CWU Response to the Government Equalities Office on Reform of the Gender Recognition Act 2004

Introduction

The Communication Workers Union (CWU) is the largest union in the communications sector in the UK, representing approximately 192,000 members in the postal, telecoms, financial services and related industries.

The CWU fully supports transgender rights, and we wish to see the Government take concerted action to tackle the discrimination, prejudice, hate crimes and violence that many transgendered people face in our society.

We welcome the Government’s consultation on reforming the Gender Recognition Act 2004 to simplify and improve the legal gender recognition process for those transgender and non-binary people who wish to use it. We believe that the current system is intrusive, costly, humiliating and administratively burdensome.

The CWU supports a simplified, statutory gender recognition process based on self-declaration in line with global best practice. A number of countries have introduced quick, transparent and accessible legal gender recognition that involves self-determination, including Denmark, Ireland and Norway.

We recognise the absolute right of women (including trans women) to safe spaces and we support the provisions and exceptions within the Equality Act that allow for the provision of single sex spaces and for proportional exclusions. We therefore welcome the Government’s commitment that the provisions of the Equality Act 2010 will remain.

The CWU is a democratic organisation and policy is set at regular conferences which are attended by our union representatives from around the UK. The CWU’s annual LGBT conference carried a motion this year which was later debated and endorsed by our annual General Conference, expressing our support for:

- A social model of gender reassignment so that trans people are not reliant on a medical diagnosis of illness and a lengthy derogatory process before they are recognised for who they are.
• The right for people to be acknowledged as gender non-binary at work and in wider society.
• The continuation of monitoring at work and in society that can help identify discrimination against women and men.
• The right of all women (including trans women) to safe spaces such as domestic violence agencies and rape crisis centres.¹

Questions

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

Not applicable

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

Not applicable

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

No. We believe the current requirement for a diagnosis of gender dysphoria is unnecessary and demeaning because it denies an individual the ability to confirm their own gender identity, having to rely instead on the medical profession. Furthermore, it excludes individuals who want to be legally recognised but who do not experience gender dysphoria as it is medically defined – i.e. they don’t experience discomfort or distress.

In addition, the requirement for a diagnosis perpetuates the false and outdated assumption that being trans is a mental illness. We consider that along with removing the current requirement, the Government should do more to help challenge this assumption, destigmatise transgender identities and promote trans rights, protection, justice and acceptance. This should include more funding and resources for the Equality and Human Rights Commission so that they can be a more visible advocate for the trans community.

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

No. We believe the requirement for a medical report is demeaning, intrusive and distressing, especially if an applicant has to explain why no treatment to modify sexual characteristics has taken place. The requirement to provide a report is also burdensome and expensive. These measures create unnecessary and onerous barriers to obtaining a Gender Recognition Certificate. Consequently, too few trans people who want legal recognition are able to get it. This is evidenced by the fact that only 4,190 of the estimated 200,000 to 500,000 trans people in the UK

¹ The full text of the motion is included in Annex B.
have legally changed their gender. Trans people who are unable to acquire legal recognition are left in the difficult situation of living in one gender, but holding a birth certificate and legal status in another gender.

Question 5 Under the current gender recognition system, an applicant has to provide evidence to show that they have lived in their acquired gender for at least two years.

(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?

No. We consider that the current requirement to collect evidence is unnecessary and burdensome. The information provided can be sensitive, such as bank statements, tax information and letters from GPs, and the process is generally intrusive. It also makes it more difficult for young people to achieve legal recognition as they start their adult life at 18.

If you answered no to Question 5A, should there be a period of reflection between making the application and being awarded a Gender Recognition Certificate?

We believe there should be a built in requirement to show seriousness of intent through the statutory declaration process. This could include a specified period of time for reflection before or after a GRC is confirmed. However, this would need to be a relatively short period of time to avoid creating unnecessary barriers to transition.

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. We believe the current requirement for a statutory declaration is an important element of the gender recognition process and should be retained. This is because it demonstrates an applicant’s seriousness of intent, and allows applicants to confirm they recognise and understand the consequences of their decision. It also provides a level of certification that the application is genuine and acts as a safeguard against abuse of the system.

(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. We believe this is an important element of demonstrating seriousness of intent. However, we also believe that there should not be any barrier to an individual who wishes to reverse the decision they have made and there should be no limit to the number of times an individual can transition.

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**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?

No. We do not believe that married trans applicants should require the consent of their spouse in order to make a successful application. The legal gender recognition process can be substantially or permanently delayed if consent is withheld, and an abusive spouse may refuse to give consent to perpetrate domestic abuse.

The following experience of a CWU member, who we will refer to as “A”, is an example of the harmful impact of the current provision and supports the case for its removal. “A” was living in a heterosexual marriage and kept her gender identity secret. When she plucked up the courage to tell her wife that she could no longer live in her gender identity from birth, she asked her wife for a divorce and her wife refused. She bravely took the decision that she would not let this deter her from living her life in her acquired gender, despite significant acrimony from her spouse. She has and continues to cope with significant bouts of depression and anxiety. Her son is supportive and this has been one of the big reasons why she is still alive today.

**Question 8** Currently, applicants must pay £140 to apply for a Gender Recognition Certificate. (A) Do you think the fee should be removed from the process of applying for legal gender recognition?

No. We believe it is reasonable to charge a fee for the process. This helps to demonstrate seriousness of intent and acts as a disincentive against malicious or frivolous applications. In addition, it is normal for Government to charge for services such as a copy of a birth or death certificate.

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

Yes. We believe the cost is currently too high at £140 and is prohibitive for many people. We note that over a third of trans respondents to the Government’s national LGBT survey who did not have a GRC but who knew about the process said that one of the reasons they had not applied was that the process was too expensive.\(^3\) Applicants can face additional charges for accessing NHS records within this process, currently amounting to a standard recommended fee of £80, which is yet another unjust burden placed on someone wishing to acquire a GRC.

We consider that the cost is currently high because the process is complex and bureaucratic, but the administration costs could be reduced significantly in line with the simplified approach we are advocating. We believe that ideally the cost of a GRC should be similar to the cost of a birth or death certificate.

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

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Yes. We believe the provisions in section 22 of the Act which are intended to protect the privacy of people who have a GRC or who have applied for one are adequate. The CWU has members who have exercised their rights under section 22 of the Act and their complaints have been settled out of court.

However, we do not believe that employers are fully aware of their responsibilities under section 22 or that workers are always aware of their rights.

We believe that more funding and resources should be made available for the EHRC to perform outreach work aimed at educating employers and workers about their rights and responsibilities under section 22.

**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.

Not applicable

**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?

Having a protected characteristic under the Equality Act is likely to make it more difficult to apply for a GRC in many cases. For example, there may be factors associated with an individual’s culture or religion that, due to certain values and beliefs, create or increase the obstacles they face in the application process.

We welcome the Government’s plans to run a full cost/benefit impact assessment, which we hope will make clearer the difficulties that people with protected characteristics face in applying for a GRC. Ultimately, simplifying the application process in the way we are advocating should make it easier for people of all backgrounds to apply for a GRC. The impact assessment should help to determine whether any other adjustments need to be made to remove barriers for those with specific protected characteristics.

**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?

We do not believe the participation of trans people in sport should be affected by changing the GRA, as there will be no amendment to the Equality Act which governs this.

However, as the visibility and empowerment of transgendered people in our society continues to increase, it may be that we see more trans people in sport in the future. We believe that more funding and resources should be made available to the Equality and Human Rights Commission so that it can enforce the Equality Act effectively on this issue and ensure high standards of fair competition and safety. This should also support the general push to maximise diversity and inclusion within sport.
Question 13 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?

If the Equality Act is enforced effectively, cases where trans people with a GRC are excluded from single or separate sex services should continue to be rare and based on sensible risk-assessments. The CWU supports the right of all women (including trans women) to continue accessing safe spaces such as domestic violence agencies and rape crisis centres. We wish to see more funding and resources for the EHRC to ensure effective enforcement of this right under the Equality Act.

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?

Providing the Equality Act is enforced effectively, this provision should not be affected by changes to the legal recognition process set out in the GRA. Again, we wish to see more funding and resources for the EHRC to enforce the law on this.

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?

As with the previous question, if the Equality Act is enforced effectively, this provision should not be affected by changes to the GRA. We also believe it is important to recognise that if a trans person is not integrated into a group that is their chosen gender that is likely to have a serious detrimental impact on their mental health and well being. This is why government and society must work hard to destigmatise transgender identities and tackle discrimination against transgendered people.

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?

If the Equality Act is enforced effectively, this provision should not be affected by changes to the GRA. In the interests of equal rights and equality of opportunity, we advocate the armed forces being as diverse and inclusive as possible.

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?

We recognise that this exception may see greater use if changes to the GRA result in more trans people having their gender legally recognised. This is because the exception specifically mentions the GRA rather than referring to the broader category of ’gender reassignment’. However, if the Equality Act is enforced effectively, the provision should not be affected by changes to the GRA.
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?

We do not believe this should be affected if the Equality Act is enforced effectively.

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?

We believe that changes to the GRA could impact on areas of law and public services which treat males and females differently. The prisons and probation service is an important example, given the health and safety risks involved with prisons in general, and the particular risks involving trans prisoners.

Last year we heard the tragic case of Jenny Swift, a trans woman who committed suicide in a male prison after she complained of bullying by guards and her requests to be assigned to the women’s estate were declined. Not only was she placed in a men’s jail but she was denied vital hormone therapy. These failures are the responsibility of both the prison service and a flawed policy approach to the treatment of trans prisoners.

Although new guidelines have been introduced in England and Wales since Jenny died, we do not believe these go far enough. The new policy states that “all transgender prisoners must be allowed to express the gender with which they identify”, but a decision to locate them in a prison which does not accord with their legal gender can only be made following a Transgender Case Board.

We believe England and Wales should adopt the Scottish policy on transgender people in prisons, where trans individuals can be placed in prisons with inmates of their acquired gender even if they have not legally changed gender or undergone any reassignment surgery. The Scottish policy states that a male to female person in custody living permanently as a woman should not be automatically regarded as posing a high sexual offence risk to other people in custody and should not be subject to any automatic restrictions of her association with other people in custody.

At the same time, we recognise there have been cases of trans women attacking other women in prisons and there must be safeguards against this. We support the view of the Scottish Trans Alliance on this issue, which is seen as one of the most effective trans support groups in the UK. The Scottish Trans Alliance regards comprehensive individualised risk assessments as essential for Scottish Prison Service decision-making about transgender prisoners, and has said that "Housing decisions must be made extremely carefully and the safety of all prisoners and staff is the highest priority”. Under the Scottish system, risk assessments are always carried out on prisoners and there are cases where people are not progressed into a facility of their preferred gender as a result.

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4 Jenny Swift was a trans woman. She should not have died in a male prison, Jane Fae, Guardian, 9 Jan 2017, accessed at: https://www.theguardian.com/commentisfree/2017/jan/09/transgender-woman-jenny-swift-prison-death

5 Transgender prisoners, House of Commons Library, 19 September 2018, accessed at: https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7420
We believe there is a responsibility on all public services, including the prison service, to embrace the changes proposed for the GRA and adopt a culture that is generally more supportive of and understanding towards the transgender community and the reality of gender reassignment.

**Question 20** Currently, UK law does not recognise any gender other than male and female. Do you think that there need to be changes to the Gender Recognition Act to accommodate individuals who identify as non-binary?

Yes. There appear to be an increasing number of people who identify as neither exclusively male nor female, and we believe they should be able to live discrimination free lives in accordance with who they wish to be.

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

Not applicable

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

No

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**Annex A: Respondent Information Form**

This form must be completed and returned with your response to the consultation.

1. Are you responding as an individual or an organisation?

This response is on behalf of an organisation

Communication Workers Union  
150 The Broadway  
Wimbledon  
London  
SW19 1RX

2. The Government would like your permission to publish your consultation response.

Any responses will be treated in accordance with Section 22 of the Gender Recognition Act. This provides protection for the privacy of a person who has applied for and/or obtained a Gender Recognition Certificate by making it a criminal offence to disclose information acquired in an official capacity about a person’s gender history or about their application to the Panel, unless a specific exception applies. One of the exceptions is if the person gives their consent to the disclosure of the information.

Publish my response, including the CWU’s name
3. The Government may wish to contact you again in the future, but we require your permission to do so. Are you content for the Government to contact you again in relation to this consultation?

Yes

Annex B – CWU Conference Motion 2018

CWU General Conference 2018 Motion 15

Conference notes the announcement by Justine Greening of a Government consultation on reviewing the Gender Recognition Act.

Conference deplores the discrimination, prejudice, hate crimes and violence many transgendered people face in our society and instructs the NEC to ensure that any CWU submission on this issue will be in line with the following principles:

1. To support a social model of gender reassignment so that trans people are not reliant on a medical diagnosis of illness and a lengthy derogatory process before they are recognised for who they are.
2. To support the right for people to be acknowledged as gender non-binary at work and in wider society.
3. To maintain monitoring at work and in society that can help identify discrimination against women and men.
4. To support the right of all women (including trans women) to continue accessing safe spaces such as domestic violence agencies and rape crisis centres.

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