNI to the UK Government's public consultation on changes to the *Gender Recognition Act 2004* in England and Wales

We welcome the UK Government's move to considering changes to the *Gender Recognition Act 2004* (GRA 2004) in England and Wales.

As an organisation based in Northern Ireland, our response is made with that context, and not as an organisation with direct operational activity in England and/or Wales. However, we would argue that changes in that jurisdiction will inevitably have a knock-on effect in Northern Ireland, and hence representation of voices from the region are important and should be closely considered, especially in the context of larger constitutional and supernational discussions around the Good Friday Agreement, and the UK's exit from the European Union and other European mechanisms.

Throughout this response, we make frequent referral to the *Gender Recognition Act 2015* (GRA 2015)¹ in the Republic of Ireland, given its success, accessibility and comparable fitness-for-purpose compared to the GRA 2004. There are, however, a significant number of other countries around the world which rely on a process of self-declaration for legal gender recognition like Ireland, including Malta, Argentina and Denmark among others².

Consent to disclose

We give full and informed consent to the disclosure internally and to the general public of this consultation response in full.

Analysis of Northern Irish access to legal gender recognition

Northern Ireland has been governed by the UK-wide *Gender Recognition Act 2004* since its enactment. This has largely operated the same way as in the rest of the UK, save for some secondary legislation like the *Sex Discrimination (Gender Reassignment) Regulations (Northern Ireland) Order 1999* amendments which were superseded by the *Equality Act 2010* in the rest of the UK but not in Northern Ireland.

Since the enactment of the Irish *Gender Recognition Act 2015*, Northern Ireland has been stuck between two systems due to the mechanisms within the *Good Friday Agreement* and the conventions of mutual recognition between the two states.

Due to the Irish GRA being based on a self-declarative model for adults, and as the lower age limit for recognition in the UK is 18, the UK Government does not recognise the legal gender recognition status of Irish citizens when in the UK unless they have an amended Birth Certificate.

¹ Gender Recognition Act 2015 in Ireland:
www.irishstatutebook.ie/eli/2015/act/25/enacted/en/html

² Transgender Europe legal gender recognition toolkit: www.tgeu.org/laws-for-the-future-statement/

Due to longstanding diplomatic and sovereignty reasons, and the peace process across the island generally, although people born in Northern Ireland are normally entitled to both UK and Irish citizenship, they are only entitled to a UK Birth Certificate.

If a NI-born Irish citizen wants to become legally recognised by both countries of their citizenship, they must apply separately to the UK GRA process, known as the *Gender Recognition Panel*, a statutory regulatory body. They must meet separately the strict requirements of the UK GRA 2004. They may apply for a Personal Public Service number in Ireland, and use that as their basis for a gender recognition declaration using the Irish GRA 2015 process. This will be reflected by the Irish state and legally they will be their acquired gender in the Republic of Ireland.

Similarly to how same-sex marriage works in Northern Ireland, where married couples from the rest of the UK and Ireland are "downgraded" to being civilly partnered when entering Northern Ireland, NI-born Irish citizens will lose their recognition status when they cross the border to Northern Ireland or to the UK generally.

This is because their UK birth certificate will not be amended, as the UK Government and the General Registrar's Office do not recognise Irish Gender Recognition Certificates as fulfilling the requirements of the UK GRA 2004.

In addition, as NI-born Irish citizens are not entitled to an Irish Birth Certificate, unlike some other Irish citizens from outside the modern Irish state, they have no access to recourse to their rights under the *Good Friday Agreement* or to the longstanding peace and cooperative agreements between the UK and Irish governments.

In addition, for the past months, the sole Gender Identity Service for Northern Ireland adults has begun refusing to write reports for the *Gender Recognition Panel*, which is a core requirement for recognition under the UK GRA 2004. This means the majority of trans individuals - those who cannot afford to access private healthcare and subsequent private assessment letters - are unable to access any form of legal gender recognition, which is in contravention of their rights on multiple fronts.

Due to the bar on same-sex marriage in Northern Ireland, forced divorce and forced dissolution (of civil partnerships) is currently a requirement for married or civilly partnered trans individuals who want to access UK gender recognition, which is a unique situation in the UK and Ireland.

Context for our response

Our stance on legal gender recognition generally is laid out on our campaign website, rights2recognition.org.uk. This response follows its recommendations closely.

We are aware that the consultation is very clear in that it is not asking for opinions on some things, for example gender recognition's application to under-18s, its application to Northern Ireland (within the context that the law may change in Scotland and/or England and Wales), and on whether changes to the GRA 2004 should recognise the obligations under the Good Friday Agreement to respect the Gender Recognition Act 2015 in the Republic of Ireland as sufficient for recognition in the UK.

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Regardless, we believe that these three issues should be reflected in the consultation responses sent from Northern Ireland. In particular, we would recommend:

- that gender recognition rights are available on the basis of self-declaration to all individuals from the age of 16 and up
- that these rights are made available to under-16s on the basis of parental/carer consent, or on the basis of demonstrated competency of the child, whichever is the best process for the child
- that such processes are not operated within a medical or psychiatric model but rather as an administrative process
- that these and other reforms to the GRA are available in Northern Ireland through the relevant legislative processes
- that reforms to the GRA should include recognition of Irish gender recognition status in all circumstances

There of course are the specific aspects of Northern Ireland's constitutional and social positions which complicate its relationships with and access to both the UK's GRA 2004 and Ireland's GRA 2015.

There are several things to keep in mind about responding from Northern Ireland due to differences in our legislation, the way public services operate and the impact of devolution on the Gender Recognition Act 2004:

- **We are not governed by the Equality Act 2010**

Although England, Scotland and Wales are governed by the Equality Act 2010 in respect to non-discrimination legislation, this law does not apply to Northern Ireland, as this area of law was devolved to NI prior to its adoption in Great Britain. The *Sex Discrimination Orders* are the pieces of legislation in Northern Ireland which cover sex-based discrimination and rights.

The *Sex Discrimination (Gender Reassignment) Regulations (Northern Ireland) Order 1999*³ amends the sex discrimination legislation in Northern Ireland to also provide trans people with protection.

Protections extend to all persons who intend to, are undergoing, or have undergone a process of gender reassignment as understood in law.

These are broadly similar protections to those guaranteed by the *Equality Act 2010* in the rest of the UK.

- **Gender recognition is devolved to Northern Ireland**

The ministerial remits of the Department of Justice NI and the Department of Finance NI both cover the area of legal gender recognition in Northern Ireland, and so the NI Government could adopt its own reforms to the *Gender Recognition Act 2004* if it wished.

³ Sex Discrimination (Gender Reassignment) Regulations (Northern Ireland) 1999: www.legislation.gov.uk/nisr/1999/311/contents/made

However, due to the collapse of the NI Executive and NI Assembly in early 2017⁴, and continued issues around the reestablishment of devolved government in the region, this is unlikely to materialise anytime soon.

We would therefore argue that even though there may not be a strict duty to legislate to Northern Ireland in this instance, there is a duty to consider carefully how changes in England and Wales may affect Northern Ireland, both positively and negatively.

To be clear, we support changes to the GRA 2004 to make it more accessible and fit-for-purpose, and encourage due diligence with respect to trans people in NI.

- **Gender recognition in Northern Ireland uses the central UK system**

Although NI enjoys devolution over gender recognition in theory, in practical terms the region uses the central UK Government system of the *Gender Recognition Panel* (GRP) to oversee gender recognition applications at present.

- This means that if a self-declarative model is introduced in England and Wales, as we'd like to see, then NI could potentially be left without the mechanism for gender recognition whatsoever if the GRP is dissolved. This is made more likely with the lack of ministerial oversight on the Departments of Justice and Finance in Northern Ireland at present.
- **The Irish *Gender Recognition Act 2015* has been working well for years**

It is important to bring the conversations around gender recognition back down to earth on occasion, as sensationalism around what self-declaration means to women's and children's rights can often get out of hand.

However, we need only look a few miles across the UK/Ireland border to see a self-declaration model of legal gender recognition that has been working well for years.

Indeed, it has been working so well that reforms to make it even more accessible, especially to people under the age of 16 and for those aged 16-17, are underway and are expected to conclude next year.

We refer to the recommendations of the report to the Minister for Employment Affairs and Social Protection in Ireland on the *Review of the Gender Recognition Act 2015*⁵.

We also refer to established international authorities, conventions and professional organisations to support our answers. In particular, in respect to the international *Yogyakarta Principles plus 10* (YP+10)⁶, the following is useful:

"Everyone has the right to legal recognition without reference to, or requiring assignment or disclosure of, sex, gender, sexual orientation, gender identity, gender expression or sex characteristics. ...States shall ensure that no

⁴ <https://www.bbc.co.uk/news/uk-northern-ireland-politics-42608322>

⁵ http://www.teni.ie/gender_recognition_review_report

⁶ <https://yogyakartaprinciples.org/principles-en/yp10/>

eligibility criteria, such as medical or psychological interventions, a psycho-medical diagnosis, minimum or maximum age, economic status, health, marital or parental status, or any other third-party opinion, shall be a prerequisite to change one's name, legal sex or gender."

Regarding the YP+10, we refer specifically to several principles contained within as pertaining to international human rights law and practice:

- Principle 2, the right to equality and non-discrimination;
- Principle 6, the right to privacy;
- Principle 19, the right to information;
- Principle 24, the right to found a family;
- Principle 25, the right to participate in public life;
- Principle 31, the right to legal recognition;
- Principle 32, the right to bodily and mental integrity;
- Principle 38, the right to practise, protect, preserve and revive cultural diversity.

Our response to issues specific to Great Britain

Since Northern Ireland is not governed by the *Equality Act 2010* and other associated items, we defer to the expert organisations in England and Wales as to the questions relating specifically to that Act.

Our response to the specific consultation questions

Q3: Do you think there should be a requirement in the future for a diagnosis of gender dysphoria?



Requiring a diagnosis is not useful, puts up unnecessary barriers for applicants, and discriminates against many in the trans community.

We don't think there should be a requirement for a gender dysphoria diagnosis, or any other diagnosis, for access to legal gender recognition. Countries like Ireland, Malta, Belgium, Denmark, Latvia and Argentina do not require such diagnostic criteria and have generally experienced improved access for trans people as a result.

In particular, across the border in Ireland there have been no issues with their legal system which does not require this diagnosis.

Requiring a diagnosis of a mental health condition to access gender recognition pathologises trans people and places stressed and over-capacity health services into a gatekeeping role, controlling trans people's ability to practice their human and civil rights. This is not the role of gender identity health services nor of the health & social care system generally.

An increasing number of trans people do not wish to access certain forms of transition related care, and so may not be able to access a diagnosis of legal gender recognition.

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However, this does not affect their lived reality and their need for access to rights. In particular, this requirement is incompatible with the rights to private and family life.

We refer to *Council of Europe Parliamentary Assembly, Resolution 2048(2015)*⁷, which states that gender recognition procedures should be quick, accessible, transparent and based on self-determination.

The *Committee of Ministers of the Council of Europe* asked member states to review their gender recognition legislation and remove abusive requirements (*Recommendation to member states on measures to combat discrimination on grounds of sexual orientation and gender identity, 2010*)⁸, which includes the requirement for a mental health diagnosis.

Professional opinion, such as of the *World Professional Association for Transgender Healthcare* (WPATH), clearly states that any barriers to gender recognition should be removed:

"WPATH opposes all medical requirements that act as barriers to those wishing to change legal sex or gender markers on documents. These include requirements for diagnosis, counselling or therapy, puberty blockers, hormones, any form of surgery (including that which involves sterilization), or any other requirements for any form of clinical treatment or letters from doctors."

*(WPATH Gender Identity Recognition statement, November 2017)*⁹

The *World Health Organisation* (WHO) stated in June 2018 that being transgender does not constitute a mental disorder¹⁰. It has subsequently changed the classification code and removed all trans-related diagnoses from the mental health chapter of the *International Classification of Diseases*¹¹, therefore there will be no medical basis on which to make a mental health assessment of a person's gender identity. The newly created diagnosis "gender incongruence" is merely there for enabling access to gender affirming healthcare services. It cannot be used in regulating how a person's gender is recorded. This means that in the near future, a requirement for a diagnosis of gender dysphoria is not a realistic or appropriate metric for determining eligibility to access legal gender recognition.

This requirement also discriminates against people on the basis of disability or health condition; a significant proportion of trans people, including people with learning disabilities, certain mental health diagnoses, and certain physical health problems, are unable to access gender dysphoria diagnoses.

⁷ <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=21736>

⁸ <https://rm.coe.int/168047f2a6>

⁹ <https://tgeu.org/wpath-2017-identity-recognition-statement/>

¹⁰ <https://tgeu.org/world-health-organisation-moves-to-end-classifying-trans-identities-as-mental-illness/>

¹¹ [http://www.who.int/news-room/detail/17-06-2018-who-releases-new-international-classification-of-diseases-\(icd-11\)](http://www.who.int/news-room/detail/17-06-2018-who-releases-new-international-classification-of-diseases-(icd-11))

Q4: Do you also think there should be a requirement for a report detailing treatment received?



Like a diagnosis, a treatment report is an unnecessary step which provides little benefit to the process.

Similarly to **Q3**, we don't think there should be a requirement for a report detailing treatment. This is because this constitutes a serious intrusion into trans people's rights to privacy, and implies a certain requirement for treatment for legal recognition.

Currently, gender identity services, including here in Northern Ireland, are unable to provide these reports as needed¹², so as demand for them increases, this is even more unsustainable as a requirement.

The current protocol in the *Gender Recognition Act 2004* is dehumanising, requiring applicants to justify their genitalia to the government, a process which many find deeply uncomfortable and unsettling.

This requirement is perhaps one of the most blatant breaches of trans individuals' Article 8 (ECHR)¹³ rights to private and family life in the current GRA 2004 procedures and must be removed.

This requirement discriminates against non-binary and gender-diverse people, and people who cannot or don't want to access physical health interventions as part of their transition for various reasons. This can include the protected characteristics of disability, age and religious belief.

The current legislation puts up particular barriers to young people and young adults who may not have the ability to prove their identity or treatment due to issues accessing documentation, and to homeless people who may have lost access to this information. Similarly, any other individuals with difficulties accessing or retaining information safely, for example survivors of domestic violence, this raises unnecessary barriers to recognition.

Other jurisdictions, for example most closely in Ireland, have not found any ill effects from the lack of requirement for such a report.

Q5A: Do you agree that an applicant should have to provide evidence that they have lived in their acquired gender for a period of time before applying?



This requirement needlessly opens trans people up to harm while no measurable benefit.

We don't think there should be a requirement to prove a social gender transition in order to access legal gender recognition. This is an important step in reducing trans people's experiences of hate crime and incitement to hatred.

¹² Belfast Health and Social Care Trust, September 2018

¹³ https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf

Currently, gender identity services in Northern Ireland require a process of "living in role" to access certain forms of treatment¹⁴; we see this as having significant detrimental impacts on many trans individuals, and in particular this requirement opens trans people up to hate crime by making them come out socially before they are ready to.

This requirement places the burden of proof on trans individuals to explain and justify their gender identity, and inherently involves criteria of gender stereotypes. For example, a trans man who is particularly feminine or flamboyant may have significant difficulties persuading professionals that he meets the criteria of "living in role". This is a barrier experienced consistently within healthcare services and legal systems today.

This provision also doesn't provide access for people who need to change how they present in various situations due to safety – for example, someone who can't come out to an abusive family member, or in a workplace they need to stay at due to housing costs.

Young people often can't meet the requirements due to lack of agency and limited access to records. If they are living at home, it can endanger their safety if their parents aren't supportive by forcing them to present consistently despite the harassment faced in their home from family members.

We would therefore argue that such a requirement is unethical, and also constitutes a breach of an individual's rights to private and family life.

Ireland and other jurisdictions with a self-declaration model of gender recognition have not noted any downsides from lacking a social transition requirement.

Q5D: If you answered no to (A), should there be a period of reflection between making the application and being awarded a Gender Recognition Certificate?

No We don't think there should be such a time delay. Such a requirement infantilises trans individuals and is out of the ordinary in terms of how other permanent changes in trans people's lives are changed. For example, name changes, record changes, and access to healthcare interventions do not require such a reflection period. Any risks associated with a lack of such a period can be removed by making certificates revocable for minors and amendable for adults. This is similar to the recommendations to the Irish Government for updating their 2015 Act.

The Ireland gender recognition system has been operating successfully for the past 3 years without this requirement. It's going so well that it's currently being updated to make it even more progressive, with even less requirements placed on trans people to 'prove' their gender.

¹⁴ Belfast Health and Social Care Trust, 2016

Q6A: Currently applicants for a gender recognition certificate must make a statutory declaration as part of the process. Do you think this requirement should be retained, regardless of what other changes are made to the gender recognition system?

No

Requiring statutory declarations involves extra costs and provides little benefit. It hard-codes gender stereotypes into law, and places the burden on trans individuals to comply with those.

Similarly to how changing your name doesn't prevent you from changing your name in the future, though changing your name for fraudulent purposes is prohibited, we think that legal gender recognition should not be irrevocable or amendable should an applicant require this. Particularly for non-binary people who currently have binary legal gender recognition in the UK, it may be very important for them in future to amend their Gender Recognition Certificate to reflect their more correct gender identity.

A statutory declaration is connected to criminal prosecution should that declaration be acted against in future. For example, a trans person who acquires recognition in law as female but happens to dress more masculine or butch may find herself at risk of legal complications by anti-trans or personally-driven individuals who argue that she is not compliant with her statutory declaration.

Particularly in the case of young people and young adults, such a requirement sets their legal identity in stone for the rest of their lives, which is far from ideal, as self-development and learning is an important part of growing up, including in the area of understanding your trans identity and what it means for your life.

Requiring statutory declarations involves extra costs and provides little benefit. It hard-codes implied gender stereotypes into recognition law and places the burden on trans individuals to comply with those, which is not compatible with their rights to private and family life.

Q6C: If you answered no to (A), do you think there should be any other type of safeguard to show seriousness of intent?

No

We recommend that recognition status is revocable or amendable upon a second application where it is reasonable to do so.

Similarly to how changing your name (formally or informally) for fraudulent purposes is against the law and subject to criminal prosecution, we think that the process of declaring intention to obtain legal gender recognition through an application form provides adequate protections for showing seriousness of intent. Since gender recognition is not required to provide trans people access to single-sex services and single-sex spaces, this is not relevant to those discussions.

We recommend that recognition status is revocable or amendable upon a second application where it is reasonable to be so. For example, the theoretical person who mistakenly applies for gender recognition may be better served to be able to reverse

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this recognition than withholding that recognition in the first place, similar to how name changes in the UK work currently.

Q7: The Government is keen to understand more about the spousal consent provisions for married persons in the Gender Recognition Act. Do you agree with the current provisions?



No one has the right to determine someone else's identity, either through veto or consent.

The current provisions – which give a trans person's spouse a veto over their gender recognition – provides a partner with even greater power than the gender recognition panel itself to control and determine a person's gender recognition process. This gives power to, for instance, abusive spouses to completely halt their trans partner's legal transition, as well as unnecessarily delaying the process for accessing legal gender recognition if the dissolution of marriage is underway. If the spouse is unable to be contacted or unable to provide consent for the gender recognition, the process could be delayed even further due to lack of ability to access consent.

In Northern Ireland, the ban on same sex marriage makes forced divorce a requirement of any married trans person who wishes to undergo the gender recognition process, regardless of their or their spouse's wishes regarding their own marriage. This is a violation of the right to private and family life, and the forced divorce of married couples in NI should not be a feature of any reform of the Gender Recognition Act.

We think that the reform should follow the Irish model of gender recognition, wherein no one has the right to determine someone else's identity, either through veto or consent – neither a gender recognition panel nor a spouse.

Q8: Do you think the fee should be removed from the process of applying for legal gender recognition?



Trans people are often on low/restricted incomes and are more likely to live in poverty than cisgender (non-trans) people.

Poor mental health, discrimination in education and employment, youth homelessness due to family rejection, reliance on disability benefits and many other factors can all contribute to low incomes in the trans community especially. Hence, any costs incurred by the gender recognition process, including but not limited to an application fee, will likely be outside of the financial capacity of trans people in these situations, and will result in a class divide in terms of access to this legal chance.

Q8C: What other financial costs do trans individuals face when applying for a gender recognition certificate and what is the impact of these costs?

There are a multitude of financial costs faced by trans individuals who wish to access legal gender recognition. These include:

- Statutory declaration process
- Medical reports; in Northern Ireland, the gender identity services no longer provide reports for the GRA process; this is now only available at large expense through the private sector
- Data subject access request fees
- Postage costs
- Administrative costs to organisations providing legacy records
- Travel costs
- Loss of income due to application for documents happening only during business hours

This means that trans individuals on a lower income – which, as is explored in Q8, is more likely to be the case than it is for cisgender people, for a myriad of reasons – may be completely unable to access gender recognition, again creating a class divide in terms of access to the process.

Q9: Do you think the privacy and disclosure of information provisions in section 22 of the Gender Recognition Act are adequate?



There are currently too many opportunities for people's rights to private and family rights to be breached, and this poses a danger to trans individuals.

There are limited reasons why an individual with legal gender recognition should be outed without their consent. Although many trans people with legal gender recognition are very open about their trans status in day-to-day life, others consider their trans status to be very private and personal, either for their individual personal reasons or for the purposes of safety, security of employment, or for housing security in the private sector etc.

The current Section 22 provisions provide a number of areas where a trans person's gender recognition status can be revealed, but we believe these provide too many opportunities for people's rights to private and family life to be breached, and represent too many opportunities for people to be lawfully outed. Someone's legal gender does have impacts on some areas, for example in some criminal convictions and a very, very slim area of employment law, and we recommend that disclosure in court proceedings should only happen where there is a demonstrable public benefit or other substantiated and proportionate reason why such private and sensitive information should be made

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known. An exception to this is when an individual with a Gender Recognition Certificate wishes to disclose that fact willingly and freely.

Q11: Is there anything you want to tell us about how the current process of applying for a GRC affects those who have a protected characteristic?

Trans people in the UK have a huge range of intersecting experiences, identities and traits, many of which fall under the definition of protected characteristics. These characteristics can have a huge impact not only on ability to access a Gender Recognition Certificate (GRC), but also the want or need for a GRC or the significance of a GRC to an individual.

Protected characteristics, and their relationship to the GRC, include:

Age

The consultation explicitly states that the UK government is not considering removing the barrier to accessing a GRC for under 18s. By ruling out any avenue for gender recognition for this age group, the process itself remains inherently discriminatory on the basis of age, which is a protected characteristic under UK law.

Further, young people – including those who are over 18 – often struggle to access the documents necessary to successfully apply for a GRC under the current provisions due to lack of agency when they are underage. This makes the process often completely inaccessible for many young people.

For older people, the diagnostic requirement for gender dysphoria and period of time “living in role” presents problems due to reduced ability to engage with formal health services for such a diagnosis, and for older people in care environments or who are living with unsupportive family members etc, their freedom to express themselves socially, or “live in role”, may be prevented or stigmatised.

We refer to children's' rights enshrined in the *UN Convention on the Rights of the Child* (UNCRC), especially the rights under:

- Article 2, the right to freedom from discrimination;
- Article 3, the requirement for adults to act in the best interests of the child;
- Article 5, the right to decision making with evolving capacity;
- Article 7, specifically relating to the right to a name and legal recognition;
- Article 12, the right for children to express their views and to have those views respected;
- Article 16, the right to privacy;
- Article 19, protection from violence, abuse and neglect;

The *Council of Europe Commissioner for Human Rights* has written in strong support for accessible gender recognition processes for children¹⁵.

¹⁵ <https://www.coe.int/be/web/commissioner/-/lgbti-children-have-the-right-to-safety-and-equality?desktop=true>

The *Parliamentary Assembly of the Council of Europe Resolution 2048 (2015)*¹⁶ calls on member states, which includes the UK, to, with respect to legal gender recognition:

- develop quick, transparent and accessible procedures, based on self-determination, for changing the name and registered sex of transgender people on birth certificates, identity cards, passports, educational certificates and other similar documents; make these procedures available for all people who seek to use them, **irrespective of age**, medical status, financial situation or police record;
- ensure that the best interests of the child are a primary consideration in all decisions concerning children;

(emphasis added)

Disability

The requirement for diagnosis or treatment presents massive barriers to some disabled people, particularly those with learning disabilities, some psychosocial disabilities like certain mental health diagnoses, or chronic physical health conditions may prevent people from either accessing the diagnostic services in the first place, or from accessing the treatment they need or want to access as part of their medical transition.

The current process is heavily bureaucratic and very detailed, requiring high levels of concentration and organisation, which is a significant access barrier for many disabled people and people with chronic health conditions.

Those with a history of poor mental health, and especially those with diagnoses of certain personality disorders, may find it difficult or impossible to achieve the diagnosis or reports required to access the current legal gender recognition system due to how their identity is pathologised as a “symptom of their mental health problem” or other problematic reasons.

Marriage and Civil Partnership

As noted in the answer to Question 7, the existence of a spousal consent mechanism ensures that those who are married – especially if it is to an abusive or transphobic spouse – can potentially be denied access to a Gender Recognition Certificate on the basis of whether their spouse wants them to have one.

Northern Ireland, as explored in Question 7, maintains a ban on same sex marriage and therefore places a requirement of forced divorce on married trans people and forced dissolution on civilly partnered trans people. This makes the process of gender recognition inaccessible to those who wish to remain married to their spouse in Northern Ireland, as well as violating their right to family and private life.

Pregnancy and Maternity

Pregnancy, whether historic or planned in the future, can be used by professionals involved in the gender recognition process to deny a Gender Recognition Certificate to any trans person with the capacity to get pregnant, as can be viewed as ‘not living in role’, and thus not compliant with requirements for RLE (real-life experience).

¹⁶ <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=21736>

This is a breach of the right to family and private life, and ensures that those who fall under this protected characteristic are denied access to Gender Recognition Certificates.

Race

Through the binarised Gender Recognition legislation, as well as in wider society, white, westernised and racialised gender roles and expectations are forced upon black people and other people of colour living in the UK.

There are specific implications for people from certain cultural backgrounds regarding the lack of non-binary recognition as many cultural gender roles and identities do not fit into male or female "living in role" requirements or expectations.

Religious belief

Trans people of religious faiths which require or usually involve practices or traditions relating to gender can have significant problems using the current legal gender recognition system while practising their faith.

Due to requirements of "living in role" as well as the required timelines, this can impact upon expectation of gender roles, expression, and presentation, forcing trans people from non-Christian backgrounds to conform to white, westernised gendered expectations.

Sex

Currently, intersex people have no route to legal gender recognition if their sex assigned at birth differs from their gender identity. As with trans people, intersex people can identify as male, female, or as a non-binary gender identity. There is no option for a third gender marker, for those intersex people who may wish to avail of it.

Intersex people often encounter significant problems trying to access medical treatment through Gender Identity Services, which excludes them from diagnoses and treatment, and therefore eligibility to apply for a Gender Recognition Certificate.

We would argue that intersex people, especially those who underwent non-consensual medical interventions should not have the burden of proof placed upon them to prove their identity, and that therefore the current diagnosis-based model is not compliant with intersex people's rights.

Sexual Orientation

Although improving, there is still an assumption within some gender identity services and parts of civil society that trans people must or ought to identify as heterosexual post-transition (for example, a trans man recognised as male only forming relationships with women), and due to current healthcare professional reports being required for recognition, in a minority of cases sexual orientation may form an explicit or implicit part of decisions made around legal gender recognition.

Lesbian, gay, bisexual and asexual people often dress and express themselves differently as part of being part of an LGBTQ/queer culture, and this often conflicts with requirements of "living in role" as someone's gender.

Q12. – Q19.

These questions are not applicable to Northern Ireland as we are not governed by the Equality Act 2010.

Although legal gender recognition can affect people's access to single sex spaces in limited circumstances, the vast majority of current inclusion/exclusion practice in Northern Ireland is based on people's gender expression and how they engage with services, rather than whether they have processed through legal gender recognition or not.

As non-discrimination and rights law is broadly similar but significantly different in Northern Ireland compared to the rest of the UK, we would encourage you to check out resources from trans advocacy organisations in England and Wales for advice on this.

We endorse the responses by *Stonewall*, *Gendered Intelligence*, *Mermaids* and the *Gender Identity Research and Education Society* on these questions.

Q20: Do you think that there need to be changes to the Gender Recognition Act to accommodate individuals who identify as non-binary?



Legal recognition is an important step in ensuring the ability for non-binary people to both be included, and to participate, fully in public and private life.

We absolutely support the rights of non-binary trans people to be legally recognised and have the same rights as other trans people in law.

Lack of legal recognition directly impacts how non-binary people are treated in their day-to-day lives. It means that almost all service provision assumes that everyone is only a man or a woman, all employers assume that everyone is only a man or a woman, and all identification provided for Northern Irish citizens declares people as only a man or a woman. Legal recognition is an important step in ensuring the ability for non-binary people to both be included, and to participate, fully in Northern Irish life. This is true in other jurisdictions too, including in England and Wales.

We refer to results and report of the *Scottish Transgender Alliance Non-Binary Survey* in 2015 for strong reasoning why non-binary recognition is important, from within a context mostly relating to jurisdictions covered by the *Equality Act 2010*.

Our recommendations would be to:

- Allow people with non-binary gender identities to have their gender accurately recorded on their birth certificates.
- Introduce a third legal gender category, to reflect the recognition of non-binary people. Subsequently, ensure that:
 - New legislation is written in a way that is inclusive of non-binary people.
 - Existing legislation is interpreted appropriately to include non-binary people where relevant.

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Q22: Do you have any further comments about the Gender Recognition Act 2004?



Legal gender recognition is an important process for many trans people, and making that process accessible is important and meaningful.

The current legislation is not fit-for-purpose as it does not provide for children and young people, recognise non-binary people, it does not operate with a human rights approach and it will not adapt to the changing needs of trans communities.

We recommend in the strongest possible terms to please take a look across the water to Ireland, a jurisdiction with very similar legal systems, and with a lot of shared history, and with a shared population with Northern Ireland, to see how truly accessible legal gender recognition can be, and how successfully it can operate and adjust when done right.

After this consultation, we will continue to campaign for fit-for-purpose, accessible and inclusive gender recognition legislation in Northern Ireland that will allow trans people to access their full rights under the law.

We're asking for recognition that places trans people's rights, genders and autonomy back into the hands of our community. We want privacy rights, protection from discrimination and recourse to justice.

Contacting us

If you need to get in touch with us about anything in this response, please feel free to do so at:

TransgenderNI
Belfast Trans Resource Centre
98 University Street
Belfast
BT7 1HE

(+44) 0300 302 3202
info@transgenderni.org.uk

transgenderni.org.uk [@TransgenderNI](https://twitter.com/TransgenderNI) [/TransgenderNI](https://facebook.com/TransgenderNI)