

# Gender Recognition Act reform: why the government is failing transgender people



*Natalie Gamble* NGA Law

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*Have inaccurate concerns about the GRA, and about trans rights, scuppered the movement for reform?*

In July 2018 the government announced its plans to review the “bureaucratic and intrusive hurdles” faced by transgender people wishing to change their legal gender. Announcing the launch of a 16-week public consultation in England & Wales and Scotland, Theresa May, then prime minister, said: “Transgender people across the UK find the process of legally changing their gender overly bureaucratic and invasive. I want to see a process that is more streamlined and de-medicalised – because being trans should never be treated as an illness.” Dawn Butler, shadow equalities minister, welcomed the consultation but criticised the government for taking its time having promised reform during Pride 2017. All the momentum was toward progressive reform.

More than two years on we are in a very different place. Liz Truss, minister for women and equalities, finally gave a written statement to Parliament on 22 September 2020 on the outcome of the 2018 consultation, confirming that the

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government will not pursue any substantive reform and will only make minor administrative changes to the current Gender Recognition Act (GRA) process. Although Scotland looks likely to follow a more progressive path, this is incredibly disappointing for trans people in England and Wales.

## What is the GRA?

The GRA was, in 2004 when it was passed, an important legal landmark. It enabled trans men and women, for the first time, to apply for a gender recognition certificate (GRC) to change the gender recorded on their birth certificate and thus secure a “whole of life” identity in their identifying gender.

Using the Gender Recognition Act, trans people in the UK can apply for a Gender Recognition Certificate (GRC). They must prove they have lived in their “acquired gender” for at least two years, and provide medical evidence from a doctor to confirm they are suffering from gender dysphoria. If they are married, their spouse must give permission. A Gender Recognition Panel (which doesn’t meet them) considers their application and, if satisfied, grants a GRC which enables the trans person to change the gender recorded on their birth certificate from male to female or vice versa.

Obtaining a GRC is the path to changing a birth certificate, but is not a pre-requisite to changing gender identity more widely. Trans people can lawfully change their names, appearance and the gender markers on their other UK identification documents (including driving licences and passports) simply by choosing to do so.

## Why does the GRA need updating?

The process of getting a GRC is widely considered to be unnecessarily burdensome and out of step with modern understanding of gender identity. As Theresa May highlighted, the requirement for medical evidence suggests that being trans is an illness rather than a facet of personal identity. Various other countries around the world – including Malta, Norway and Ireland – have introduced processes for

changing gender identity which are based on trans people's ability to determine their own gender and which therefore afford trans people greater respect and acceptance.

There are other problems with the GRA too, including the spousal veto which (at least in England and Wales) can block a trans person from changing their birth certificate if their husband or wife does not give permission. The Act also only includes male and female genders, and so excludes trans people who identify as non-binary. Section 12 of the GRA (which says that a trans person who changes legal gender does not lose their status as the "mother" or "father" of a child) has also proved problematic in its failure to anticipate the scenario of trans people conceiving children after changing gender. Earlier this year the Court of Appeal ruled that Freddy McConnell (a trans man who was legally male and had given birth to a child) could not be recorded on his son's birth certificate as the "father" or "parent" and had to be registered as the "mother" (*Re TT* [2020] EWCA Civ 559).

## What is happening with reform?

The government consultation ran from July to October 2018 and 100,000 individuals and organisations responded, showing overwhelming support for reform:

- 64% of respondents supported abolishing the requirement for a gender dysphoria diagnosis;
- 80% supported abolishing the need for a medical report;
- 79% said trans people should not have to evidence they had lived in their "acquired gender" for a specific period of time; and
- 85% wanted to abolish the spousal veto.

However, the government has decided not to pursue any of the reforms it asked for views on. The minister's statement has confirmed that the government (at least in England) now intends not to change the requirement for medical evidence, the spousal veto or the process of applying to a Gender Recognition Panel. Instead it will enable applications to be submitted online and will reduce the current £140 fee to something "nominal". This meagre administrative reform hardly seems worth the effort of a public consultation and is surprising given the then prime minister's clear commitment to reform in 2018.

## Why did the government change its mind?

Of course we have a different government now with new priorities, and things change in politics. But the last three years have also seen a significant uptick in negative discourse around trans issues in the UK, given an additional spotlight recently by the support expressed by high-profile author JK Rowling. Concerns raised by 'gender critical' opponents of trans rights include that vulnerable adolescents may too readily make life-altering decisions

they later regret, and that dangerous or imposter trans women may seek to access single-sex spaces like bathrooms and women's refuges and assault other women. In fact, the evidence shows that trans adolescents struggle to access the support they need, face significant discrimination and have a very high rate of suicide (see the Stonewall School Report 2017 at [www.stonewall.org.uk/system/files/](http://www.stonewall.org.uk/system/files/)

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*the\_school\_report\_2017.pdf*). Research into the experiences of those working in women's refuges has also shown that they are much less concerned by the risk trans women pose (given the careful safeguarding procedures they use to protect all women in their care) than by the risk of abused trans women not having access the refuges they needed (see "Supporting trans women in domestic and sexual violence services: interviews with professionals" at [www.stonewall.org.uk/system/files/stonewall\\_and\\_nfpsynergy\\_report.pdf](http://www.stonewall.org.uk/system/files/stonewall_and_nfpsynergy_report.pdf)).

In any event, these issues have very little to do with the GRA, which is an administrative process to change a birth certificate. No one has to show their birth certificate to use a bathroom or access a women's refuge, and the law governing access to single-sex spaces is governed by different legislation – the Equality Act 2010 – which was not the subject of this consultation. and no one has to show their birth certificate to use a bathroom or access a women's refuge. The only people affected by the GRA are those who need to use it, and there is every reason to ensure the law is modern, compassionate and effective so that it meets their needs. If inaccurate concerns about the GRA and about trans rights has won traction, or at least raised enough prospect of controversy to make the government nervous, that is a tragedy. England has for many years been a leader in progressive LGBT+ rights, and its failure to protect the rights of a minority group which faces significant discrimination is very worrying. As family lawyers, we should use our voices to encourage the government to reconsider and give effect to reform which has been endorsed by a public consultation and is long overdue.

Natalie@ngalaw.co.uk 