

To whom it may concern,

Attached is Gendered Intelligence's organisational response to the consultation opened in July 2018 on the Gender Recognition Act (GRA).

Gendered Intelligence is a not-for-profit community interest company (CIC), the mission of which is to increase understandings of gender diversity across all sectors. Our vision is of a world where people are no longer constrained by narrow perceptions and expectations of gender, and where diverse gender expressions are visible and valued.

We work closely with the trans community and those who impact on trans lives. We particularly specialise in supporting young trans people aged 8-25. Our response to the Gender Recognition Act is informed by our work with our stakeholders and their wide range of diverse experiences. It is these expert voices on gender recognition that should be heeded to form a robust and meaningful response to the Act's unforeseen failings, especially around its model of binary gender and exclusion of under-18s. In addition to collaborative learning from other LGBTQI organisations, we have worked closely with 80 members of our youth groups, listening to their needs and what *they* think needs to change. The responses are in no way shocking: open up the legal gender recognition process to under-18s, include non-binary identities, reduce the stigma and remove the forced medical pathway for trans people to be acknowledged.

Whilst we have been somewhat dispirited by factions opposed to reform, we remain buoyed by the incredible support of those we work with, and the support of human rights experts internationally and at home. We look forward to working closely with the Government Equalities Office – and other relevant departments – on next steps to ensuring authentic autonomy for all gender diverse people in the UK, both under the auspices of the Gender Recognition Act and more widely.

Yours faithfully,

Cara English
Policy Engagement Officer
Gendered Intelligence

Question 1: If you are a trans person, have you previously applied, or are you currently applying, for a Gender Recognition Certificate? If yes, please tell us about your experience of the process. If no, please tell us why you have not applied? If you have applied, were you successful in obtaining a Gender Recognition Certificate?

Many of Gendered Intelligence's staff and service users, and the staff and service users of the organisations we work with, are trans men, trans women and non-binary people. Some of this diverse group have applied for and obtained a Gender Recognition Certificate. However, many have felt a lack of desire or wherewithal to go through what is currently seen as a fairly arduous process.

Of the above group with a Gender Recognition Certificate (GRC), most stated that the process of obtaining it was one of trepidation, fraught with insecurity as to when they might be 'tripped up' or have some other roadblock put in their way. Others still had an experience of an easy, seemingly streamlined process. With lack of external clarity as to how the process works, with particular opacity around who makes decisions and how, it seems there's no uniform process for all, with decisions being made arbitrarily and, it seems, often randomly.

We have heard that for some people, getting a GRC is a big part of their being accepted by the Government as themselves, affording them the external recognition in their gender that's often necessary, especially around bureaucratic needs. Other trans people have applied for a GRC and had their claim denied spuriously – for example, a psychiatrist's letter has had a date of treatment written on it but was off by a few days of what the GRC applicant themselves had written.

One young trans person (14) who Gendered Intelligence supports recently told us, "I haven't yet applied for a Gender Recognition Certificate because of the age restriction. I do agree about taking time to understand yourself, but some people understand at a younger age."

We fully support young trans people in their journey, and advocate for a system which would allow them a system of self-determination. It's important to note that whilst some young trans people are in flux and questioning their future pathway, some have persistently and consistently reaffirmed their gender identities over several years; a willed ignorance of their surety only serves to negate their identities in a very real way.

Question 2: If you are a trans person, please tell us what having a Gender Recognition Certificate means, or would mean, to you.

A Gender Recognition Certificate (GRC) would mean, for many, a legal recognition in the gender people already know themselves to be. Practically and, perhaps most importantly, it would allow people to update all their documentation, including with HM Revenue and Customs, in line with their identities; and allowing them the full privacy as proclaimed by Article 8 of the European Convention

of Human Rights. It would potentially spell the end of having to constantly ‘out’ yourself as trans, potentially putting yourself in physical danger, when having to present a birth certificate that hasn’t been updated. A GRC allows for what are effectively minor bureaucratic changes so that a trans person’s documentation is uniform across the board.

A Gender Recognition Certificate for young trans people would mean the ability to be taken seriously in their gender, for others to recognise that there can be no scope for discrimination or bullying as the law is on their side. Further, this recognition within educational settings would lessen mental ill-health amongst young trans people, remove the stress of constant negotiation with administrators for gender marker change and ensure exam certificates are future-proofed by having the correct name listed on them.

A Gender Recognition Certificate would allow for more trans people to marry in their self-determined gender, as opposed to having no option but to use one with which they no longer align. In addition, the ‘contracting words’ in a marriage in England and Wales are legally limited to “wife” or “husband”. Reforming the Gender Recognition Act to embrace non-binary identities may have the knock-on effect of including “spouse” as a more inclusive, all-encompassing option for those who want it.

If the legal gender process were to recognise the reality of non-binary people’s existence, and allow for a third gender, no gender, other gender or ‘x’ marker on an updated birth certificate, it would in effect act as a celebration and legal validation of those lives. A Gender Recognition Certificate for non-binary people would show that the UK Government takes the needs of all of its citizens seriously, and its obligations to adhere to international human rights protocols and legislation around privacy and right to family life. A Gender Recognition Certificate available to and inclusive of non-binary people would see their existences being validated and affirmed by government. It would bring the UK if not to the forefront of international best practice, then at least in line with other jurisdictions’ processes as opposed to languishing in the past. Canada and Australia are two Commonwealth nations that allow for non-binary or gender-neutral markers on official documentation such as passports. The Women and Equalities Committee’s report on Transgender Equality states that any consultation on the GRA “must look into the need to create a legal category for those people with a gender identity outside that which is binary and the full implications of this”.¹

Intersex UK, the leading organisation for intersex people in the UK, is calling for the Government to reform the “Gender Recognition Act to explicitly include intersex [or variations of sex characteristics] and uphold the fundamental rights of self-determination and privacy”.

¹ <https://publications.parliament.uk/pa/cm201516/cmselect/cmwomeq/390/390.pdf>

Question 3: Do you think there should be a requirement in the future for a diagnosis of gender dysphoria? Please answer YES or NO. Please explain the reasons for your answer.

No.

Gendered Intelligence wants to see a legal gender recognition process that de-pathologises and demedicalises trans lives and experiences. Cisgender (non-trans) people do not have to 'prove' their gender to anyone, so trans and non-binary should not have to prove the validity of their identities. Gender identity is simply that, identity, and no other group of people must pass through so many hurdles to have their identities legally recognised and respected.

Gender dysphoria/incongruence has been removed as a mental condition by the World Health Organisation in its ICD-11², so it follows that a diagnosis should hold no weight when it comes to legal gender recognition. Continued requirement of such a diagnosis would have an acutely stigmatising effect on trans communities, wherein dangerous stereotypes of trans people as confused, unstable and unsure can be propagated. It is incumbent on any UK Government to mitigate such widespread miscomprehension of one of its most vulnerable minorities, with GRA reform but one step towards rectifying this. The Government's own hate crime report shows that attacks against trans people have shot up over 32% from 2017-2018, a marked symptom of the aggressive anti-trans atmosphere that's been allowed to take hold.³

Demanding a diagnosis of gender dysphoria would be not just unfair, but unworkable and an example of rigid gate-keeping. One young trans person recently told Gendered Intelligence: "some people don't experience dysphoria constantly. There are many types and people experience different ones at different times and with some people it doesn't impact their lives at all". Gendered Intelligence believes that the current process of legal gender recognition is overly medical and needs to be reformed to rectify this unnecessary incursion into trans people's medical histories.

Whilst we are awake to (artificially magnified) concerns that removing the need for a diagnosis might open up legal gender recognition to all, including fraudulent misuse, we would counter that:

- The reformed process must and will be fraud-proof, with safeguarding processes in-built (legal protections against fraudulent misuse of any reformed legal gender recognition process via GRA)

² <https://icd.who.int/browse11/l-m/en#/http://id.who.int/icd/entity/90875286>

³

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748598/hate-crime-1718-hosb2018.pdf

- People experience gender dysphoria in different ways (some more acutely than others, some barely at all), meaning some sort of universal benchmark couldn't work in practice when determining from a diagnosis whether someone is worthy of having their identity recognised
- Trans people should not have their identities externally and arbitrarily decided upon based on whether they experience dissonance with their physicality, as a specific occurrence of discrimination and 'othering' from their cis peers
- Gender dysphoria is no longer a mental condition per the World Health Organisation, so a future diagnosis of it would not even be 'enforceable' or applicable
- Removing such a need for a diagnosis would relieve stress on the over-worked NHS, whose specialists have better things to do than dole out diagnoses in a culture of performativity, for a box-ticking exercise in placation.

The Council of Europe expressed concern in its 2015 motion that an application for legal gender recognition that requires a diagnosis of mental illness is a “violation of fundamental rights”.⁴ Their recommendations include “abolishing sterilisation and other compulsory medical treatment, as well as a mental health diagnosis”. Many countries have already removed a compulsory diagnosis of gender dysphoria as a result, including Ireland, Denmark and Belgium. There have been no negative repercussions of these changes, only a lessening of the barriers against trans people's access to a fit-for-purpose legal gender recognition process.

For intersex people, many of whom have had a gender identity imposed upon them, the requirement for a diagnosis of gender dysphoria is improper and impossible to meet.

The demand for a diagnosis of gender dysphoria before being afforded the right to legal recognition is underpinned by a paternalism, of others knowing a person better than they know themselves. This is inherently linked to the supposed need of a gender recognition panel, the existence of which is an expensive act in money-wasting and whose work would no longer be needed under a reformed system, freeing up public funds.

Question 4: Do you also think there should be a requirement for a report detailing treatment received? Please answer YES or NO. Please explain the reasons for your answer.

No.

⁴ <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21736&lang=en>

The current report has to be prepared by a registered medical practitioner or psychologist practicing in the field of gender dysphoria. Discounting those who have been struck off or retired, the Government's own list counts a meagre 61 such specialists for the entire country⁵. Per the estimates of the trans population from the Government's National LGBT Survey, this leaves 1 specialist per 8,200 trans people, with those in rural areas disproportionately affected by access issues to these specialists' services. More widely than capacity of the above specialists and physical access to their services, waiting lists make an NHS-funded report difficult to attain in the first place, with private care similarly slow and inaccessible. For capacity reasons alone, the entire demand for a treatment report must be dropped as inherently unworkable.

Moreover, someone's medical history should not factor into whether they are seen as deserving of having their (gender) identity respected.

These reports will go to an unseen panel of strangers, who will make arbitrary decisions on your life based on nothing but some comments made by a doctor you may have met for only a few minutes. The "detailed report" is often nothing more than a list of medical procedures and dates, the sensitivity of which often goes ignored by the Gender Recognition Panel, who externally seem solely interested in corroboration of dates and times.

There is currently a bizarre discrepancy where there is no need to have undergone any aspect of medical transition to apply for and receive a GRC, but you will still need a report detailing this lack of treatment.

The entire process is weighted heavily towards recognition of transitions that involve medicalised pathways, to the detriment of non-medical ones; this likely harks to a now-outdated understanding of trans people's lives and experiences. Decisions are all too often made based on whether someone's transition has been 'medical enough' to tick off boxes. Decisions like these should not be made by a panel in any case, as a trans or non-binary person knows themselves better than a set of strangers ever could.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/710983/t493-eng.pdf

Question 5: (A) 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? Please answer YES or NO. Please explain the reasons for your answer.

(B) If you answered yes to (A), do you think the current evidential options are appropriate, or could they be amended?

(C) If you answered yes to (A), what length of time should an applicant have to provide evidence for? (Choose one option from: Two years or more; Between one year and two years; Between six months and one year; Six months or less)

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

- a) No. We would first raise the issue with the wording of ‘acquired gender’ as though from the aether, and proffer that gender identity is as an inherent an aspect of identity as any other.

There is a question as to how anyone can reasonably be expected to prove they have lived in their ‘acquired gender’ without that documentary evidence having to feed into gendered norms and expectations to placate external assessors. For example, current practice is to detail how long someone has been “living as a man” or “living as a women” by setting out how long ago they changed their name and taking that as the baseline for the start of a legal transition. Similarly, at Gender Identity Clinics across the country, ‘gender dysphoria reports’ will detail people’s clothing and presentation on the days of their appointments, as though these are in and of themselves a marker of gender. This current requirement seems nothing more than gatekeeping by people who have been governmentally deemed the arbiters of gender identity. Twinned with this is the inherent crassness of demanding to know about a trans person’s genitals, notwithstanding this being a flagrant disregard and indeed flouting of that person’s protections under Article 8 of the European Convention on Human Rights.

With many trans people, especially non-binary and gender non-conforming people, a transition may not mean having to necessarily change your name or appearance, nor medicalise yourself. A transition can be a liberation from gendered expectations, rather than a reification, with the current need to prove your gender identity to an external group both unfair and impossible. Our fear is that continued demand to prove living in an “acquired gender” crystallises stereotypes and norms around gender into legal realities.

For many people, the evidential requirements are going to be impossible to reach, for reasons outside of their control. As way of example, young trans people who live at home with their parents are going to have no bills in their names, and so no way of proving they have used their new name officially. There is a similar lack of paper trail for evidentiary requirements for those who have experienced poverty or unemployment (trans people are likelier to be excluded from employment, with 1 in 3 employers unwilling to hire a trans person⁶); and homeless trans people in particular, with 1 in 4 trans people experiencing homelessness at some point in their lives⁷.

d) Gendered Intelligence believes that a period of reflection may be very useful and needed for many people. Others still may have been considering this for many years and know what they're doing, being well-versed and educated in areas that affect them. Any 'waiting period' must not be mandated or replicated in any reformed Gender Recognition Act, being as it is an unnecessary and ultimately useless hindrance. Any application for a Gender Recognition Certificate is realistically going to follow the transitioning person's already having an internal period of reflection. In addition, there's already an in-built waiting time at the moment, where a trans person applies for and must wait for any news on whether they will receive a Gender Recognition Certificate, often being requested to submit additional information or re-confirm information already provided.

If the reformed process is to be robust enough to not have to be fixed again 14 years down the line, it must take into consideration the unique and individual demands from those who are going to use it and work from the baseline that people are who they know themselves to be.

Any theoretical or distant risk of abuse of a system with no waiting period must be weighed against the need and right for legal gender recognition. Gendered Intelligence is firmly of the opinion that this falls heavily on the side of protecting and affirming rights rather than gatekeeping against some trumped-up, fraudulent bogeyman.

With other international systems where there is no mandatory reflection period, there have been no instances of misuse or fraudulent application, and we would see no reason for that to not directly translate onto any proposed system in the UK.

⁶ <https://www.crosslandsolicitors.com/site/hr-hub/transgender-discrimination-in-UK-workplaces>

⁷ <https://www.stonewall.org.uk/sites/default/files/lgbt-in-britain-trans.pdf>

Question 6: (A) Do you think this requirement [statutory declaration] should be retained, regardless of what other changes are made to the gender recognition system?

Please answer YES or NO. Please explain the reasons for your answer.

(B) If you answered yes to (A), do you think that the statutory declaration should state that the applicant intends to 'live permanently in the acquired gender until death'? Please answer YES or NO.

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

a) Yes.

If statutory declarations can act as the main vehicle for a reformed legal gender recognition (LGR) process, their straightforward nature should ensure a lessening of the (currently) excessive burden put on trans people. A statutory declaration helps people know how serious what they're doing is. This is the point at which a reformed LGR process would effectively vet applicants, ensuring the process is being used only by those who have a genuine need for it, and offering assurances to any concerned parties that it cannot be used by those with nefarious aims.

The process of using statutory declaration to inform legal gender recognition needs to be extended to include young people, who are unfairly excluded at the moment by virtue of being under 18. Young trans people are those least likely to be able to afford access to a statutory declaration and so we are recommending that there be special consideration towards this group's economic needs. There may be a system in place that allows for a tiered payment, or the Government may wish to create a list of approved co-signatories who will complete statutory declarations at a reduced or set price, per the existing list of gender specialists.

b) We believe that whilst the declaration should reaffirm that the applicant wishes their legal gender change to be permanent, there is no need to include any mention of death. Each applicant should and will be aware of the permanency of the declaration, and will respond to it as an honest statement of intent. Any system of self-declaration simply needs proper monitoring and administration to ensure smooth running.

We are acutely aware of the need for non-binary recognition to be realised if we're to avoid any situations where a person feels the need (whether perceived or not) to change their legal gender several points over time. In Gendered Intelligence's experience with our service users, people frequently 'come out' as a trans man or trans woman before acknowledging their non-binary

identity. If such a one-time-only process, stating that your legal gender will be “until death”, were to be ratified, the Government would be excluding many people who would effectively transition twice. By simply allowing recognition of gender identities that don’t necessarily map onto ‘male’ and ‘female’, the government should help avoid the pitfalls of increased bureaucracy.

Question 7: 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? Answer YES or NO.

No. The spousal consent provisions allow for what is effectively a spousal veto. This means that a very personal act of self-determination is reduced to something potentially very difficult and fractious, where your spouse is able to effectively block your legal gender change. A shocking 44% of trans people’s spouses have tried to stop their partner’s legal transition, and 29% have made getting a divorce intentionally difficult for their trans partners, according to the LGBT Conservatives’ report on the spousal veto⁸. In addition, more than 7% of trans people are denied any access to the children after they have transitioned.

Moreover, if a trans person’s spouse is going to be accepting and supportive of their transition, they are going to be so regardless, having no desire to forcefully intrude onto their spouse’s autonomy whether legislatively permitted or not. If a trans person’s spouse is unsupportive of their transition and the only recourse is divorce, this is unfortunate but it doesn’t stand that they should be able to block their spouse’s legal gender recognition in the interim.

When equal marriage was being introduced, Scotland had the foresight to remove the spousal veto from the statute books. England and Wales now needs to catch up, not fall even further behind.

One spouse seeking legal gender change continues to be a valid cause for dissolution of a marriage, which clearly stigmatises trans people as ‘other’, and of their status as worthy of ending a marriage. We need to find compromise between trans people being trapped in a marriage that denies them access to legal gender recognition through spousal veto, and trans people’s status branding them as exceptionally worthy of a quick divorce. The message from this legislation is clear: that trans people are deceptive and that spouses must be protected from their partners should they wish to transition. This needs to be amended and removed as a matter of priority.

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https://www.lgbtconservatives.org.uk/sites/www.lgbtconservatives.org.uk/files/report_to_the_consultation_on_the_spousal_veto.pdf

Question 8: (A) Do you think the fee should be removed from the process of applying for legal gender recognition? Please answer YES or NO.

(B) If you answered no to (A), do you think the fee should be reduced? Please answer YES or NO

The Government is keen to understand more about the financial cost of achieving legal gender recognition, beyond the £140 application fee

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

Yes.

A system of legal gender recognition which is fit for purpose is one which is open to as many people who need it as possible, including those with limited financial means. Your ability to have your correct gender legally recognised should not rest on how much money you have, or if you can afford to go through an expensive process. Whilst the current system should be commended for having (albeit limited) concessionary pathways for those unable to afford access otherwise, the process remains too expensive as a whole.

It must be free, or as close to free as is practicable – government should not be profiting from affording its citizens their rights. This is particularly important for younger trans people, who will be excluded if the process is costly, but also more widely as trans people of all ages are often at a crossroads of financial disadvantage and social exclusion. £140 is not a small amount for a great deal of people, and people will be forced to make cuts elsewhere to make ends meet.

For school-age young people in particular, having proper, unimpeded access to the process would mean being able to be treated without discrimination at school. School authorities often use their discretion to mean their personal, often discriminatory attitudes to trans young people translate to school-wide policies. A reformed GRA system would hopefully see scope for this reduced, as any young person with a GRC would then have to be treated according to the gender they know themselves to be. Young trans people are the least likely to have both the money and wherewithal to navigate the legal gender recognition process, despite their demand and need. The current SIMS system means that people have to provide evidence of permanent change, which is very difficult for young people to get in and of itself, but changes to the fees for legal gender recognition may allow wider access.

Charging any sort of a fee for what should be a simple administrative act is not in the best interests of citizens, fringing on the discriminatory where such an act is necessitated by government to afford basic dignities and legal recognition.

c) Other aspects of transition are already prohibitively expensive, without adding insult to injury. For example, trans people will already find themselves out of pocket for updated passports, driving licenses and birth certificates. Notwithstanding additional costs of travel to and from (all too frequently distant) Gender Identity Clinics or specific social support groups, there's also the potential cost of private medical care in absence of a well-functioning, trans-friendly NHS service specification. Linked to this is the need to pay for any reports if a trans person has no ready access to the NHS system (examples: through exclusion through distance or waiting times) and has to seek private care. All of these costs impact substantially and detrimentally to a cohort of people already often forced into the economic margins through systemic discrimination. With 1 in 3 employers saying they wouldn't hire trans people⁹, this group is disproportionately affected by overwhelming financial exclusion, who may in turn find raising enough money to access any LGR process an insurmountable hurdle.

Question 9: Do you think the privacy and disclosure of information provisions in section 22 of the Gender Recognition Act are adequate? Please answer YES or NO. If no, how do you think it should be changed?

No.

There have been no legal test cases to our knowledge, effectively rendering Section 22 in its current form unused and ineffective. We are aware of many instances where the Section 22 provisions to ensure confidentiality and privacy have been flouted, including several where trans people's status and history have been unfairly revealed in national media, with no repercussions or recourse.

Section 22's court exception, allowing for trans people's pasts to be used against them in an attempt at sullyng their character, needs to be removed to stop further misuse. People's trans status is being weaponised by what can be a judiciary interested in sensationalising trans histories to portray a trans person in a bad light, rather than protecting personal and private information for confidentiality.

⁹ <https://www.crosslandsolicitors.com/site/hr-hub/transgender-discrimination-in-UK-workplaces>

The Section is failing in its purpose of protecting people under Article 8 of the ECHR, especially when considering the faulty reasoning that a person has only six months from an instance of Section 22 being breached to legally respond to it.

Question 10: If you are, and you have one or more of the protected characteristics, which protected characteristics apply to you? You may tick more than one box.

There are nine 'protected characteristics' – including age, disability, pregnancy and maternity, race, religion and sexual orientation – which are listed in the Equality Act 2010. This Act protects people from being discriminated against on the basis of any of these characteristics.

Question 11: Is there anything you want to tell us about how the current process of applying for a Gender Recognition Certificate affects those who have a protected characteristic?

Yes.

Gendered Intelligence works with and indeed employs people with a wide range of the protected characteristics of the Equality Act 2010. Our understanding of a GRC application and any interaction with the Equality Act 2010 is that it's important to have an intersectional approach to any response to this question, as people are often affected by their having more than one protected characteristic. Trans identity doesn't exist in a vacuum and whilst below we detail interactions with some of characterises as though they were discrete, people will have several of them apply to them at any one time, with one aspect having no more import than another.

We cover some interactions with selected protected characteristics of the Equality Act 2010 below, but these are in no way exhaustive.

Age

Those who have the protected characteristic of 'age' (and are under 18) are unfairly discriminated against by being excluded from the proper legal gender recognition they deserve and should have access to. When the Scottish government recently consulted on changes to the Gender Recognition Act, 72% Scottish respondents said something must be done to make it easier for those under 18 to access legal gender recognition. This is a clear majority in favour of opening up the process to younger people from the current, outdated age limit of 18.

Gendered Intelligence believes that people are often aware of their gender identity from an early age, and that steps should be taken to ensure all children (whether cis or trans) are comfortable, respected and affirmed in their identity, regardless of their trans history or status. Over half of trans and non-binary young people find their schools unsupportive of their transition. Ireland is in process of moving to a system whereby any trans person under the age of 18 may go through a streamlined legal recognition process with parental consent. In Europe alone, 14 states have a system of legal gender recognition for under-18s. We have a unique opportunity for the UK to reposition itself at the vanguard of a legal gender recognition process in a post-Brexit landscape, reaffirming the UK's commitment to internationally excellent standards of equality.

Gendered Intelligence is asking for a system of legal gender recognition for under-16s through parental application, with the option of application by a capable child where parental consent can't or won't be given. A system of parental application might be best as it works under the assumption that the young person will have parental consent and support, which is ultimately one of the biggest factors in how successful and happy a transition is for a young person and their family.

Of course, the reality is that many young people of all gender identities don't have much parental support, so there has to be something in place for them. We're asking for a system of 'application by capable child', wherein a capable young person can access the GRA process by providing a statutory declaration. Application by capable child as the only option would make the process longer and should only be as a fall-back option where parental consent isn't granted. Gendered Intelligence is keen to work with other stakeholders to develop any potential future system of LGR for young people.

Young people's access to a system of legal gender recognition that works for them must be guaranteed. Their right to recognition cannot be muted or discounted simply because of their age. This message is repeated by the young trans and non-binary people we work with, who know who they are and are asking for fair and equitable acknowledgement.

Race

The current process of obtaining a GRC excludes people from other cultures and experiences of third genders. It in effect allows the white-centred, Western perspective (that of two genders) to replicate itself with no recognition that people of different races, ethnicities and backgrounds experience gender differently. In Britain, we must do better to accommodate the needs of those with cultures with different understandings of gender than ours, allowing for third or no gender markers and legal recognition.

Marriage

Applying for and receiving a GRC would allow people getting married to do so in their correct gender. The process as it stands excludes up to a half of non-cisgender people from this right by virtue of their being non-binary and having no process of legal gender recognition.

Pregnancy and maternity

Per the LGBT Consortium's Response to this consultation, some trans men and non-binary people are likely to continue to be left in "legal limbo due to existing contradictions between the GRA and laws relating to fertility, childbirth, maternity and paternity"¹⁰.

Disability

People with the protected characteristic of disability often find themselves negatively and unfairly affected by the current process of applying for a Gender Recognition Certificate. Those people with intellectual disabilities, or those who are otherwise legally required to have another person make decisions for them, can find their carers make applying for a GRC impossible if they are transphobic, unsupportive or simply don't want to do so. The bureaucracy at the heart of the current system effectively ties the hands of a lot of disabled people who have the mental capacity to independently go through the process but who are reliant on carers for help with filling out and sending off forms, going to appointments and seeking advice. If the process were to be streamlined for people with a disability, the reliance on another person to help wouldn't be as critical for those with unsupportive carers. Similarly, the majority of carers who wanted to offer support would have fewer barriers in place, reasserting autonomy and self-advocacy for the disabled person.

Gendered Intelligence has heard from disabled people who tell us that "living as your gender for at least two years can be very hard for people who rely on others to get dressed, as carers can be strict with gendered norms for clothes". Our response to Question 5 touches on how "Gender Identity Clinics... will detail people's clothing and presentation on the days of their appointments, as though these are in and of themselves a marker of gender". This means that if you rely on someone who is unable or unwilling to offer support to a trans person, such as by allowing them to dress as they wish, it would be nearly impossible to qualify for a Gender Recognition Certificate under the current process.

There is little in the way of available information for disabled people in accessible formats, adding further barriers.

¹⁰

<http://www.lgbtconsortium.org.uk/files/lgbt/downloads/LGBT%20Consortium%20TON%20GRA%20Response%20171018.pdf>

We have heard from disabled people who tell us that misunderstandings and connotations between their disabilities and gender identity occur often with medical practitioners, who will often assume people are uncomfortable with their body for reasons to do with their disabilities and not their gender identity or expression.

Sex

Whilst some intersex people do identify as cis men and women, others still identify as trans and/or non-binary, facing any hostility and discrimination that often goes hand-in-hand with that. For those intersex people who identify outside of the parameters of the binary categories of 'male' and 'female' – either through sex characteristics or gender identity – there is currently no system in place wherein they may have access to identification which affirms their identity.

Question 12: Do you think that the participation of trans people in sport, as governed by the Equality Act 2010, will be affected by changing the Gender Recognition Act? Please answer YES or NO. Please explain the reasons for your answer.

No. The Equality Act 2010 is not being consulted on and will not change as a result of a consultation on the Gender Recognition Act.

Whilst Gendered Intelligence sees no direct connection between any changes to the Gender Recognition Act and trans people's participation in sport, with access at elite level dictated individually by discrete national and international bodies, we recognise the work currently being done to make sport more accessible to trans people.

The participation of trans people in sport is being hindered at the moment, with huge variations across different sporting bodies on how people may self-declare when it comes to sex-segregated services. Sport England's advice to the Government around this is that there needs to be a relaxation of the rules in order to ensure an equal playing field for all people, trans or not. Where international federations have trans-inclusive policies, they've often encouraged national federations to follow their lead. There are examples (such as with World Cycling and British Cycling) where UK federations wish to go above and beyond the centrally-set international standards for trans-inclusivity in sport, with the fall-back that where people may compete at a top level in the UK, they will not be allowed to do so at an elite, international level.

Where gender-affected sporting activities have increased in number, there has been a lack of education or guidance around trans-inclusivity or where the exceptions of the Equality Act 2010 may be used. Sport England is going to release guidance around when and where the exceptions should

be used on a local level to ensure there is no unnecessary exclusion of trans people from sports they are entitled to access.

The Football Association’s trans-inclusion guidance says that they “maximise inclusion and ensure everyone can play for a team” with the ask that other associations “communicate [their] inclusive approach to trans people and [their] zero tolerance approach to transphobia, homophobia and sexism, as well as the reporting options people can use”¹¹.

Whilst on a local level most sporting activities are not sex-segregated, there are exciting opportunities for further trans inclusion for trans and non-binary people.

Question 13: (A) Do you think that the operation of the single-sex and separate-sex service exceptions in relation to gender reassignment in the Equality Act 2010 will be affected by changing the Gender Recognition Act? Please answer YES or NO. Please explain the reasons for your answer.

No. The Equality Act 2010 is not being consulted on and will not change as a result of a consultation on the Gender Recognition Act.

Organisations and services are taking a pro-active step to ensure that trans people are included without any need for forced legislation. Welsh Women’s Aid¹² have responded previously to the false dichotomy between protection of vulnerable women and provision of service inclusive of trans women, stating that they are committed “to supporting the realisation of rights for trans people, and the delivery of trans inclusive services and support, on the basis of self- identification”.

A similar joint statement has been released by several women’s organisations in Scotland¹³, including Rape Crisis Scotland and Scottish Women’s Aid, stating that “[they] do not regard trans equality and women’s equality to contradict or be in competition with each other”. Further, the statement explains that this large group of organisations “welcome the reform of the Gender Recognition Act”.

Several organisations, including women’s refuges in England and Wales, stated in a Stonewall report¹⁴ that any changes to the Gender Recognition Act would have no relevance to their service delivery, as they are already inclusive of trans women with or without a Gender Recognition Certificate. Whilst

¹¹ <http://www.thefa.com/-/media/files/pdf/the-fa-2015-16/transpeople-in-football-guide.ashx?la=en>

¹² <http://www.welshwomensaid.org.uk/2018/04/transgender-inclusion-statement/>

¹³ <https://www.engender.org.uk/news/blog/statement-in-support-of-the-equal-recognition-campaign-and-reform-of-the-gender-recognition/>

¹⁴ https://www.stonewall.org.uk/sites/default/files/stonewall_and_nfpsynergy_report.pdf

the exceptions in the Equality Act 2010 allow for trans women to be excluded from services where there is a legitimate and reasonable excuse, service providers say that their use of these is minimal, and that their robust safeguarding and vetting processes alone are sufficient. One staff member of such a provider says that for a trans woman accessing their services, “she should be treated as any other survivor of domestic violence”.

Question 17: Do you think that the operation of the marriage exception as it relates to trans people in the Equality Act 2010 will be affected by changing the Gender Recognition Act? Please answer YES or NO. Please explain the reasons for your answer.

No. The Equality Act 2010 is not being consulted on and will not change as a result of a consultation on the Gender Recognition Act.

Gendered intelligence is of the opinion that the marriage exception as it stands will not in itself be affected by anyone using the legal gender recognition process as affirmed by the Gender Recognition Act, other than a potential increase in the number of people seeking a Gender Recognition Certificate. However, the Equality Act 2010 must be amended in this regard if we are to remove systemic transphobia across society. There should be no good place for a person’s judgement of someone’s appearance to impede on their ability to marry and in turn having that somehow legislated for. This will work against not only trans people but also those people mistakenly believed to be trans.

Question 18: Do you think that the operation of the insurance exception as it relates to trans people in the Equality Act 2010 will be affected by changing the Gender Recognition Act? Please answer YES or NO. Please explain the reasons for your answer.

No. The Equality Act 2010 is not being consulted on and will not change as a result of a consultation on the Gender Recognition Act.

Gendered Intelligence, and indeed the UK Government, does not envisage any change to the operation of the insurance exception as it relates to trans people in the Equality Act 2010 by any proposed changes to the Gender Recognition Act.

Question 19: Do you think that changes to the Gender Recognition Act will impact on areas of law and public services other than the Equality Act 2010? Please answer YES or NO. Please explain the reasons for your answer.

No.

The current Prison Service Instruction (17/2016)¹⁵ states that obtaining a GRC will not automatically lead to a prisoner's transfer to a different gender-segregated estate. Any transfers would continue to be subject to rigorous safe-guarding procedures including the Transgender Case Board. It is the understanding of Gendered Intelligence that high-risk prisoners of all genders will continue to be held in the male estate.

Question 20: Currently, UK law does not recognise any gender other than male or female. Do you think that there need to be changes to the Gender Recognition Act to accommodate individuals who identify as non-binary? Please answer YES or NO. If you would like to, please expand on your answer.

Yes.

The Government's own LGBT survey showed that over half of the non-cisgender population are non-binary. It is government's role to make laws fitting to the population as it exists, not to try to shape people and their needs around existing laws which aren't fit for purpose. It's important that there's true representation of people as they exist, so recognition of non-binary people needs to be brought in as soon as possible. Otherwise, how are we as a country expected to be able to even know how many non-binary people there are in the UK, let alone how we best serve their needs?

We need the existence of non-binary people to be legally recognised not just for monitoring purposes, but on a basic level of mutual recognition and respect. At the moment, there's a two-tiered system of those with legally recognised gender identities at the top and those without recognition at the bottom. This needs to be fixed and made more equitable.

On top of the wider issues around the need for non-binary legal recognition, there will be some inevitable legal clashes if the UK government fails to bring its laws up to scratch. Scotland recently released some first findings from its own consultation on gender recognition reform. 66% Scottish respondents said that action should be taken to ensure non-binary people are given legal recognition. We've no reason to believe that England and Wales will have widely different results in any meaningful way, with a clear majority of people in obvious favour of non-binary people being enfranchised with legal recognition and respect.

Many other countries have already taken the step into non-binary legal inclusion, including India and Portugal. The Yogyakarta Principles¹⁶ are the culmination of decades of work of leading human rights experts, and are seen as a shining beacon of what best practice looks like with regards to sexual orientation and gender identity. Principle 3 states: "Everyone has the right to recognition everywhere as a person before the law. Persons of diverse sexual orientations and gender identities

¹⁵ <https://www.justice.gov.uk/downloads/offenders/psipso/psi-2016/PSI-17-2016-PI-16-2016-AI-13-2016-The-Care-and-Management-of-Transgender-Offenders.docx>

¹⁶ <https://yogyakartaprinciples.org/>

shall enjoy legal capacity in all aspects of life." The Women and Equalities Select Committee's report on Transgender Equality mirrored the Yogyakarta Principle's call for recognition, stating that "the Government must look into the need to create a legal category for those people with a gender identity outside that which is binary".¹⁷

Question 21: (A) Do you have a variation in your sex characteristics? Answer YES or NO.

As outlined in question 3, the Government wants to understand whether there should be any requirement in the future for a report detailing a diagnosis of gender dysphoria and any requirement for a report detailing treatment received.

(B) Would removing these requirements be beneficial to you?

(C) What other changes do you think are necessary to the GRA in order to benefit intersex people?

By bringing in an updated, demedicalised process of legal gender recognition in a reformed GRA - and where there is recognition beyond the parameters of 'male' and 'female' - intersex people could have access to identification that affirms their identity. Gendered Intelligence recognises the parallels and intersections between trans and intersex people and we believe that both groups' demand for bodily autonomy will be achieved through working with and understanding each other.

Question 22: Do you have any further comments about the Gender Recognition Act 2004? Please answer YES or NO. Please explain the reasons for your answer.

The Gender Recognition Act was a world-class piece of legislation when it was brought into place, but is now failing to embrace and capture the reality of the full diversity of trans people. Whilst we commend the Government's decision to consult on and hopefully amend the Gender Recognition Act, we remain disappointed that the wider stance across the media has been, and remains, that trans equality as a concept is up for redrafting.

In what other circumstances would a piece of minority rights legislation being consulted upon have government invite and indeed welcome what amount to hate groups to the discussion via roundtables? Gendered Intelligence of course welcomes dissent and discussion, but being on the receiving end of invective and unfiltered hatred does no one any favours, especially already-stigmatised groups on the margins.

¹⁷ <https://publications.parliament.uk/pa/cm201516/cmselect/cmwomeq/390/390.pdf>

The only way this so-called debate is going to be calmed is if the government help call it out for the hate it is and encourage non-discriminatory, sensible discussion.

It's unfortunate that loud, negative voices have been able to mar conversations around this consultation. Gendered Intelligence believes that ultimately, this consultation is a much-welcomed, once in a generation opportunity to:

- Create a world-class process of legal gender recognition that places the UK at the forefront of LGBT equality
- Minimise bureaucracy and create a streamlined and cost-effective system
- Put the power in the hands of trans people to determine their own legal gender
- Remove the stigmatising requirement of a psychiatric diagnosis
- Include non-binary people who are around half of the non-cis population yet receive no legal recognition or protection
- Allow young trans people under 18 to be recognised as their authentic selves under law
- Send a clear message to the British public that discrimination against trans people is not acceptable and that trans people deserve to be fully part of British society.