



# Gender Recognition Act Consultation

## Background

In 2016 the Westminster Women and Equalities Committee produced the “[Transgender Report](#)”, a report which for the first time considered issues of transgender equality within the UK.

The Committee’s report made more than 30 recommendations, covering a wide range of policy areas, aimed at ensuring full equality for trans people including updating existing legislation, providing better services, in particular within the NHS, and improving confidence in the criminal justice system.

A key recommendation within the report was updating the Gender Recognition Act 2004 (GRA), the legislation which enables transgender individuals to apply for a Gender Recognition Certificate. The Committee suggested the current medicalised approach runs contrary to the dignity and personal autonomy of those applying under the GRA.

## Proud’s View

In 2017 our Annual General Meeting (AGM) debated a motion supporting the full implementation of the recommendations within the “Transgender Report” and calling on our National Committee to work with PCS’ National Executive Committee (NEC) to achieve this.

The motion was successfully carried by our AGM therefore officially agreeing this as Proud’s position on the issue. Our National Committee has continued to put forward this position in discussions with the NEC as we awaited the launch of the Government consultation on the issue.

## PCS' View

In 2017 PCS Annual Delegate Conference (ADC) debated motion A78, an identical motion to that carried by Proud members at our own AGM, which called on that year's incoming NEC to work with Proud to pursue and achieve full implementation of the "Transgender Report" recommendations.

Despite a call for remission from the NEC, the motion was successfully carried by delegates at ADC, ensuring that Proud and PCS' position on the issue were aligned.

The issue was further debated at ADC 2018, under motion A18, which dealt with the issue of the Gender Recognition Act specifically and called on PCS to pursue reform of the GRA as soon as possible and to support trans and non-binary members in the face of increasing transphobic behaviour linked to debate around potential reforms of the GRA.

During the debate some opposition was raised however delegates, again, overwhelmingly carried motion A18, reiterating PCS' position in support of reforming the GRA.

Our NEC, in supporting motion A18, stated "as we work to ensure that reform of the GRA comes about, we must be aware of the need to leave intact the protections and exemptions currently provided by the Equality Act," committing to working with Proud and the National Women's Forum in order to achieve this aim.

## Government Consultation

In November 2017 the Scottish Government announced its consultation on reviewing the Gender Recognition Act 2004 in order to consider reform of the GRA, where these powers were devolved.

Although PCS was unable to submit a response to the consultation itself, our position was put forward as part of the Scottish Trade Unions Congress (STUC) submission, as agreed by both the STUC LGBT+ Workers' and Womens' Committees on which PCS is represented.

On 3<sup>rd</sup> July 2018 the Westminster Government then published the details of its consultation, "[Reform of the Gender Recognition Act 2004](#)" which is due to run until 19<sup>th</sup> October 2018.

Following their meeting in July, our NEC [issued a statement](#) on 2<sup>nd</sup> August reaffirming PCS' position on reforming of the GRA and working with Proud, and the National Women's Forum, to facilitate discussion and prepare our response to the Government consultation.

## **Membership Consultation**

In order to consider our recommendations to the National Executive Committee, Proud consulted with PCS' Equality Department to review possible options that would allow members to contribute their views on GRA reform for our National Committee to consider.

Proud and PCS Equality reflected on the questions contained within the Government consultation and identified those we felt were most relevant to PCS, Proud and our members. We also agreed to collate members' current experience with the Gender Recognition Act and members attitudes in regards to our union and their position on trans equality in general.

Both parties agreed that all submissions should be anonymous in order to try and obtain open and honest feedback from members .

An online questionnaire was produced with an email invitation issued to all Proud members, where a personal email address is held by PCS. Details were not made available publicly or via Proud social media in order to try and ensure all feedback received was from Proud members only.

## Summary

Proud and PCS' Equality Department prepared our online survey, set out in five sections;

1. Personal (Q1 - Q3)
2. GRA Reform (Q4 - Q7)
3. Equality Act (Q8 - Q10)
4. Additional Comments (Q11)
5. Trans Equality in PCS (Q12)

A summary of responses to the survey is provided below.

### ***Section 1 - Personal***

We asked all respondents the following;

*Q1. How would you describe your gender identity?*

*Q2. Does this differ from the sex/gender you were assigned at birth?*

*Q3. Have you, at any time, applied for a Gender Recognition Certificate under the existing Gender Recognition Act legislation? (If yes, what was your experience? If no, what was your reason(s) for not doing so?)*

Of responses received, 48% of those who responded identified as male and 28% as female - this includes those identifying as either cisgender or transgender. 24% of respondents identified out with traditional binary gender identities, e.g. non-binary, or provided a response which meant we were otherwise unable to determine an appropriate answer to question 1.

Three out of four respondents confirmed that their gender identity matched the sex assigned to them at birth i.e. cisgender. One in four responded that their assigned sex and gender identity differed, this includes those who may be transgender or who identify as non-binary or another gender identity.

In response to question 3, a majority of respondents (95%) indicated that they had not applied for a Gender Recognition Certificate. Many, not all, of these were on the basis their gender identity and assigned sex were aligned (cisgender).

Additional comments were received in relation to question 3 highlighting concerns regarding the current Gender Recognition Act and gender recognition process. These included;

- Current process described, separately, as “expensive” “triggering” and “cruel”
- Involvement of anonymous third parties (Gender Recognition Panel) considered “humiliating
- Experiencing delays due to ongoing issues regarding required psychologist’s reports.

## Section 2 - GRA Reform

We asked all respondents the following;

*Q4. Do you believe that transgender applicants should be required to make a statutory declaration as part of their application for a Gender Recognition Certificate?*

*Q5. Do you believe that transgender applicants should be able to apply for a Gender Recognition Certificate without receiving a medical diagnosis of gender dysphoria?*

*Q6. Do you believe that transgender applicants should have to provide evidence of living in their acquired gender before applying for a Gender Recognition Certificate?*

*Q7. Do you agree with the following statement, “Transgender applicants should be able to apply for and receive a Gender Recognition Certificate without incurring a fee or additional charges as part of their application”?*

Responses to question 4 were almost evenly split with 52% of respondents favouring the retention of a statutory declaration (legal document stating intention of applicant to live permanently in their acquired gender until death) within any reformed Gender Recognition Act, with additional comments provided as below;

- “I believe a statutory declaration should remain within the gender recognition process and is evidenced as best practice in Ireland where such a system is already in operation with no evidence of abuse or false declarations...”
- “...a statutory declaration, with proof of living in affirmed gender, would ensure that our cis-normative peers are protected.”

Of responses to question 5, 67% of respondents agreed that applicants should **not** have to obtain a diagnosis as part of their application. The same number responded to question 6 to disagree with the current requirement of applicants in relation to evidence of having lived in their acquired gender. Additional comments included,

- “Obtaining a diagnosis of gender dysphoria or evidencing their having lived in their acquired gender is often based on outdated stereotypes...”
- “A medical model of gender recognition and “lived experience” excludes people whose gender is not binary - not all trans people experience dysphoria in the same way...”
- “”...at present the “requirements of real life test” and many hoops to jump through are, for want of a better word, cruel.”

In response to question 7, 95% of responses agreed with our statement that there should be no financial detriment to those applying for their Gender Recognition Certificate.

### **Section 3 - Equality Act**

We asked all respondents the following;

*Q8. Do you believe changing the Gender Recognition Act will impact on the current provision for single sex and separate sex exceptions (for example, cisgender women only refugees) under the Equality Act 2010?*

*Q9. Do you believe changing the Gender Recognition Act will impact on the current provision for employment exceptions (i.e. excluding trans persons from a vacancy where it is deemed proportionate) under the Equality Act 2010?*

*Q10. Do you believe changing the Gender Recognition Act will impact on any other current areas of law or public service either as part of the Equality Act 2010 or otherwise?*

Of responses received, 76% of respondents indicated that they believe that there will be no impact on existing single-sex and separate sex exceptions under the Equality Act 2010 (Q8), increasing to 81% for current employment exceptions (Q9), and further increasing to 86% in regards to any other established areas of law or public service (Q10). Additional comments included;

- “The GRA is a purely clerical piece of legislation which allows a transgender person to have their acquired gender legally recognized by the state. It offers no other benefit or protections.”
- “All the proposed reform of the GRA will do will be to simplify and shorten the length of time it takes for a trans person to obtain their Gender Recognition Certificate, whether this were to go ahead or not the trans person would still be guaranteed the same protections under the EA [Equality Act] based on the current definition of the gender reassignment characteristic.”
- “Changing the GRA is very clearly a different process to changing the Equality Act. Reducing the administrative burden on trans people has no bearing on changing the law with regards to single sex services.”
- “The issue for all women is to ensure safe space. This may not always include trans and cis women at the same time. Sometimes both cis and trans women will not want or need to be together but it must not be based on misconceptions or spurious reasons.”

## ***Section 4 - Additional Comments***

We asked all respondents the following;

*Q11. Do you have any additional comments you would like to make in relation to the Gender Recognition Act 2004 and/or the consultation?*

Many of the responses to question 11 were supportive of reform to the Gender Recognition Act, additional points raised regarding the consultation itself were;

- On the question of spousal consent,

“Spousal consent, or the spousal veto, was retained as part of the Westminster Government’s same sex marriage legislation, however the Scottish Government removed this requirement as part of their legislation.

I believe our union, having supported and welcomed same sex marriage in Scotland, should support removal of the spousal veto in England and Wales in order to give equality to our trans members regardless of where they are based.”

- On the question of non-binary identities,

“Our union will have members who identify as non-binary, I believe it is important that we look to support their right to be legally recognised by the Government and that changes should be made to the Gender Recognition Act, but also the Equality Act as set out by the Women and Equalities Committee “Transgender Report” which recommended updating the “gender reassignment” characteristic to that of “gender identity”.

This would provide greater, clearer, recognition of diverse gender identities, such as non-binary and intersex, whilst retaining the existing characteristics and protections therein...”

“This reform is hugely overdue, and the proposals should go further to allow for non-binary identities.”

“...not all trans people experience dysphoria in the same way and it is unclear what “lived experience” as a non-binary person means.”

## **Section 5 - Trans Equality in PCS**

In relation to question 12, we received a total of twenty one (21) individual comments which are provided, in full\*, below

*\*comment edited to remove reference to individuals or events not involved within PCS;*

- “I believe recent incidents have most certainly damaged the trust between our Union, LGB, and in particular our Trans, members and allies.

The decision of our Union's leadership to align ourselves, officially, with individuals involved in opposing reform to the Gender Recognition Act and engaging in the use of language against trans people that, I believe, goes against the very principles of our Union has had a detrimental effect on the wellbeing of our trans members and how we are perceived amongst our membership.

This has not been alleviated by the recent statement of the NEC which failed to mention the most serious situation, as raised by Proud, and instead was almost hidden in with a generic message around the consultation rather than a direct addressing of members concerns regarding the actions of those within our Union's leadership.

At a time when our Union wants to organise and engage members in our equality strands, I believe recent actions have had a negative impact on these aspirations and that a lot of work will need to be done across the Union in order to try and repair the damage that has been done.”

- “Very poor. We have passed policy at conference two years in a row explicitly supporting first the recommendations in the transgender report and now the reforms proposed in the GRA. We were assured this consultation would be about how best to support and carry out conference mandate, but instead we again have to fight the anti-trans rhetoric spewing out of the leadership of our union. It is a disgrace. Start the campaign that conference mandated you to carry out and promote these reforms.”
- “Pretty weak when the General Secretary signs his name to horrendously transphobic open letters in national media and fails to adequately justify his position. Conversely however I am proud that the majority of members stand behind and with their trans comrades. I feel that Mark Serwotka and the wider NEC have repeatedly let down trans members despite the inspirational work many PCS activists are doing for trans rights.
- “Exceptionally well versed and active with campaigning - to be commended”
- “I think PCS whilst condemning violence against others they are trying very hard not to disengage certain equality groups. I think Proud has a role to play to unite and not to be drawn into dividing the union. We need to stand together to make this world a better place for all!
- “Very, Equality is at the heart of everything we do.”
- “I think you are weak on all LGBT+ issues”
- “Strong”
- “Very poor. The leadership of PCS has (despite conference policy which rejects this) issued a statement which takes on some of the points made by transphobes as legitimate concerns. We would not accept the "legitimate concerns about

immigration" narrative from xenophobes and racists, yet our statement accepts the concerns of transphobic bigots. It also refers to "both women and trans people". Many trans people are women. These are not separate categories.

It breaks my heart because I am committed to trade unionism and have been a rep for ten years, but I am seriously considering resigning because of this."

- "Not very"
- "Until recently I had thought it to be very strong and sure. But since the letter that has been signed up to by GS Serwotka, I am not sure that the clear conference policy is being kept to in spirit or delivery. In a matter of weeks I have gone from being proud of my union to ashamed of it."
- "Terribly, that letter Mark signed has made me doubt if as a cis gay male I have a place in the union, if it's my trans colleagues today who are having their validity questioned, who will be next?"
- "Not strong enough"
- \*"Not very strong at all, and this is primarily due to the very clear conflict of interest that Mark Serwotka has.\*"
- "It doesn't appear to be high on the agenda list. Not a priority"
- "As a union, PCS is strong, however more could be done on non-binary inclusion. The General Secretary's statement in solidarity with an anti-trans campaign, however, has damaged a lot of the good work of the union."
- "Very strong. We understand a lot more about trans issues than we did. And I think we are ok with trans people living in their gender ID what I believe is less than clear is gender fluidity and non-binary. People don't understand it at all"
- "We need to talk about it more, educate people and tackle the discrimination. We need to make our workplaces a safe and inclusive environment for transgender people to feel comfortable at work."
- "PCS has made many statements in support of equality and trans rights. Recent events have brought to light however that the unanimous support may not be fully echoed by many within the union, as there have been many instances of poorly considered postings which are to put it bluntly hate speech, have been posted by senior members within the union and also some FTOS. This has went unchallenged by the union as these members are considered to be posting personal opinions."

However, this does seem to be a bit of a double standard as were these individuals talking about another protected characteristic i.e. race or disability - there would be an instant reaction.

As such, at present I feel concerned that PCS may be willing to publicly show support for transgender equality. However until that support is backed by names and faces, and until that support is passionately advertised and unanimous (from a leadership) perspective, I feel that at present - this is lip service. Make a commitment to smash inequality from the union, ensure bigots are made aware that hate is hate whether it comes from a personal statement or a collective one, and make a real effort. The latest post about the gender recognition act on the website was as bland as bland could be - with no advice on questions, no significant support to the consultation, other than a link to the NEC statement which felt like PCS is doing the bare minimum rather than making a clear statement. A union should be united on this - but there are so many mixed messages."

- “Still a bit of work to do on this subject...do our leaders really support us 100%? I’m not so sure.”
- “Don’t see much in publications.”

## Recommendations

Based on members' feedback and existing Proud and PCS policy, our recommendations to PCS' National Executive Committee are that;

### Reforming of the Gender Recognition Act:

- Applicants **should** be required to make a statutory declaration as part of their application for a Gender Recognition Certificate

We believe the inclusion of a statutory declaration will help to ensure those applying for a GRC understand the importance of their decision when doing so.

We also believe it will act as a deterrent to individuals considering making a fraudulent or trivial application by ensuring appropriate criminal sanctions are in place for those who do.

Use of a statutory declaration is existing best practice in several countries, including Ireland where, since 2015, less than 500 gender recognition certificates have been issued (against a total estimated population of 4.8 million) with no reports of widespread abuse or fraud.

- Applicants **should not** be required to receive a medical diagnosis of gender dysphoria as part of their application for a Gender Recognition Certificate

We support transgender members' right to their own self-identity. We believe requiring applicants to meet this criteria runs counter to this right and acts to call into question the dignity, integrity and autonomy of the individual.

We also recognise that experiences of gender dysphoria can differ for each individual, causing potential issues for those seeking medical assistance, and in some cases may not be relevant for those potentially seeking legal recognition of their gender - for example those who identify out with the traditional gender binary such as non-binary or gender fluid.

- Applicants **should not** be required to provide evidence of having lived in their acquired gender as part of their application for a Gender Recognition Certificate

As above, we support transgender members' right to their own self-identity. We believe requiring applicants to 'prove' their gender identity to a third party runs counter to this right and, again, acts to call into question the dignity, integrity and autonomy of the individual.

We also recognise the current system surrounding evidence can place additional barriers on some of the most vulnerable within the trans community, for example those who have to move out or are made homeless due to transphobia and may be unable to access and collate the appropriate evidence required by the existing Gender Recognition Panel process.

- Applicants **should not** incur a fee or any additional charges as part of their application for a Gender Recognition Certificate

As a union, PCS is clear that we oppose austerity and all forms of inequality. Requiring applicants to pay as part of their application places additional barriers on those who are unemployed or in insecure and/or low paid employment.

Our position is also overwhelmingly reflected in this regard by members' feedback.

## Impact on the Equality Act 2010:

- We do not believe reform will impact on current single-sex and separate sex exceptions within the Equality Act 2010
- We do not believe reform will impact on current employment exceptions within the Equality Act 2010
- We do not believe reform will impact on any other area of law or public service within the Equality Act 2010 or otherwise

We recognise that the Westminster Government has already confirmed that there will be **NO** amendments made to the Equality Act 2010 as part of any reform to the Gender Recognition Act 2004, thereby protecting all provisions and exceptions already held within the Equality Act 2010 for existing protected characteristics.

Our position is that the Gender Recognition Act is an entirely administrative piece of legislation, offering no additional benefit or protection out with the Equality Act 2010.

Under the Equality Act 2010 “A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person’s sex by changing physiological or other attributes of sex.”

We believe that any reform of the Gender Recognition Act will benefit trans members, and the wider trans community, by streamlining the existing recognition process and removing unnecessary barriers for those applying for a gender recognition certificate.

We do not believe this to have any impact on the criteria set out under the Equality Act, above, which currently applies to those undertaking the gender recognition process at all stages of their own journey to acquire a gender recognition certificate.

We recognise that some have raised concerns that reform may impact on the provision of single sex spaces, in particular those provided for women such as refuge and domestic violence shelters and prisons, which are protected under the Equality Act 2010.

On the provision of refuge and domestic violence shelters, we refer to the position taken during the Scottish Government consultation by national gender equality organisations and campaigns, Close the Gap, Engender, Equate Scotland, Rape Crisis Scotland, Scottish Women’s Aid, Women 50:50 and Zero Tolerance, in [their public statement supporting reform of the Gender Recognition Act](#).

We would also refer to Stonewall’s recent [“Supporting trans women in domestic and sexual violence services”](#) report which found “many participants told us that reform of the Gender Recognition Act would have no relevance to how they [national and local domestic and sexual violence services in England and Wales] deliver their services.”

On the provision of single sex prison spaces, notably women’s prisons, we would refer to existing practice within the Scottish Prison Service in this area.

Under existing provisions, all individuals held in custody are able to self-declare their individual gender identity. In determining placement of the individual, this is

subject to a full case conference and risk assessment process, taking into account their criminal and behavioural history.

All decisions are made based in the best interest of safety for both the individual and those who they will be placed with, with additional risk assessments carried out covering issues such as single cells, privacy and potential restrictions on their circulation with others in the prison estate.

Protections also exist to ensure that if a risk is identified in relation to a particular individual then they may be housed in the male prison estate, regardless of whether they are legally female (cisgender or transgender), where they may pose a danger to others within the female prison estate.

We believe that existing best practice, along with the Government commitment, display how any reform of the Gender Recognition Act will have no impact on legislation, exemptions and service provisions contained with and provided under the Equality Act 2010 as it currently stands today.

## **Additional Recommendations**

- **We do not agree with the current spousal consent provisions for married persons in the Gender Recognition Act**

We acknowledge and welcome the points raised by members that the requirement for spousal consent pertains to England and Wales only, having been removed by the Scottish Government when the introduction of same sex marriage took place.

We agree that our members should be treated equally, regardless of geographical location, and that the spousal consent requirement should be removed as part of any reform of the Gender Recognition Act.

As previously stated, we support transgender members' right to their own self-identity. We believe giving another individual the ability to deny, or delay, this right runs counter to that right and acts to call into question the dignity, integrity and autonomy of the individual.

- **We do agree that there needs to be changes to the Gender Recognition Act to accommodate individuals who identify as non-binary**

As a union, PCS' position is clearly set out in our [Charter for Equality](#), we are opposed to all forms of discrimination and inequality "on the grounds of sex, race, ethnic or national origin, religion or belief, colour, class, caring responsibilities, marital status, sexuality, gender identity, gender reassignment, disability, age or other reasons based on their status or personal characteristics."

We believe our union has a responsibility to represent, campaign and organise for all our LGBT+ members, including those identifying as non-binary, in order to make positive changes to the world we live in as our union stands for.