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Mermaids Response to the Reform of the Gender Recognition Act 2004: Government Consultation

Question 1: If you are a trans person, have you previously applied, or are you currently applying, for a Gender Recognition Certificate?

Yes

No

If yes, please tell us about your experience of the process. If no, please tell us why you have not applied?

TNB: Trans or Non-Binary

CYP: Children and Young People

LGR: Legal Gender Recognition

This response is given on behalf of Mermaids, not an individual however Mermaids will take this opportunity to state on behalf of our service users' who are under 18 years old that they could not apply even if they wished to. An applicant currently has to be 18 years old to do so.

Further, our non-binary service users, of any age, have no recourse under current legislation to apply for a Gender Recognition Certificate (GRC) because current legislation does not recognise Non-Binary as a legal gender identity and therefore they are unable to apply even they would wish to do so. (See question 20).

If you have applied, were you successful in obtaining a Gender Recognition Certificate?

Yes

No

Awaiting Decision

N/a

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

Information provided in response to these questions will be protected under the existing provisions in Section 22 of the Gender Recognition Act, as relevant.

Examples given may be published in the consultation response if you give consent to this at the end of this consultation.

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Identity documents reflecting a person's gender identity are important for TNB people's dignity, safety and access to human rights – this includes CYP. Through in-house consultations and statements from service users, we have listened to the life-experiences of our CYP as well as their parents. TNB CYP face problems in being recognised and respected for their gender within society without a birth certificate that reflects their true gender.

As a result of not having a birth certificate that documents their affirmed gender, our CYP are being denied recognition in our schools, jobs and healthcare practises on the basis that their identity documents do not match their true gender.

Some of our service users have sent us, in their own words, what having a GRC would mean to them:

CASE STUDY 1

"I am 12. This will be me at 16 years old [drawn illustration] and the other picture is me at 76 years old [drawn illustration].

I'm a boy. I've always been a boy inside but some of my body parts are wrong to how I feel. I know I'm young but I do know who I am and I should be allowed the right to be me. Being included in gender recognition would mean I could get a new birth certificate and be properly recognised as who I am.

Without one it would be harder to get a job when I'm older because my information won't match so I'd be made to tell people. I shouldn't have to do that.

A 16 year old can have a job, leave home and be a parent. They can even join the army, like I want to be in the Royal Navy, but without gender recognition I won't have the same rights as my friends. That's discrimination.

I don't know why you've not included us but I hope you'll change your minds. It would make life easier and fairer. We should all matter so please don't ignore us just because we're young.

R. Age 12"

CASE STUDY 2

“We are the parents of George who transitioned from female to male at age four in February 2018. George has been telling us he is a boy, asking us when he will become a boy and when he will grow a willy from about the age of two and a half to three years. Since then, we have always allowed him to express himself as he needed, but as soon as George started school, it became apparent to both us and the school that he needed the world to see him as he saw himself.

We started using male pronouns, a few weeks later he cut his hair and in May, he told us he would like to change his name to George. We have been completely led by him.

The school have been incredibly supportive, as have all the children. It is a small rural school, and he has very quickly been accepted as George.

We have a totally different child, he is suddenly here, alive - there is joy in his eyes and he is now a far more confident child who is thriving at school and has taken up drama and street dance classes. This is not the child we had before.

This is all very simple to George, this is no big deal- he understands that he has a female body, but to him he has always been a boy. He has no concept of policy or laws, he is just a boy who wants to have fun. He was female for only four years and in the Education system for just five months as female, why should his legal gender stay as female for the next thirteen years? It does not sit right with us. If we want to raise a generation of children that are happy and free from mental health issues, we have to listen to them, to their needs and intuition. We therefore believe that it is George’s and every other gender variant or transgender child’s right to change their legal gender.” Anonymous parent

CASE STUDY 3

“Hi, I am mum to 2 children. I gave birth to 2 daughters in 2002 and 2004. I have come from a line of strong woman, not feminist`s but we held our own and were not soft flouncy women in any shape or form and both my mother, and both my parent`s mothers were extremely strong and would have been said to wear the trousers in the house. I had never questioned gender but pushed that women could do the same as men on many levels. I therefore grew my children with no specific girl roles, they did do ballet but also karate, they had fairy costumes and dragons. When my eldest child was 14 he told me he was a boy trapped in a female body, which shocked me deeply. I have come along way now learning what is gender and now fully support my Alex in his transition, however society on the whole does not and needs educating as I did. In the past year my youngest child has told me they are non-binary which was confusing and difficult again to understand but I am there now and deeply upset that actually THEY have no legal rights or recognition.

In the UK we need a non binary marker for passports and other legal documents, they need to be able to be parents not father and mother, partner not wife or husband. We need better education in the GP practices for Dr`s and receptionists and nurses. Schools need to be educated on what is gender. trans women are real women and trans men real men, non-binary are human beings.

As a mother I feel deeply about this and my children are educating me, that is no bad thing but society needs to catch up, we are living in the UK in 2018 not a century ago.

We also need some new words like we have nephew/niece but what for non-binary? Also they/them is perfectly correct grammar Chaucer used singular they/them and this needs to be explained to the general public, specifically in schools.

We also need help with the gender clinics waiting lists, this is terrible and kids are suicidal, self harming and depressed because they are just left for over a year with NO support at all. My son has been binding and wearing tape for his chest which is not healthy when he could have been on blockers by now and approaching testosterone and top surgery in the near future, which is sadly far off for us.

I hope this is of help.

Kind regards, Anonymous parent"

CASE STUDY 4

"About Child E, 7 years old

When my child was young, from about three years old, I knew there was something different about "him" and I thought it might mean "he" would come out as homosexual later on in life.

Then one idle Tuesday afternoon, a few months ago, "he" came to my bedroom and told me "he" wanted to be a girl and wear girl clothes. "He" said "he" feels like a girl on the inside. She came out to us officially as transgender. We changed her name from that day to the name we picked together.

Whilst this has been a huge adjustment for us as a family in many ways, in others it makes such perfect sense and explains so many things we have noticed over the past few years, since as early as when she was in pre-school.

As soon as she let us know, we started to use her preferred name and pronouns. We worked hard to change her wardrobe, her bedroom and let her express herself fully and completely as Child E at home and on trips out of the house. Soon after that she transitioned to being herself in school. The school noticed a huge difference in her outlook and personality. They said she used to be very quiet and reserved, anxious and fidgety, but was now bright and bubbly, relaxed and outgoing. It was a very positive experience in many ways.

Being able to be herself has made her happier than I have ever seen her in her life.

The signs were there:

Child E always gravitated to toys and clothes that are more traditionally for girls and wanted the pink option wherever possible. She had a pink handbag for a long time that she would take with her everywhere. We didn't think much of it at the time as many boys do this kind of thing and are not trans. However, Child E did also show an unusual interest in gender. She once told a girl at pre-school that she had a "bagina". The staff had to explain to her that it wasn't appropriate conversation and I was called in to talk about it as well. This was aged 3 or 4. I've always talked very openly about body parts and gender with my children, using the correct terminology.

Year 1 for Child E was terrible. She came home the first day and when asked how her day went she replied it had been "humiliating!". She was noticeably depressed and anxious and it was a very difficult time. The confidence I was used to seeing in her was almost completely gone; she had retreated into herself, wouldn't try hard at school work and began to stutter and stammer, when she spoke at all. She did say that she didn't like her teacher's habit of shouting in class and what Child E judged as harsh punishments. As it was a teacher that is known for being strict and severe in her style, I put it down to Child E's sensitive nature and hoped year 2 would be better. We have all had a teacher whose style didn't suit us. We have talked about it since her coming out and Child E explained the teacher had, from her point of view, a preference for girls in the class which made her very sad and angry. Feeling that she was really a girl and should also be treated in this perceived preferential way, it caused her

great emotional pain. I would add that this could be the time at which Child E started to consciously identify as trans and was in much emotional pain already.

At a similar time, the early part of year 1, she also became concerned about her penis and didn't want anyone to see it. (I had to cover her up with a towel while she changed at swimming. If I didn't do this properly she became very distressed and tearful.) She started to hide her penis away from us at home, only allowing Z, her older brother, to see her naked. This was a worrying thing for us and we asked her about it. We asked whether someone had hurt her, touched her inappropriately or made her feel bad about her penis. She told us she was just shy and didn't want anyone to see her private parts. She also has this habit of pushing down on her penis. This turns out to be very much part of the gender dysphoria associated with being trans. She has told us that she doesn't like her body to the point where she doesn't want to have a penis at all and pushes it out of the way. I have had to stop her from trying to twist it off! She doesn't even like to have to urinate and will avoid and put off going to the toilet to the point of wetting herself. This has been going on since potty training. I asked her about the rest of her body and she told me it feels all wrong and she would even like to have a more rounded and feminine bottom.

Child E coming out was a bit of a shock to those who didn't know her very well. She always appeared to the casual observer to be a normal boy. She is very bright and realised early on that even though she felt like a girl, she was a boy in the eyes of the world and knew how she was expected to behave, dress and wear her hair. She was literally playing the role of "Aiden" for a long time. In all that time in her home environment she would buy Shopkins when Z bought Zomblings, dress her teddies up and play mum, choose the girl characters in computer games, ask to wear my dresses and makeup, sneak a single painted toenail to school, buy pink teddies and jewellery, etc. She was delighted when the only Christmas top available for last year's jumper day was from the girl's section. Her favourite colour has always been pink and I would have expected this to be drummed out of her in Reception and definitely by the end of Year 1. At the same age her brother started to eschew anything that was deemed for girls only in all arenas.

One of Child E's proudest moments was receiving her new passport in her new name and gender. To have such an official document confirm who she is was immensely positive for her. It proves to her that not only is she accepted for who she is by her family, her friends and her community, but by an official government body as well. Her confidence in herself has blossomed since then. We have managed to change her name, title and gender marker in all the places we can at this age, the NHS, the school records, her passport and her Apple ID, etc. We are not able to change her birth certificate or her gender marker on her bank accounts. These may seem like trivial things, but the reality is she is not able to change those until she has a GRC at the age of at least 18. That is 11 years away for us. 11 years with documents that don't affirm who you are fundamentally. I would find that tremendously damaging to my mental health. I would urge you to consider a way for young children who are persistently, insistently and consistently identifying as trans be considered for a Gender Recognition Certificate.

Thank you, sincerely,

Anonymous parent"

CASE STUDY 5

“My daughter dresses as a female, has the mannerisms of a female, speaks like a female. Child J is, indeed, female. So why should her true gender identity not be legally recognised. Why should her gender identity be open to the scrutiny of others, who often have a bigoted and prejudiced agenda?”

To be brave enough to come out as trans and give herself the opportunity to live a life as her true self is, quite simply, admirable. To have the law and other people, who often don't understand the true impact of gender dysphoria, dictate how her gender identity can be recognised is nothing short of criminal. Whilst ever my daughter's gender is not recognised in law, it gives fuel to the transphobic haters legitimising their prejudice. This has to change.

My name is [anonymous], mum to my trans daughter, Child J who has lived entirely as her female self for nearly a year now.”

CASE STUDY 6

“I am a 13 year girl who unfortunately was identified as male when I was born. Three years ago I told my parents that I could no longer live in a male identity as it felt like I had to spend every moment of every day pretending to be someone I was not. So my parents supported me to transition which meant I was able to live socially as my true self. Things have not always been easy since I transitioned and I was bullied really badly at my first secondary school and it got so bad that I had to study at home for 8 months. I have started at a new school, who are doing their best to be supportive, but before I even started at this school my old school told them that I was transgender without asking my permission to do so which took away my right to choose if someone knows about my gender identity.

I have done research and in some states of America parents can apply to the court to have their children's birth certificates changed to the gender they now live in which means no one has to know about them being transgender because all their paperwork matches their identity. I have asked my parents and they have already said that if they had the ability to be able to do this for me then they would. So if the process to obtain a GRC were made more simple I and other young people like me would be able to be themselves because although I have a deed poll legally changing my name my birth certificate is still in the name I was given when I was born and this makes me feel as though I am not a real person and that society does not recognise me as such. Even though I am under the age of 18 when we first took my deed poll to school, the bank etc they actually asked for a GRC but my parents fought that stating that even if I had one I would not have to show them as I would have a new birth certificate. And my deed poll was a legal document.

So I can apply for a GRC when I am 18 years old but I will have to provide lots of evidence to a panel and pay for them to tell me I am a real female so I can be recognised as one even though I will have lived socially for 8 years, nearly half my life, as female. I have known for as long as I can remember that I am female so why should I have to prove this to a panel of people. I should have the right to make that decision for myself, I should have the right to be legally recognised without having to prove it any more than I already have.

Signed: S, aged 13 years”

CASE STUDY 7

“If my seventeen year old transgender son were to die before he could obtain a GRC his death certificate would list him as female, it would be the most appallingly disrespectful way to honour his life

Yours, father of transgender son”

CASE STUDY 8

“A change in law would empower the trans community because they would know the government is on our side. The current system feels robotic and it feels like you are dealing with a machine rather than your life.”

Anonymous, 16 year old trans young woman

CASE STUDY 9

“[Recognising trans CYP] would give all of us a valid acceptance. Unless you are trans someone will never experience what it feels like, however many trans people you may know. Cis people are talking over the trans community and not listening. Trans people are already at a disadvantage and the current system is making it worse.”

Anonymous, 15 year old young trans man

CASE STUDY 10

“I’m 6 and a half. I like space food and spaghetti hoops. I’m a girl. I’m trans. I like Pokemon, Harry Potter, Paw Patrol. I like fist bumps. My school know I’m a girl. My friends know I’m a girl. I went to France. My passport says girl. I ate baguettes and chocolate cake. I don’t like very spicy food. I am good at writing and reading and games. Some of my friends are trans. All of my friends are nice. I think the government should know trans children like me and some of my friends. I like Hamilton especially ‘In the Room Where it happened’. I think there should be a trans politician. I like experiments, magic, craft and reading.” Anonymous

Question 3: Do you think there should be a requirement in the future for a diagnosis of gender dysphoria?

Yes

No

Please explain the reasons for your answer.

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Gender dysphoria can be defined as: *‘a medical term that refers to the potentially immense distress that some (and not all) trans and non-binary people experience as a result of the incongruence between their gender and the gender assigned (and assumed) at birth’*; [See *‘Transgender Health: A Practitioners Guide to Binary and Non-Binary Trans Patient Care’* (2018) Jessica Kingsley Publishers]

Mermaids recommends the repeal of the current diagnosis requirement and that generally the legal process for gender recognition should be completely de-medicalised, for all ages; (TNB health care and LGR should be completely disassociated.) Mermaids recommends that a future system is built on a system of “self-determination” (PACE 2048(2015) 6.2.1.)

The diagnosis requirement has a direct and extremely negative impact on the social and political status of TNB people as well as renders the LGR process inaccessible to many TNB people. From an international human rights perspective, this diagnosis requirement is also considered outdated and acts in direct contradiction to the recommendation of the Council of Europe, which states that gender recognition procedures should be “quick, transparent and accessible” (Paragraph 21 LGBT Recommendations CM/Rec 2010(5)). Involvement of mental health professionals to testify or provide “expert opinions” should be omitted from procedures to increase their accessibility.

Being TNB is not a disease or a marker of mental ill-health and gender is not a pathology in need of a diagnosis. This is supported by the recent action by World Health Organisation’s (WHO) International Classification of Diseases (ICD) Version 11 which has removed “gender identity disorders” from ‘Mental and Behavioural Disorders’ and instead now has a “gender incongruence” category under the new section 6: “Conditions related to sexual health”. Any LGR process that refers to an explicit diagnosis might render it inapplicable in light of ICD11. The Standards of Care (SoC) Version 7, 35 developed and published by the World Professional Association for Transgender Health (WPATH) also emphasises that transgender identities and expressions are not pathological or negative, and warns against legal barriers that would harm social transition and *“even contribute to trans people’s vulnerability to discrimination and violence”* [file:///G:/My%20Drive/Resources/WPATH%20Statement%20on%20Legal%20Recognition%20of%20Gender%20Identity%201-19-15.pdf].

Mermaids believes that the continuance of the dysphoria diagnosis requirement will continue the heavily stigmatising effect it has on trans communities as it reinforces the stereotype of TNB individuals as being confused, mentally unstable or ‘mentally ill’ and this is unacceptable and contributes to trans people’s vulnerabilities. Mermaids believes that we should have a LGR system that advances the position of TNB people in a positive and respectful way.

The diagnosis requirement is based on the humiliating premise of ensuring that applicants are ‘actually transgender’ which is symptomatic of the historic ‘gender policing’ to which the Trans community in England and Wales (as well as outside of E&W) have been subject to, which is unacceptable and degrading. Mermaids believes that what it means to ‘be’ a gender is not defined by anything but one’s self-determined identity. Any system that allows a person’s self-determination to be limited depending on a third party’s opinion (including professional medical opinion) is deeply problematic and incompatible with international human right principles and legislation. According to the Yogyakarta Principles (an affirmation of existing international legal standards as they apply to all persons on grounds of their sexual orientation, gender identity, gender expression and sex characteristics), neither medical or psychological interventions nor a psycho-medical diagnosis should be a prerequisite for accessing legal gender recognition [YP+10, Principle 31 http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf].

The pathologisation and resultant stigmatisation within this requirement also infringes a TNB’s right to private life (Article 8 European Convention on Human Rights, (ECHR) as well as a TNB’s right to non-discrimination (Article 14, ECHR). Linking TNB identity to mental illness has also been used to validate

institutional discrimination, in areas such as employment and parental rights. Transgender Europe (TGEU) has also welcomed the de-pathologisation of trans identities and banning of conversion therapies [https://tgeu.org/issues/health_and_depathologisation/].

Mermaids believes a diagnosis requirement is further abusive as it puts pressure on people who were not otherwise uncomfortable with their bodies to seek to alter their bodies, which possibly violates the prohibition of torture and inhuman and degrading treatment or punishment [Article 3, ECHR].

As one service user eloquently put it:

“...I don't agree with how I was born, but I do not feel as strong as some other trans people. Some trans people are really relaxed about their bodies and some are really strongly against their bodies. The current system allows the government to say, 'we don't like your approach to transitioning'. I want the government to stop applying a stereotype to a vast amount of people – it shouldn't apply as it doesn't work.” [Anonymous, 16 year old trans young woman]

Evidencing a diagnosis of gender dysphoria within an application also prevents some TNB people from applying because not all people experience gender dysphoria and/or if they do, many experiences are not understood by the current pathological interpretation of it. For example, our service users have reported consultations being used to 'search' for experiences of physical dysphoria of some sort with a complete disregard for social dysphoria. This leads many TNB people feeling like they have to say certain things to reach a diagnosis of gender dysphoria. The process therefore restricts applicants to one certain experience of what being TNB is, which is dis-authentic and infringes on the individual's right to their identity.

Furthermore, pressure within school, from family or friends and the GIDS waiting times TNB CYP are currently subject to (at time of writing 18 months) mean CYP have been unable to be out about their gender for the majority of their life and when they have are unable to access healthcare quickly, which means they are specifically vulnerable to this requirement making the whole LGR process slow and potentially inaccessible in contravention to Paragraph 21 LGBT Recommendations CM/Rec 2010(5).

There are jurisdictions like Argentina, Malta and Ireland (for individuals above 18) where there are no medical requirements whatsoever and this has been implemented successfully in new gender recognition legislation. These jurisdictions are considered to have achieved the 'gold standard' in terms of separating legal gender recognition from medicine, from an international human rights perspective. In its advice to the UK Government in 2016, the House of Commons Select Committee on Women and Equalities called for “proposals to update the Gender Recognition Act, in line with the principles of self-declaration that have been developed in other jurisdictions”;[House of Commons Select Committee on Women and Equalities, Transgender Equality (The Stationary Office Limited 2016) [45]]. This is further supported by the Council of Europe Resolution 2048(2015) which calls upon Member States to “abolish sterilisation and other compulsory medical treatment, **as well as a mental health diagnosis**”(our emphasis) (6.2.2) in legal gender recognition, and the Committee of Ministers call for a review of laws to remove “*abusive requirements*” [Rec CM 2010(5) at section IV:20].

Question 4: Do you also think there should be a requirement for a report detailing treatment received?

Yes

No

Please explain the reasons for your answer.

Whatever anyone's age, one's access to legal gender recognition should not be dependent on or have anything to do with any form of medical treatment, but instead Mermaids recommends a system "based on self-determination" [PACE 2048(2015) 6.2.1]. The GRA doesn't require physical medical intervention in order to get a GRC. This must not change in the GRA reform. Mermaids recommends that the reformed Act removes the current medicalised process to receive a GRC because it is incompatible with the (Mermaids supported) principle that no medical intervention should be required, established both in the original Act and within the Equality Act 2010, which (in its description of gender reassignment) explicitly recognises that transition cannot be reduced to a medical process.

Mermaids provides the following reasons for this recommendation:

1. Any system that allows a person's self-determination to be limited depending on medical treatment undergone is deeply problematic and incompatible with international human right principles and legislation. According to the Yogyakarta Principles (an affirmation of existing international legal standards as they apply to all persons on grounds of their sexual orientation, gender identity, gender expression and sex characteristics), neither medical or psychological interventions nor a psycho-medical diagnosis should be a prerequisite for accessing legal gender recognition [YP+10, Principle 31 http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf].
2. The Council of Europe recommends a "quick, transparent and accessible" [Paragraph 21 LGBT Recommendations CM/Rec 2010(5)]. A requirement of disclosure of treatment works against this recommendation as it places unnecessary barriers in the way of obtaining legal recognition of their gender and is not compatible with European best practice. Currently, it can take several years for trans men and women in England and Wales to legally change their gender under the current system, which can be in part explained by a chronic lack of funding devoted to NHS transgender health care provision. TNB CYP are subject to unprecedented delays in relation to access to TNB healthcare and the continuation of this requirement would subject them to a delay in application should the process be opened up to those under 18. Even if it applies to over 18yrs only then the delays in access to treatment would negatively impact a person should they start to seek treatment at 15/16 they'd still have had virtually no treatment when 18/19 years old.
3. Such a requirement asks that someone provides information around the most private of matters (healthcare) to a panel of strangers they will never meet which violates their right to a private life enshrined in Article 8 European Convention on Human Rights (ECHR).
4. Although treatment is not compulsory to obtaining a GRC, having the requirement does suggest an increase in chance of success should you provide this extra evidence and puts pressure on people who were not otherwise uncomfortable with their bodies to seek to alter their bodies, which possibly violates the prohibition of torture and inhuman and degrading treatment or punishment [Article 3, ECHR].
5. It forces applicants to choose between their human rights: the rights to the highest attainable standard of health [Article 12.1 International Covenant on Economic, Social and Cultural Rights] and to be free from cruel, inhuman or degrading treatment [Article 3, ECHR], and the rights to private life [Article 8 ECHR] and to recognition before the law [Article 16 of the International Covenant on Civil and Political Rights].

6. It furthers the stigma around 'not being trans enough' should you not have undergone treatment and therefore incites stigma to be attached to the TNB people that do not want to undergo treatment. Some TNB people take hormones or have surgery as part of their transition, but some do not. All these TNB people are valid. It does not make you less TNB should you not undergo treatment. Raising treatment as a way to increase the chance of your application being successful invalidates the majority of TNB people who do not undergo surgery as well as restricts them in applying for a gender recognition certificate (GRC).

As one service user powerfully stated:

"...cis people do not have to prove their gender, so why should trans people?" Anonymous, 12 year old trans girl

7. Someone's gender is completely disconnected from their sex and anatomy and to have them associated within the gender recognition procedure is inappropriate and incompatible with what gender is. It continues the myth that sex and gender have to be aligned. Whether a TNB person receives gender affirmation treatment has nothing to do with their gender and certainly cannot prove someone to be TNB or not. What it means 'to be' a gender is not defined by sexual physiology or anatomy, but by identity which is self-determined and our system should mirror this reality.
8. This requirement is symptomatic of the historic 'gender policing' to which the trans community in England and Wales (as well as outside of E&W) have been subject to, which is unacceptable and degrading. What it means to 'be' a gender is not defined by anything but by oneself.
9. The requirement restricts those who are unable to access treatment due to medical conditions, stigma and pressures from people in their lives and therefore indirectly discriminates against those with protected characteristics such as disability and age.

Good implementation of non-medicalised gender recognition can be found in Malta's Gender Identity, Gender Expression and Sex Characteristics Act 2015 which states that people have a right to 'bodily integrity and physical autonomy' [Transgender Europe, 2017: Third Gender Markers in Europe and Beyond: [<https://tgeu.org/third-gender-marker-options-in-europe-and-beyond/>]]. In this jurisdiction, the gender recognition procedure is 'quick, transparent and accessible' [Paragraph 21 LGBT Recommendations CM/Rec 2010(5)] and the requirement of psychological or medical proof is forbidden.

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?

Yes

No

Please explain the reasons for your answer.

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Mermaids notes the outdated notion of 'acquired' gender within the question and only uses this term in reference to current legislation. Any future legislation should refer either simply to one's 'gender', 'true gender' or 'affirmed gender'.

Mermaids does not agree with a requirement to evidence what is commonly referred to as a 'real life experience' (RLE) for 2 years as part of a LGR application. Mermaids recommends that this requirement is not retained within the reformed Act and that a model of self-determination is the most appropriate, desirable and human rights conscious regime for the following reasons:

1. The current requirement for an applicant to have lived in their acquired gender for two years creates significant difficulties in relation to access for TNB CYP. CYP would struggle to 'evidence' they have been living in their gender for this length of time. Pressure within school, from family or friends may mean they have been unable to be out about their gender for the majority of their life which means that documents, systems etc. may not state the correct gender of the individual which may render a CYP incapable of 'evidencing' their RLE and would make the LGR process inaccessible in contravention to the Council of Europe recommendation that the procedure should be accessible [Paragraph 21 LGBT Recommendations CM/Rec 2010(5)].
2. A 2 year time requirement is in direct contravention to the Council of Europe recommendation that the LGR procedure should be 'quick' [Paragraph 21 LGBT Recommendations CM/Rec 2010(5)].
3. Non-Binary would be particularly restricted in being able to 'evidence' their gender as many forms of ID do not recognise any gender identity other than male or female; this would mean the requirement would be potentially impossible to satisfy and acts in direct contradiction to the Council of Europe recommendation that the procedure should be "accessible" [Paragraph 21 LGBT Recommendations CM/Rec 2010(5)].
4. The requirement has been justified as providing a 'trial-run' for gender recognition, allowing TNB people to 'prove' their capacity and desire to live in their true gender. The principle of such a justification debases and humiliates TNB people's experience. An arbitrary 'reflection period' should not be bureaucratically imposed, but instead should be self-determined by the individual. People socially transition at various times in their life, but the times in that person's life they weren't perceived to be their gender to the outside world does not invalidate their true gender during that period of time. The RLE requirement acts in direct opposition to that principle and reality.
5. The RLE requirement is based on an outdated notion that any one gender can only be identified in one particular way. How do 'normal men/women/non-binary' people live their lives? Future legislation must resist biased and stereotypical assumptions which not only restricts access to the LGR process, but also contributes to a system that incites judgment, hate and abuse towards all genders (including cis-gender people) who identify within the gender binary (i.e. male or female). A reformed LGR system should not pose additional barriers to a person's free development of their gender identity.

6. It holds TNB people to a standard that cis-gendered people are not held to. A cis-gendered individual is not denied recognition of their gender should they not be able to evidence a RLE. Further, once a gender recognition certificate is issued a TNB person no longer is obliged to satisfy this 'standard'. The RLE requirement injects a bizarre, isolated need to externalise their gender in one way, which they will not have to maintain (and rightly so) thereafter which can only render it meaningless.
7. The requirement requires the applicant to evidence their gender to a tribunal they never meet and they are assessed against an unclear, publicly inaccessible decision-making criteria. It is not unreasonable to suggest that panel members may be reviewing GRC applications with subconscious prejudice and make decisions based on a biased perception of what it means to be a gender. Mermaids believes this to be unfair, humiliating and degrading.
8. An unsuccessful verdict also does not have to be explained to the applicant, which makes an unsuccessful decision impossible to challenge. It breaches trans people's right to privacy, potentially causing further discrimination and breaches of social, economic and cultural rights, as well as one's Article 6 rights [European Convention on Human Rights – right to a fair trial].
9. It does not comply with international human rights standards which stipulate that a process must be 'quick, transparent and accessible' for it requires original copies of a passport, driving licence, payslips or benefit documents, utility bills and other documents. This is a significant amount of information, which is both logistically difficult to obtain, time consuming, costly and can be traumatic. It is particularly difficult for TNB CYP to obtain all the necessary documentation whose families/carers often manage their financial transactions. It also restricts those with disabilities whose family/carers manage their financial transactions as well as those people who have lost paperwork due to fleeing domestic abuse or otherwise becoming homeless.
10. Other European jurisdictions (Ireland, Belgium, Malta, Sweden, Norway, and Netherlands) have actively rejected a RLE condition which supports the requirement is not necessary.

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

N/a

(C) If you answered yes to (A), what length of time should an applicant have to provide evidence for?

Two years or more

Between one year and two years

Between six months and one year

Six months or less

N/a

(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?

TNB: Trans or Non-Binary

CYP: Children and Young People

LGR: Legal Gender Recognition

Mermaids recommends that there is no period of reflection for any applicant of any age because it contravenes the principle of self-determination that must be at the centre of any new LGR system. Such a requirement bolsters a myth that TNB people don't understand their identities or know what's best for themselves. For a TNB person, a decision to apply for a gender recognition certificate (GRC) will inevitably be following a period of self-reflection, often over several years. An arbitrary 'reflection period' should not be bureaucratically imposed, but instead should be self-determined by the individual.

Requiring a state-imposed period of reflection invalidates a TNBs experience and unnecessarily elongates the LGR process. In line with Council of Europe Recommendations, LGR should be quick, transparent and accessible [Paragraph 21 LGBT Recommendations CM/Rec 2010(5)]. This requirement does not satisfy this recommendation, but instead prolongs the length of time an individual must wait before having their gender legally recognised. All this time is a delay in the individual being recognised and dealt with as their true gender (this is especially true for CYP) and prolongs the length of time that their rights, including their right to privacy, are violated – this includes CYP.

A reflection period requirement is often explained through the theory of 'desistence' which is not appropriate and ignores the experience of TNB people. Mermaids recommends that the government is cautionary in evidence around desistence as a lot of 'evidence' uses methodologies and analyses that are fundamentally flawed and will not assist in creating better systems for our TNB citizens (See [Dr B Vincent, PhD, 'Transgender Health: A Practitioners Guide to Binary and Non-Binary Trans Patient Care' (2018) Jessica Kingsley Publishers pp.121-124] for full discussion around desistence in CYP).

Through consultation with our service users it was suggested that the idea of a reflection period insinuates that someone is making a decision around their gender, which is the wrong approach:

"...the idea that it is a 'decision' makes me so angry ... why it is someone else's decision? People still get rejected on the basis of it being someone else's decision and that it should not be the case. You should not have to prove yourself to anyone. Current law feels like the government are saying, "...you are not trans enough"." Anonymous, 15 year old young trans man

Mermaids recommends that any procedure is made accessible enough to allow for a quick reversion if necessary in acknowledgement that one's gender identity may indeed change in time, for people of any age.

Question 6: Currently, applicants for a gender recognition certificate must make a statutory declaration as part of the process.

(A) Do you think this requirement should be retained, regardless of what other changes are made to the gender recognition system?

Yes

No

Please explain the reasons for your answer.

TNB: Trans or Non-Binary

CYP: Children and Young People

LGR: Legal Gender Recognition

Mermaids recommends that there should be no statutory declaration (SD) requirement for the following reasons:

1. As per Council of Europe recommendation, a LGR system should be created that is “quick, transparent and accessible” [Paragraph 21 LGBT Recommendations CM/Rec 2010(5)]. Statutory declarations are in opposition to this basic principle as they often have to be paid for and they require appointments to be made, often during school hours, which means it is particularly restrictive to CYP.
2. No cis-gender individual has to execute a SD, ‘declaring’ themselves to be the gender they are; it adds an extra requirement on TNB people that is not expected of cis-gendered people which is unfair and treats someone differently on the basis of them being TNB.
3. It exposes the signatory to a risk of breaching of a SD should they not be seen as ‘being’ the gender they ‘declared’ to be and if so, could be prosecuted for it. Mermaids suggests such SD’s would be impossible to regulate and enforce because such regulation would be based on the outdated notion that any one gender can only be expressed in one particular way. We suggest it is also ultimately impossible to enforce because of this and therefore meaningless, so there is no basis or logic in requiring it. It also infringes on one’s right to an identity and expression and invites what would be symptomatic of the historic ‘gender policing’ to which the Trans community in England and Wales (as well as outside of E&W) have been subject to, which is unacceptable and degrading.

Mermaids recommends that a model of self-determination is the most appropriate, desirable and human rights conscious regime, but this self-determination should not have to be evidenced by way of SD.

(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’?

Yes

No

N/a

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

TNB: Trans or Non-Binary

CYP: Children and Young People

LGR: Legal Gender Recognition

Being TNB is not a safeguarding issue in itself and the process of legal gender recognition should not treat it as such. A system that suggests 'safeguarding' is necessary contributes to the social stigma attached to being TNB. The research that currently exists illustrates that the major risk for TNB people is attached to someone not being able to engage in society as their true gender. There is research that illustrates asking TNB CYP to "wait" can push them into isolation, distress, depression and suicide; [Olson Kristina R., Durwood L., DeMeules M., et al. (2015): Mental Health of Transgender Children Who Are Supported in Their Identities. Pediatrics. 2016;137(3): e20153223 accessible at: <http://tinyurl.com/jn844dx>].

Someone who is applying for LGR will have already undergone a period of self-reflection. Any TNB person who applies for a gender recognition certificate (GRC) will inherently have seriousness of intent and to suggest otherwise would be injecting cis-normative prejudicial ideas on to an applicant, which is unacceptable. Self-autonomy and self-determination should be respected and implemented within GRA reform.

Mermaids suggests that it would be reasonable for the LGR application to have an introduction that sets out clearly how a change in legal gender will impact them practically and it should be a requirement for someone to confirm they have read and understood this, but we categorically reject any notion of having to 'prove' one is serious by way of any form evidence.

Mermaids feels it apt to here address the idea that a self-determinative model that is 'easy' to complete would be abused for it is being argued that abuse of women and girls in single gender spaces, such as toilets, changing rooms, rape crisis centres or prisons, will increase as a result of a LGR system that is not adequately 'safeguarded'. Mermaids believes that claims of potential abuse of the LGR system cannot be used as objective evidence available to support the argument that self-declaration is a safeguarding issue. There is currently no evidence to suggest a quick, accessible system would be abused. People who want to abuse systems to abuse women already do so and will continue to do so with or without a GRC. Any risk of harm should be dealt with by our criminal laws and not as a means to justify a LGR system that is not based on self-determination.

See question 11 for specific discussion around TNB CYP.

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?

Yes

No

Please explain the reasons for your answer. If you think the provisions should change, how do you think they should be altered?

TNB: Trans or Non-Binary

CYP: Children and Young People

LGR: Legal Gender Recognition

Mermaids recommends that there should be no spousal veto power. A model of self-determination is the most appropriate, desirable and human rights conscious regime and no one should have a right to restrict one's access to it.

No TNB person should have to rely on anyone's consent, including a spouse, to allow them to self-determine their identity; such a requirement violates their right to that identity.

The spousal veto power implies that having a transgender partner is undesirable for a spouse. Our laws must not perpetuate such negative attitudes.

Mermaids does acknowledge the fact that a gender recognition certificate would change the terms of the contract of marriage or civil partnership and therefore confirmation that notice has been given to the spouse of the LGR application would be reasonable, but this notice should not include an opportunity for the spouse to veto the application. Mermaids also wants to make it clear that this notice does not give any weight to the suggestion that a marriage contract has been *violated* (either by deceiving or harming their spouse) by seeking legal gender recognition.

According to the Yogyakarta Principles, neither marital status nor any third party opinion should be a prerequisite for accessing legal gender recognition [YP+10, Principle 31 http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf]

The Select Committee on Women and Equalities acknowledged that the power of a spousal veto can lead to 'trans people to be victimised by spouses with malicious intent' which was furthered acknowledged to be 'deplorable and inexcusable'. [House of Commons Select Committee on Women and Equalities, Transgender Equality (The Stationary Office Limited 2016) [45]]. GRA reform must not allow or invite domestic violence and the removal of this requirement is therefore essential.

Question 8: (A) Do you think the fee should be removed from the process of applying for legal gender recognition?

Yes

No

(B) If you answered no to (A), do you think the fee should be reduced?

Yes

No

TNB: Trans or Non-Binary

CYP: Children and Young People

LGR: Legal Gender Recognition

LGR should be accessible to all who seek it: any fee would pose an economic barrier to gender recognition and no-one should be barred from accessing LGR on the basis of their economic status. TNB CYP are especially vulnerable to an application fee restricting them in being able to apply for a gender recognition certificate as they are often financially dependent.

The Council of Europe recommends a "quick, transparent and accessible" [Paragraph 21 LGBT Recommendations CM/Rec 2010(5)] and an unreasonable fee (which we deem the current fee to be) would act in contravention to this.

Mermaids recommends that any cost should be no more than the current cost of a new birth certificate: <https://www.gov.uk/register-birth/birth-certificates>

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

TNB: Trans or Non-Binary

CYP: Children and Young People

LGR: Legal Gender Recognition

Applicants have to provide additional documents to prove to a Gender Recognition Panel that they've been living 'in role'. Providing such evidence costs money. Costs accrue through passports and driving licences applications, deed polls, medical reports, legal advice or guidance costs and certified copies of ID.

Further there is always the prospect of having to pay for another application should the first not be successful.

This effectively means that one application can amount to hundreds of pounds which acts in direct contravention to the Council of Europe's recommendation that gender recognition procedures should be accessible. (Paragraph 21 LGBT Recommendations CM/Rec 2010(5) and "based on self-determination" [PACE 2048(2015) 6.2.1.]).

The impact of these costs is that it creates an elitist system that renders only those who can afford the application eligible i.e. the system is not accessible to all and certainly not CYP. TNB CYP are especially vulnerable as they are often financially dependent.

Mermaids recommends a LGR self-determinative model that does not rely on 'evidencing' one's gender which would omit the need to organise and pay for supporting documentation.

Mermaids recommends that any cost to the LGR process should be no more than the current cost of a new birth certificate: <https://www.gov.uk/register-birth/birth-certificates>

Question 9: Do you think the privacy and disclosure of information provisions in section 22 of the Gender Recognition Act are adequate?

Yes

No

If no, how do you think it should be changed?

TNB: Trans or Non-Binary

CYP: Children and Young People

LGR: Legal Gender Recognition

Mermaids has major concerns around the lack of enforcement of Section 22. There have been no convictions under Section 22 since its enactment and we submit that it is clearly therefore, not fit for purpose. Mermaids asks that the government prompts a national inquiry as to why this is the case.

Mermaids would suggest in the meantime that the Government should develop a more robust approach and ensure that a future 'Section 22' protection would include provisions that protect the privacy of TNB people who do not have and do not wish to apply for a gender recognition certificate. Further, Mermaids believes the requirement for prosecutions to be pursued within six calendar months should be changed to allow for a larger limitation window as this may be a reason charges have not been pursued.

Action should also be taken around ensuring the police and public bodies in general (including employers) are provided with practical guidance as to how they should act to ensure they are not acting in violation of their Section 22 duty.

Question 10: If you are someone who either has, or would want to undergo legal gender transition, and you have one or more of the protected characteristics, which protected characteristics apply to you? You may tick more than one box.

Age

Disability

Gender reassignment

Marriage and civil partnership

Pregnancy and maternity

Race

Religion or belief

Sex

Sexual orientation

Please give us more information about how your protected characteristic has affected your views on the GRC application process.

Those under 18 years old are currently unable to apply for legal gender recognition.

Those who are Non-Binary are currently unable to apply for legal gender recognition.

Question 11: 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?

TNB: Trans or Non-Binary

CYP: Children and Young People

LGR: Legal Gender Recognition

Age:

Mermaids recommends that every TNB CYP should have access and the option of LGR, whatever their circumstance.

In summary Mermaids recommends that those YP aged 16 and 17 years old should have automatic access to a self-determination model of application i.e. the 'adult system'. The mechanism for under

16 year olds should be streamlined for those who have consent from all with parental responsibility although PR consent would not be necessary should the young person have independent competence. Those without supportive households and/or lack of independent competence should have access to a safeguarded mechanism – we want to work with the government to develop a vision as to what this mechanism would look like. Any procedure must provide every CYP a life of dignity and autonomy, the right to privacy and the right to be heard and to take an active role in all administrative and judicial procedures that concern them.

Mermaids thinks the GRA application should be a simple online application similar to the form of other governmental platformed applications. There should be offline application options also. All options must be accessible to all people with disabilities and additional needs.

In 2016, the Women and Equalities Select Committee recommended that the age for gender recognition should be lowered to 16, with appropriate support. This was an important step and in line with the ability of adolescents to consent to medical treatment in the UK (as per [s.8 Family Law Reform Act 1969]). Further, these young people don't need parental consent to change their names which means many Trans 16 and 17-year-olds are forced into a situation where their legal name reflects their gender identity, but not their legal gender. Not extending legal gender recognition to those aged 16 and 17, creates the likelihood of a general disparity across Great Britain, given that the Scottish Government included lowering the age at which a person can apply for a GRC as one of the proposed reforms to the GRA in their consultation (which closed in March 2018).

Mermaids submits that the Women and Equalities Select Committee recommendation (referred to above) does not go far enough however and does not reflect the evolving capacity of a CYP as recognised within international law [Article 5 UN Convention of Rights on a Child (UNCRC); Council of Europe CM/Rec (2012)2]. Many children have the capacity to meet the test of 'independent competence' before they are 16 years old and a future LGR system should acknowledge this. The test for independent competence should not be set too high to render it inaccessible to those under 16; it should only require that a CYP has a clear and settled understanding of their gender. Independent competence must not be used as a gateway to medicalising the LGR procedure for those under 18 years old, but it is acknowledged that independent competence may need to be assessed by an appropriate professional for those under 16 years old.

For those with the support of everyone with parental responsibility, a self-determinative model can be implemented with evidence of PR support; this application should be quick and accessible. This is in line with international best practice as per [Article 5 of UNCRC] which asks for Governments to respect the rights and responsibilities of parents and carers to provide guidance and direction to their child as they grow up, so they full enjoy their rights.

Mermaids acknowledges that it would be possible (for those CYP who only have the support of one person with PR) for someone with PR to make a specific issue order application as provided by [s8 Children Act 1989] in relation to LGR. A decision made by the court in response to such an application should be based only on the child having a clear and settled understanding of their identity. The lack of support from one person with PR should not be determinative of whether a child's identity should be recognised.

The Government is asked to acknowledge and protect those CYP who do not have PR support, who are under 16 and not deemed to be independently competent. Mermaids recommends that serious consideration needs to be had around how is best to safeguard these individuals who are arguably the

most vulnerable demographic of an already marginalised and vulnerable group of TNB people. They must not be ignored.

Identity documents reflecting a person's gender identity are important for TNB people's dignity, safety and access to human rights – this includes children. Not providing TNB CYP with access to LGR creates unwanted experiences of having to come out, which often would not happen were the CYP to have a birth certificate (BC) that reflected as their true gender. TNB CYP people do not always have passports or driving licences; BCs can often be a CYPs only form of official personal identification. This often leads to a CYP, or their parent, having to explain why the BC has the incorrect gender marker on it which infringes on the right to privacy of that individual [Article 8, ECHR].

Through in-house consultations and statements from service users, we have listened to the life-experiences of our CYP who face problems in being recognised and respected for their gender within society without a birth certificate that reflects their true gender. We have received accounts of our service users being denied recognition in our schools, jobs and when accessing healthcare on the basis that their identity documents do not match their gender. This is unacceptable and exposes TNB CYP to distressing and humiliating situations that is impacting on their ability to learn, thrive and interact in full within society, which could be avoided through Gender Recognition Act (GRA) reform. Reforming the GRA to include those below 18 years old with no age restriction can help end the discrimination that is currently taking place. Mermaids states this whilst acknowledging however that TNB CYP should have no extra difficulty interacting in society as their true gender without a GRC and we invite the Government to explore ways public bodies and society generally can be educated in this respect.

Not allowing a TNB CYP to correct their BC is also incompatible with other systems that allow TNB to change their gender marker. For example, Trans CYP can change their gender marker on all other forms of ID including passports, education and NHS records without age-based restrictions. A change in law around LGR for CYP and the allowance of it would simply bring GRA law in line with how wider social systems are working. In respect of NB CYP, GRA reform would ensure wider social systems recognised these individuals also. Without a set of matching documents participation in society becomes very difficult. For many TNB CYP, the gendered information in these documents, including name and gender marker is a constant source of discomfort, discrimination and hate incidents/hate crimes. Mermaids believes that GRA reform can help make our TNB CYP more comfortable, mitigate the risk of discrimination against them and mitigate the risk of hate incidents/hate crimes.

We should not be denying a TNB CYP gender recognition on the ground that they are too young. Current legislation does not give our TNB CYP acknowledgement that they are right holders in their true gender. The Council of Europe asks member states dealing with minors' gender recognition procedures to "ensure that the best interests of the child are a primary consideration in all decisions concerning children". Explicit or implicit age restrictions may obstruct this best-interest-principle for CYP. Further, such restrictions may violate non-discrimination provisions in the Convention on the Rights of the Child (UNCRC) [Art 3.1; Art 8.1; Art 12.1; Art 24 and Art 6.2], the Yogyakarta Principles [YP+10, Principle 32 http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf], the European Convention on Human Rights [Art 8; Art 14] and the EU Fundamental Rights Charter [Art. 21]. The UNCRC requires states to respect the right of a child to be heard and to duly take into account their views, supported by the Council of Europe [CM/Rec (2012)2]; their evolving capacities must be taken into account also remembering that the age of a CYP does not determine the significance of their views. The UN Committee on the Rights of the Child has highlighted that the identity of the child includes characteristics such as gender

identity and the right of the child to preserve his or her identity is guaranteed by the UNCRC [Article 8] and must be respected and taken into consideration in the assessment of the child's best interests.

The state talks about 'protecting' TNB CYP, but it needs to ensure that 'protection' is not only looked at from a cis-normative perspective. The state needs to reject a default position that being non-trans (or cis-gender) as always safe, when simply it is not. Being TNB has been evidenced to increased risk of depression [<https://www.sciencedirect.com/science/article/pii/S0165032717324400>] and specific research around not supporting TNB CYP with their gender can lead to an increase risk of isolation, distress, depression and suicide; [Olson Kristina R., Durwood L., DeMeules M., et al. (2015): Mental Health of Transgender Children Who Are Supported in Their Identities. *Pediatrics*. 2016;137(3): e20153223 accessible at: <http://tinyurl.com/jn844dx>]. We must mitigate the risk by supporting TNB people with their identity through GRA reform. We have evidence that illustrates pushing an assigned gender on a young person can be extremely damaging and in some circumstances, fatal. The Stonewall School Report (2017) [<https://www.stonewall.org.uk/school-report-2017>], conducted with the University of Cambridge, found that more than four in five Trans young people (84 per cent) have self-harmed; more than two in five Trans young people (45 per cent) have attempted to take their own life; approximately nine in ten Trans young people (92 per cent) have thought about doing it (Young Minds estimates that one in four young people have had these thoughts). We should be recognising TNB CYP for who they are and supporting them to be themselves. GRA reform would be a form of supporting our TNB CYP and we believe it would inevitably have a positive effect on protecting our TNB CYP from inner distress and hopefully therefore lead to a reduction in harm our TNB CYP are currently victim to.

Making gender recognition accessible independent of age is becoming more pressing as more TNB CYP come out at an earlier age. The World Professional Association for Transgender Healthcare – WPATH – confirms that “increasing numbers of adolescents have already started living according to their gender identity upon entering high school” [deVries, Steensma, Doreleijers, & Cohen-Kettenis, 2010 in WPATH, Standards of Care Version 7 (2013)] and currently 9 states in Europe open gender recognition procedures for those below age of majority with no age restrictions [https://tgeu.org/wp-content/uploads/2018/05/SideB_TGEU2018_Print.pdf]. Importantly, Ireland has committed to reviewing the Gender Recognition Act 2015 to open the process up to those of all ages; the Review Group of GRA have suggested this to be an “administrative process” requiring “parental consent” with a straightforward revocation process [<http://www.welfare.ie/en/downloads/GRA%20Review%20Report.pdf>].

Mermaids also believes that it is important to pay attention to practical aspects and ensure that no barriers are in place that might render a procedure inaccessible. Accessibility needs to be ensured for all TNB people who seek it, independent of gender identity or a non-binary identity, the person's medical, age or other protected characteristic status such as disability or race. If a TNB person cannot fulfil certain requirements for age, religious, health or other reasons, they should not be barred from having their gender identity recognised.

Through consultation with our service users there is an overwhelming support for there to be no age requirement as part of the future LGR application. We here provide you with some comments from our TNB CYP service users that support this assertion:

“...there should not be an age limit because it takes away the agency of the children and instils the belief 'is it just a phase'. Changing the law would also means that there was recognition that trans young people do exist and there should be no age of credibility because this is prejudicial... changing the legislation would help get rid of the myth around young trans and non-binary people not existing

and remove the barriers and make the system as simple as it is for cis gender... cis gender people do not have to prove their existence... any age limit on legal gender recognition would show an age limit to transgender people being believed to exist..." Anonymous, sister to a 16 year old trans young man

"...I am frustrated that I can change everything apart from my birth certificate ... I have to adapt to society rather than society adapt to me..." Anonymous, 16 year old young trans man

"...privacy and dignity should be afforded to people of all ages and that someone shouldn't have to out themselves through the disclosure of documents..." Anonymous, 16 year old young trans man

"...I don't think parental support is an unnecessary thing... trans kids who want their gender changed on their birth certificate will want it so much that they won't want to change later on... there shouldn't be an age limit on anything ..." Anonymous, 16 year old young trans woman

"...it would mean the state seeing me as valid and as a female which is in line with the government seeing me as a woman in all other walks of my life... it would also mean not having to out myself and I could be comfortable knowing that all pieces of ID will be consistent and uniformed. I think this would put trans young people at ease generally." Anonymous, 16 year old young trans woman

"...I still have a piece of paper that says I am female and the worst thing is that this isn't my fault. The law changing would mean that society would accept trans and non-binary people more – coming out as trans should not be a big deal..." Anonymous, 16 year old young trans man

"...I think society is scared and the legislation protects and reinforces that. Current legislation is working for the majority (i.e. cis people) and ignoring trans and non-binary people..." Anonymous, sister to young trans man

"...I find it offensive that my child has a name and gender marker that she has never identified with on her birth certificate. If my daughter is dead-named it can reduce her to tears and not being able to change her birth certificate makes it more likely that this will happen..." Anonymous, mother to 10 year old trans girl

Gender Recognition

Please see q20

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?

Yes

No

Please give reasons for your answer.

TNB: Trans or Non-Binary

CYP: Children and Young People

LGR: Legal Gender Recognition

Under the Equality Act 2010 (EqA10) transgender people have the right to participate in sport as their gender although they are subject to certain exceptions. The Government has been clear that the proposals outlined within this consultation document are aimed at reforming the Gender Recognition Act 2004 and not the EqA10. The provisions regarding sport therefore will not change through GRA reform.

TNB CYP should have no extra difficulty in integrating within sporting life as their true gender without a GRC.

Mermaids also acknowledges that there is no explicit recognition for Non-Binary people within the EqA10 and recognising NB individuals within the future GRA would assist in NB having protection under the EqA10 in future.

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?

Yes

No

Please give reasons for your answer.

TNB: Trans or Non-Binary

CYP: Children and Young People

LGR: Legal Gender Recognition

TNB people, including CYP, do not need a gender recognition certificate (GRC) to use the facility or service that aligns with their true gender for they are protected under the terms of the Equality Act 2010 (EqA10) at section 7 where 'Gender Reassignment' is a protected characteristic (GRPC). Schedule 3 of the EqA10 provides exceptions where people with the GRPC can be excluded, but only if the exclusion is deemed proportionate to a legitimate aim (a high threshold) and the onus would be on the service provider to meet this test. (Mermaids also notes that the exemption provision of single-sex or separately provided services in Schedule 3, Paragraph 28 does not apply to schools.) If the threshold does apply and is met, an act of discrimination can be defended by the service provider; this is the case even if someone has a GRC.

The Government has been clear that the proposals outlined within this consultation document are aimed at reforming the Gender Recognition Act 2004 (GRA) and not the EqA10. The provisions regarding single-sex and separate-sex services therefore will not change through GRA reform. Therefore, even if it is easier to get a GRC, it will not be any easier to gain access to a single-sex service or facility if there is a legitimate reason to exclude. The reason that trans women and girls will be able

to access single-sex services post-GRA reforms is not because it is easier to get a GRC, it is because (consistent with the position that currently exists) it is almost impossible to prove that excluding trans women and girls is a proportionate and legitimate measure, simply because it more often than not would be a decision that would be disproportionate and illegitimate.

TNB CYP should have no extra difficulty using the facilities and services that aligns with their gender without a GRC.

Mermaids also acknowledges that there is no explicit recognition for Non-Binary people within the EqA10 and recognising NB individuals within the future GRA would assist in NB having protection under the EqA10 in future.

Mermaids is concerned that there has been much negative and misinformed media reporting on how GRA reform could affect the provision of single sex services. Specifically there has been a sensationalism (and often fabrication) around CYP and the use of single sex facilities. The media has heightened anxiety around TNB CYP and we have reports that some of our CYP service users are experiencing schools and public institutions refusing them to share facilities that align with their true gender which is being fuelled by this negative rhetoric. We have had accounts from our service users that state they were unable to go to the toilet for the whole day because they are not allowed use the toilet aligned with their true gender or because they were bullied if they did. Other experiences include TNB CYP who have not been permitted to stay in a dormitory with their friends and peers of their true gender on a school trip simply because they are transgender. We invite the government to acknowledge that this is unacceptable and discriminative.

Mermaids believes that every child should be comfortable to learn and thrive as themselves and enjoy socialising as themselves, whatever their gender.

(B) If you provide a single or separate sex service, do you feel confident in interpreting the Equality Act 2010 with regard to these exemptions?

Yes

No

Please give reasons for your answer.

N/a

(C) If you are a trans person who has experienced domestic abuse or sexual assault, were you able to access support?

Yes

No

Please give reasons for your answer.

TNB: Trans or Non-Binary

CYP: Children and Young People

LGR: Legal Gender Recognition

This response is given on behalf of Mermaids, not an individual however Mermaids will take this opportunity to ask on behalf of our service users' the Government to recognise that abuse can be in the form of TNB CYP not being supported in their gender identity at home. Such abuse is currently dealt with in a variety of ways by our local authorities. Mermaids has received accounts of local authorities not understanding TNB identities which can lead to a misapplication of current child law and can often result in TNB CYP being decided to live in hostile households. It must also be recognised however, that some local authorities are proactive in ensuring they are TNB aware and we would encourage the government to act to ensure this was the case throughout England and Wales (and the whole of the UK). Mermaids recommends that all local authorities are commissioned to provide every member of staff with the necessary expert TNB awareness training to ensure they deal with TNB CYP appropriately with the aim of ensuring every TNB CYP lives in a supportive household. We would encourage the government to work with expert TNB charities and LGBT+ charities that focus on CYP that are homeless or live in hostile homes as a result of their gender identity, such as Albert Kennedy Trust, to implement this.

(D)If you answered 'yes' to (C), was this support adequate?

N/a

Question 14: Do you think that the operation of the occupational requirement exception in relation to gender reassignment in the Equality Act 2010 will be affected by changing the Gender Recognition Act?

Yes

No

Please give reasons for your answer.

The Government has been clear that the proposals outlined within this consultation document are with the aim of reforming the Gender Recognition Act 2004 and not the Equality Act 2010 (EqA10). The provisions therefore will not change through GRA reform.

TNB CYP should have no extra difficulty in integrating within society as their true gender without a GRC.

Mermaids acknowledges that there is no explicit recognition for Non-Binary people within the EqA10. Recognising NB individuals within GRA reform would help ensure NB have protection under the EqA10 in future, which they currently do not explicitly have.

Question 15: Do you think that the operation of the communal accommodation exception in relation to gender reassignment in the Equality Act 2010 will be affected by changing the Gender Recognition Act?

Yes

No

Please give reasons for your answer.

TNB people, including CYP, do not need a gender recognition certificate (GRC) to be allocated to a room within communal accommodation that aligns with one's true gender for they are protected

under the terms of the Equality Act 2010 (EqA10) at section 7 where 'Gender Reassignment' is a protected characteristic (GRPC). Schedule 23 of the EqA10 provides an exception where people with the GRPC can be excluded, but only if the exclusion is deemed proportionate to a legitimate aim (a high threshold) and the onus would be on the accommodation provider or trip organiser (should it be a school organising the sleeping arrangements) to meet this test. If the threshold is met, an act of discrimination can be defended; this is the case even if someone has a GRC.

The Government has been clear that the proposals outlined within this consultation document are aimed at reforming the Gender Recognition Act 2004 and not the EqA10. The provisions regarding communal accommodation therefore will not change through GRA reform. Therefore, even if it is easier to get a GRC, it will not be any easier to gain access to a single-sex service or facility if there is a legitimate reason to exclude. The reason that trans women and girls will be able to access single-sex communal accommodation places that align with their gender post-GRA reforms is not because it is easier to get a GRC, it is because (consistent with the position that currently exists) it is almost impossible to prove that excluding trans women and girls is a proportionate measure.

TNB CYP should have no extra difficulty in integrating within society as their true gender without a GRC.

Mermaids acknowledges that there is no explicit recognition for Non-Binary people within the EqA10. Recognising NB individuals within GRA reform would help ensure NB have protection under the EqA10 in future, which they currently do not explicitly have.

Question 16: Do you think that the operation of the armed forces exception as it relates to trans people in the Equality Act 2010 will be affected by changing the Gender Recognition Act?

Yes

No

Please give reasons for your answer.

See answer to question 14.

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?

Yes

No

Please give reasons for your answer.

See answer to question 14.

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?

Yes

No

Please give reasons for your answer.

Please see answer to question 14.

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?

Yes

No

TNB: Trans or Non-Binary

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A reformed GRA provides good opportunities for improvements in the delivery of public services.

Identity documents reflecting a person's gender identity are important for TNB people's dignity, safety and access to human rights – this includes CYP. Through in-house consultations and statements from service users, we have listened to the life-experiences of our CYP who face problems in being recognised and respected for their gender within society without a birth certificate that reflects their true gender. Our service users are being denied recognition in our schools, jobs and healthcare practises on the basis that their identity documents do not match what their self-determined gender – reforming the GRA to include those below 18 years old with no age restriction could help end the prejudice and discrimination that is currently perpetrated on to TNB CYP within society. This is said whilst acknowledging that TNB CYP should have no extra difficulty in integrating within society as their true gender without a Gender Recognition Certificate (GRC).

We ask that the Government works with public bodies to increase awareness and encourage TNB-inclusive policies to ensure that in future our TNB and CYP are dealt only with respect and dignity as their true gender, when engaging with public services, whether they have a GRC or not.

A simple, de-medicalised LGR system inclusive of NB people and TNB CYP generally would improve monitoring data also as records would accurately reflect their gender identity.

Question 20: Do you think that there need to be changes to the Gender Recognition Act to accommodate individuals who identify as non-binary?

Yes

No

If you would like to, please expand more upon your answer.

TNB: Trans or Non-Binary

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LGR: Legal Gender Recognition

At present Non-Binary (NB) people have no access to LGR. NB identities are valid as gender identities that fit within the gender binary. Mermaids recommends that people with NB identities are recognised within reformed legislation.

Mermaids believes that identity documents reflecting a NB person's gender identity are important for their dignity, safety and access to human rights – this includes CYP. Mermaids believes that all people,

including CYP, who identify as a gender other than male or female should be able to obtain documents that reflect their gender identity in the same way as a man or woman does. Having driving licenses, birth certificates, passports and other official documentation, including medical documentation that reflects this would have a significant impact on their sense of acceptance in society. Currently, NB people are currently unable to marry as themselves, they would have to die being mis-gendered and have to conduct life often being mis-gendered and having no means to remedy this. The experience of this on NB is that it is degrading and unacceptable and Mermaids calls for NB identities to be recognised immediately within GRA reform.

NB identities are not new and future legislation should acknowledge this demographic of our population. To put it in context, not recognising NB people in reformed GRA is principally the same as not recognising the identity of a man or woman in future legislation. Not recognising a gender on the basis of it only applying to a marginalised group of Trans people cannot be justified. A minority group, however small, deserves the respect and dignity of LGR. To not provide this respect acts in contravention to the principles that our equality laws are based upon.

Until NB identities are recognised the government will be refusing a proportion of our population the degradation of not being seen as valid, in law, which is not only humiliating and tolerant of a non-acceptance of the identity within wider society generally, but it is incompatible with the increasing social acknowledgment and acceptance of this gender identity. Further, this is an identity that is being recognised internationally already. Options for NB people to obtain legal documents exist in Malta, Denmark and are under discussion in Germany, Ireland and Scotland. Outside Europe, several countries, including Canada, Nepal, Australia, New Zealand, Pakistan and India, already allow for passports with gender markers other than “F” or “M”; these countries typically use “X”, which is recognised by the International Civil Aviation Organization. (Transgender Europe, 2017: Third Gender Markers in Europe and Beyond).

Changing the GRA so that the law explicitly recognises NB identities, would make it clear that NB people have a protected characteristic (‘gender reassignment’) under the Equality Act 2010 (EqA10). Current protection under the EqA10 is not explicit and the continuance of non-recognition would be essentially allowing a demographic of our Trans population to not be explicitly protected from discrimination on the basis of their gender identity. Again, this is principally the same as the suggestion that a man or woman should have not have protection under equality law due to their gender not being recognised. The idea would not be tolerated, and rightly so.

Practically in relation to the LGR application process, people with a NB identity currently only have the choice either to apply for a certain gender marker that is perhaps closer to their gender identity and subject themselves to a system that is incompatible with what it means to be NB or be excluded from legal gender recognition. A NB gender identity is a gender identity of its own and the current system does not acknowledge this.

As recognised within previous responses in this survey, being NB should not be seen as a phase, confusion or marker of ill-health, just as identifying as a man or woman (whether trans or cis) should not.

Through consultation with our young service users there is an overwhelming support for NB identities to be recognised within future legislation and that not including NB identities within reformed legislation would be an outdated outcome and delaying the inevitable.

Examples of comments we have received from our CYP service users:

“Non-binary people are becoming more and more visible ... There are countries that include non-binary people and we should get them recognised as soon as possible... it is about taking pride in our population and taking pride in diversity.” Anonymous, 16 year old trans young woman

“...if government says no to non-binary people now they have to say yes in the end anyway so it is pointless to say no.” Anonymous, 16 year old trans young woman

“...there has to be people in the middle because gender is not simple – a system that includes non-binary people would simply reflect reality.” Anonymous, 16 year old young trans man

“...non-binary people should be included because otherwise they are simply excluded.” Anonymous, 16 year old young trans man

“...non-binary identities are currently being invalidated by our government...” Anonymous, 15 year old young trans man

“...we should flip the question and asking why non-binary shouldn't be included...” Anonymous, 16 year old young trans woman

Question 21: (A) Do you have a variation in your sex characteristics?

Yes

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?

N/a

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

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Mermaids believes that individuals who are intersex or have variations of sex characteristics (VSC) should not face additional barriers in accessing LGR if it differs from the sex they were assigned at birth.

Intersex / VSC people should also not be restricted to an arbitrary lower age limit in applying for a Gender Recognition Certificate, especially considering many have already been subjected to huge limitations and traumas in life due to unnecessary cosmetic surgeries, and harmful medical procedures.

Mermaids would support the reformed legislation to include Intersex/VSC individuals within its title e.g. 'Gender and Variations of Sex Characteristics Recognition Act'.

Mermaids recommends that intersex / VSC CYP and adults should be permitted to correct and replace their original birth certificates quickly, accessibly and without the need to disclose any historic medical evidence. Mermaids acknowledges that the current General Register Office system is outdated and poses specific barriers for intersex/VSC individuals and are in need of immediate reform within GRA reform.

Mermaids would recommend that the Government work with expert intersex organisations such as Intersex UK, UK Intersex Association and Organisation Intersex International (UK) to ensure any mechanism going forward is expert led to ensure a future system is suitable and fully inclusive of intersex/VSC people.

Question 22: Do you have any further comments about the Gender Recognition Act 2004?

Yes

No

If you answered yes, please add your comments.

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Mermaids is a charity that supports TNB CYP and their families. Our online support group for parents has over 1,200 members, and over 500 young people on our youth group and we advocate on behalf of TNB CYP and their families nationwide.

Through in-house consultations and statements from service users including TNB CYP as well as parents and carers, Mermaids has listened and considered the life-experiences of these people within the context of international best practice to create this submission.

Mermaids welcomes this Consultation and the opportunity to improve the lives of TNB and intersex/VSC individuals; we ask that the GRA reform includes TNB CYP.

Mermaids is concerned by the rise of a transphobic climate in public opinion towards TNB people, including CYP. Annual figures released by the Government on 16 October 2018 show a surge in trans focused hate crime in England and Wales and we ask the Government to respond to this. We ask the Government to be alive to the misinformation and transphobia (including against those who are NB) present currently in society and ask it to support the TNB communities in doing what it can to mitigate the risk of harm currently being felt. Mermaids believes GRA reform is one way the Government can help make positive change for the reasons submitted throughout this survey.

Following the closure of the GRA Consultation and throughout the Parliamentary GRA reform process, Mermaids are keen and willing to work with the Government to help develop reformed GRA law that aligns with the following basic principles:

- To build a system based on the principle of self-determination
- To build a system that is quick and accessible to all TNB and intersex/VSC people
- To build a system that is completely de-medicalised
- To build a system that recognises genders both inside and outside of the binary
- To build a system based on international best practice

Mermaids believes that reforming the GRA to allow for TNB CYP's true gender to be legally recognised will help change the lives of thousands of TNB CYP that exist in England and Wales for the better. Every CYP should have the right to be seen by the state as who they are. Every CYP should be awarded the dignity and opportunity to have their gender acknowledged and respected every day without difficulty and seen by society in every circumstance as themselves, without exception. We believe GRA reform that includes CYP will provide a safer place for them to learn and thrive as themselves. Every child should have the opportunity to learn and thrive as themselves, whatever their gender. GRA reform that includes TNB CYP will ultimately help ensure that our TNB CYP can go forward in to adult life happy, healthy and comfortable in themselves.