

GOC response to our consultation on updating gender on the register policy

September 2023

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Executive summary

1. The General Optical Council (GOC) is one of 13 organisations in the UK known as health and social care regulators.
2. As part of our statutory duty to maintain and publish a register of all those who are fit to practise, we publish certain information about our registrants, which currently includes their gender. Section 11(2) of the Opticians Act 1989 and rule 21 of the [Registration Rules 2005](#) set out the information that we must publish on our register. These do not include a specific requirement to publish a registrant's sex or gender.
3. We are committed to supporting registrants who wish to update their gender on our register and ensuring compliance with the [Gender Recognition Act 2004](#) (GRA) and the [Equality Act 2010](#). We have drafted a policy setting out the process for applying to the GOC to update the registered gender. We will agree such applications unless there is a public protection reason for not doing so.
4. We undertook a full [public consultation](#) on our proposed policy, which was open for 12 weeks from 12 December 2022 to 30 March 2023. We received 41 written consultation responses from a range of stakeholders including our registrants, members of the public and optical representative organisations.

Findings

5. Key findings from the consultation were:
 - 56.1% agreed or strongly agreed with the content of the policy;
 - 19.5% felt that there was something unclear or missing in the policy;
 - 29.3% did think there were aspects of the policy that could discriminate against stakeholders with specific characteristics;
 - 24.4% thought there were aspects of the policy that could have positive impacts on stakeholders with specific characteristics; and
 - 12.2% told us that there were other impacts of the policy that they would like to tell us about.

Conclusions

6. Overall, there was some support for the policy from our stakeholders, but it was not overwhelming. There were a number of anecdotal comments from contributors that offered negative commentary regarding gender identity, changing gender and the GOC's involvement in it. We also received suggestions for additions and amendments, particularly from the professional/representative and defence bodies.

7. Some stakeholders questioned why we provide information on gender on the register. Considering these comments, we are issuing a consultation on removing information on a registrant's gender from the public register.
8. If we decide to remove gender from the public register, we will continue to need a policy for managing requests from registrants to change their gender within our internal systems. It is necessary to do this to ensure our records are accurate while also respecting the rights of individual registrants.
9. We propose to make the following amendments to the policy and supporting application based on feedback received during the consultation (see the 'amendments to the policy' part of the 'conclusions' section for more information):
 - amend language used to say "sex registered at birth", rather than 'sex assigned at birth';
 - ensure that the application form and registrations database allow us to record the language which best reflects a registrant's identity;
 - include a timeline to explain how long it takes to update the register once an application to change gender has been submitted;
 - clarify the reference to third party authorisation on the application form for changing gender;
 - review the list of evidence that can be used to verify identity, to ensure that it remains up to date and appropriate;
 - explain any public protection reasons why we would not agree applications to change a registrant's gender, the process that we would follow in such circumstances and who would make a decision on this point;
 - amend our process so that applications to change gender go straight to an inbox which can only be accessed by a registrations manager, rather than the general registration inbox; and
 - review the references in paragraphs 4.2.2 and 4.2.4 to permitting disclosure of a registrant's gender reassignment when required by statute or as part of sharing information with employers on fitness to practise history, to ensure that those paragraphs comply with the relevant legislation.

Introduction

10. The GOC is one of 13 organisations in the UK known as health and social care regulators. These organisations oversee the health and social care professions by regulating individual professionals. We are the regulator for the optical professions in the UK. We currently register around 33,000 optometrists, dispensing opticians, student opticians and optical businesses.
11. We have four primary functions:
 - setting standards for optical education and training, performance and conduct;
 - approving qualifications leading to registration;
 - maintaining a register of individuals who are fit to practise or train as optometrists or dispensing opticians, and bodies corporate who are fit to carry on business as optometrists or dispensing opticians; and
 - investigating and acting where registrants' fitness to practise, train or carry on business may be impaired.

Background to policy

12. As part of our statutory duty to maintain and publish a register of all those who are fit to practise, we publish certain information about our registrants, which currently includes their gender.
13. We have drafted a policy setting out the process for applying to the GOC to update the registered gender. We will agree such applications unless there is a public protection reason for not doing so.
14. We recognise that this is a sensitive area for some registrants. Our policy and process document seeks to make our process for updating gender clear and easy to apply. It also ensures confidentiality under section 22 of the GRA and complies with our information governance framework.
15. As a statutory regulator subject to the public sector equality duty, we are committed to upholding the Equality Act 2010 including the prohibition of discrimination on the grounds of gender reassignment. This document aligns with our commitment to promoting equality, valuing diversity and being inclusive.

Consultation process

16. We undertook a full public consultation on our proposed policy, which was open for 12 weeks from 12 December 2022 to 30 March 2023.
17. We sought stakeholders' views on the proposed new policy ahead of implementation of the policy in our next renewal period.

18. We received 41 written consultation responses from a range of stakeholders. These were made up of:
- five dispensing opticians;
 - twenty optometrists;
 - six members of the public;
 - two professional/representative bodies;
 - one oversight regulator
 - two student dispensing opticians; and
 - five therapeutic prescribing optometrists (this term covers all three categories of prescribing optometrists: additional supply, supplementary prescribing and independent prescribing).
19. The organisations who were willing to be named were:
- The Association of Optometrists (AOP)
 - FODO – The Association for Eye Care Providers
 - The Professional Standards Authority (PSA)
20. We are grateful for all the feedback we received and have taken this into account in deciding how to amend the policy for publication.

Approach to producing this response

21. Respondents were encouraged to provide comments where they did not support our proposed approach. We did not actively seek comments where respondents indicated support for our approach, but some respondents gave these anyway. We reviewed every comment received. We are unable to include individual responses to all comments within this report. Any comments that have been included are produced verbatim.

Findings

Content of the policy

22. We asked respondents to what extent they agreed with the content of the policy. Of the 41 respondents, the majority (23, or 56.1%) agreed or strongly agreed with the content of the policy. Twelve respondents (29.2%) neither agreed nor disagreed with the content of the policy, saying that the language in the policy needed to change or asking why it was necessary to put information about gender on the public register.

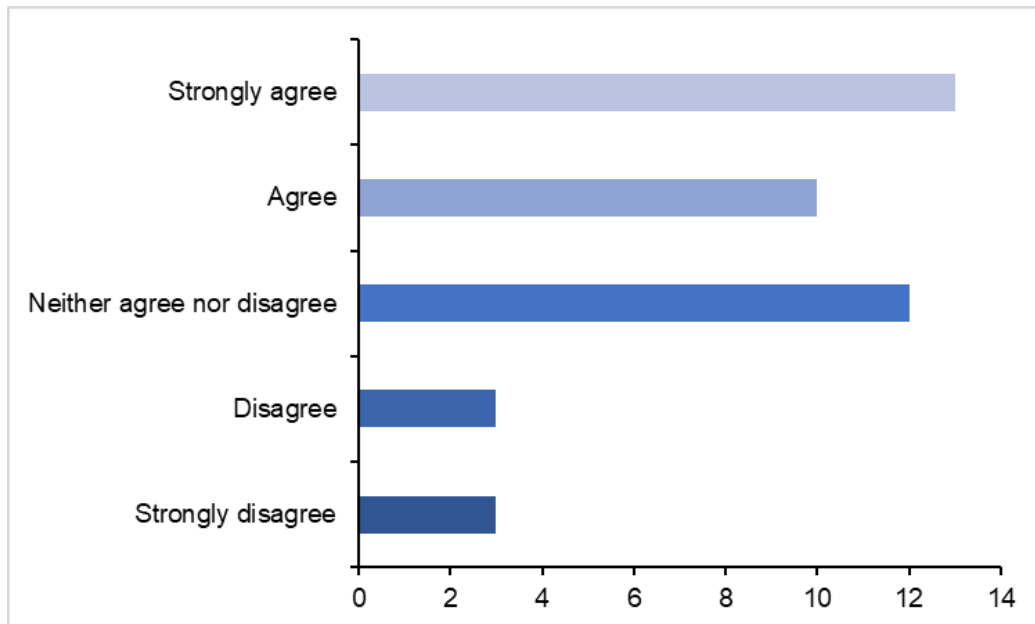


Figure 1: To what extent do you agree with the content of the policy?

23. The AOP felt that the policy should be amended to ensure that there was nothing in the process which would put relevant registrants at risk of indirect discrimination. This could happen if the GOC disclosed a registrant's former gender identity when sharing information on previous fitness to practise history with a prospective employer or other regulator.
24. A sample of the comments we received in response to this question are in the box on the following page.

“Registrants should have the right to state their gender and not be limited to declaring the gender assigned at birth.” (Optometrist)

“Please note that gender is NOT a protected characteristic under the Equality Act. Asking about a non-protected characteristic such as gender, may be in breach of the UK GDPR by processing personal and potentially special category data without lawful process.” (Optometrist)

“I cannot see the need for the policy in the first place, as I do not understand why gender is included in the public register. I believe the simplest and most satisfactory way for the GOC to meet its obligations under the equality act would be to remove this information from the published register.” (Therapeutic prescribing optometrist)

“While we agree with the GOC's aim to support registrants who wish to update their gender on its register, we think that the parts of the policy about the circumstances in which the GOC would disclose a registrant's former gender could lead to indirect discrimination..” (AOP)

“We would like the GOC to have clarified what they believe the ongoing purpose is of including gender on the public register and engaged with some of the potential complexities from a public interest and public protection perspective. Our policy position is that only information necessary for public protection should be on the register.” (PSA).

Clarity of the policy

25. We asked respondents whether there was anything unclear or missing in the policy. Of the forty who responded to the question, eight respondents (20.0%) felt that there was something unclear or missing in the policy.

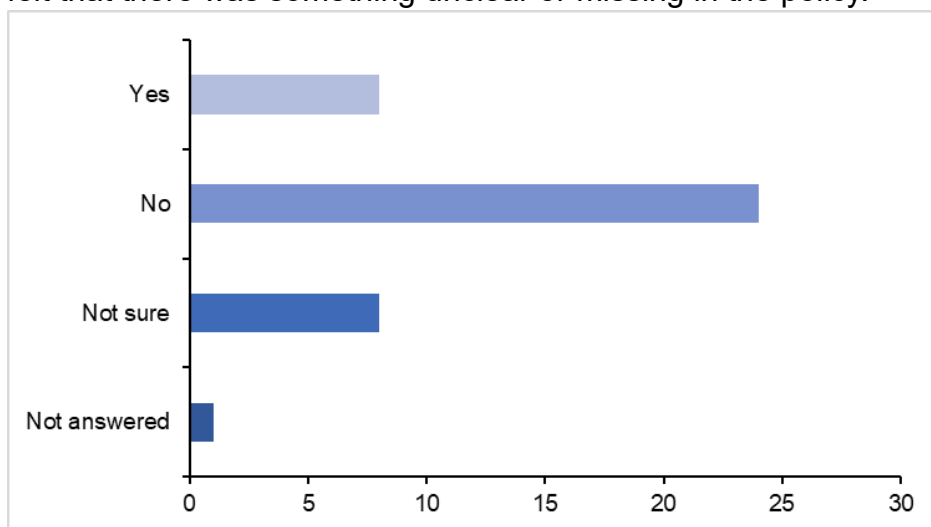


Figure 2: Is there anything missing or unclear in the policy?

26. Areas that were considered to be unclear or missing were as follows:

- a request was made to clarify a) what legislation the GOC is relying on for its statement that it would disclose a person's previous gender for reasons of public protection, and b) in what circumstances such a reason would apply;
- a suggestion to explain the public protection reasons why the GOC might not agree applications to change a registrant's gender on the register, as well as clarify how applicants or members of the public would find out about those reasons, and who would make the decision not to allow an application;
- a request to include a target timeline for updating the register once an application has been submitted;
- to maintain confidentiality, a suggestion that applications to change gender should be submitted directly to a registration manager rather than via the shared registration team email address;
- a question of whether it was appropriate that appeals on a decision not to allow a change of gender should be handled by the corporate complaints process, which may not provide enough confidentiality;
- clarity on whether registrants will need to submit any evidence on their change of gender as it does not appear that registrants are required to submit a Gender Recognition Certificate;
- a suggestion that the reference to providing both 'paper and photocard parts' of a driving licence should be amended as the paper part of a licence is no longer issued, nor is it a statutory requirement to hold a paper licence if a photocard licence is held;
- a suggestion to review the proposal for registrants to validate their current identity using various forms of official ID as UK law only recognises male and female on official documents, and as such those already with a non-binary identity will be on the register as male or female;
- a suggestion that we review the list of options from which applicants select their current and future gender and provide a free text box within the form. The inclusion of intersex as an option for gender identity may also need to be reviewed as people who are born intersex (as their biological sex) may identify as non-binary, male or female as their gender.
- clarification on what is meant by third party authorisation and in what circumstances it might be required; and
- a suggestion that the form for applying to make a change to gender should make clear that any FtP history will be stored against the old record.

27. A sample of the comments we received in response to this question are in the box below.

“People are not ‘assigned their sex at birth’. Except in an extremely small number of cases, sex at birth is not a choice. Sex is observed and registered at birth, or people are born female or male.” (Dispensing Optician)

“The policy and process does not include a target timeline for updating the register once an application has been submitted. We would like assurance that, as a minimum, changes will be made in line with the normal standard for other updates to the register..” (FODO)

"In paragraph 4.2.4 the policy states that the GRA permits disclosure of a registrant’s gender reassignment “where it is necessary in the public interest or is required to by statute”. It seems that the GOC is relying on section 22 paragraph 4 of the Gender Recognition Act here, but “public interest” is not listed in the exemptions and as such the GOC would potentially be committing a criminal offence if it relied on this section when making such disclosures.” (AOP)

Discrimination against stakeholders with specific characteristics

28. We asked respondents whether there were any aspects of the policy that could discriminate against stakeholders with specific characteristics and gave the list of protected characteristics from the Equality Act 2010 as examples. 22 respondents (53.7%) did not think that there were any aspects of the policy that could discriminate.

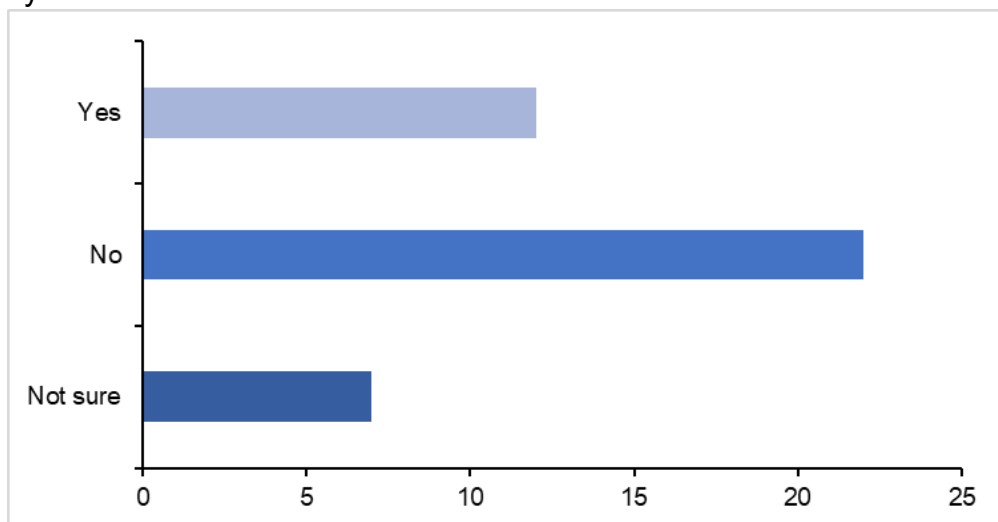


Figure 3: Are there any aspects of the policy that could discriminate against stakeholders with specific characteristics?

29. However, twelve respondents did identify aspects of the policy that they believed could discriminate against stakeholders with specific characteristics. They believed the following groups could be discriminated against:
- women, particularly lesbian or bisexual women, who may have gender critical beliefs;
 - women from particular religious backgrounds or those who are survivors of abuse, who seek same sex care and may use gender on the register as a proxy for a professional's sex;
 - people from religions which only believe in two genders;
 - transgender individuals, as they will be required to have a new GOC number as part of the process of changing gender on the register and may need to tell their employer that their GOC number has changed. No other groups receive a new GOC registration number;
 - transgender individuals, as the GOC may disclose fitness to practise (FTP) history or pending FTP proceedings to prospective employers or regulatory bodies and, in doing so, make those organisations aware that this individual is transgender.
30. A sample of the comments we received in response to this question are in the box below.

"Women and in particular lesbian and bisexual women are more likely to hold gender critical views. By subscribing to gender ideology, you are at risk of indirectly discriminating on their beliefs." (Optometrist)

"As a Christian I agree with the legal definition of gender as male or female and believe those are the choices that should be given on a form." (Optometrist)

"The requirement for a new GOC registration number (and indeed a whole new record) to be allocated for a change of gender could potentially be discriminatory, if not required for other similar updates to the register." (FODO)

"In paragraph 4.2.2 the policy states that the GRA permits disclosure "to prospective employers and regulatory bodies to confirm fitness to practise (FTP) history or pending FTP proceedings". ... Disclosing a registrant's former gender has the potential to breach their right not to be subjected to any other detriment. Additionally, the current policy creates a risk that relevant registrants will be put at risk of indirect discrimination (see section 19 of the Equality Act 2010)." (AOP)

"In our view there is the potential for the policy to discriminate against women and/or those with specific religious beliefs who may wish to request/choose same sex care. It may be helpful for the GOC to consider how the information on gender on the register might be used by members of the public, potentially as a proxy for birth sex. (PSA)

Positive impact on stakeholders with specific characteristics

31. We asked respondents whether there were any aspects of the policy that could have a positive impact on stakeholders with specific characteristics and gave the list of protected characteristics from the Equality Act 2010 as examples.
32. Of the forty who responded to the question, 10 respondents (25%) thought there were aspects of the policy that could have a positive impact on stakeholders with specific characteristics. The group most identified as being positively affected by this change were those registrants who are transgender and wanted to update their details.

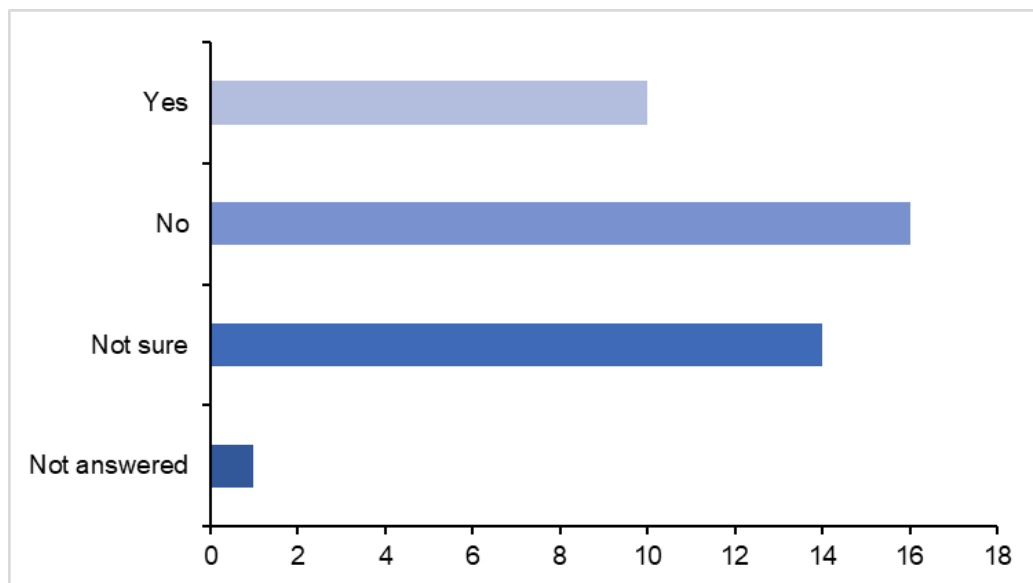


Figure 4: Are there any aspects that could have a positive impact on stakeholders with specific characteristics?

33. A sample of the comments we received in response to this question are in the box below.

“We anticipate that the policy should have a positive impact on stakeholders who have or are undergoing gender reassignment or who have a different gender identity or gender expression from their birth sex.” (PSA)

“Registrants should be able to register their gender identity without fear or discrimination.” (Optometrist)

“People who wish to express their gender or wish it to be known to others should be able to do so. This can be very empowering.” (Optometrist)

Any other impacts

34. We asked respondents if there were any other impacts of the policy (including financial) that they would like to tell us about. Of the forty who responded to the question, just five respondents (12.5%) told us about other impacts. Respondents identified the following as the impacts they believed would arise from this policy:
- supporting and facilitating individuals to change their gender on the register undermined our credibility as the regulator of a science-based profession; and
 - there could be a financial impact on registrants of administering this process, would this cost be met by all registrants or just those registrants who wished to change their gender on the register.
35. We received two comments from the PSA on the draft impact assessment which accompanied the consultation document:
- “The impact assessment states that ‘this topic has had little focus in the media in the last 12 months. Whilst in the most literal interpretation the issue of gender on healthcare professional registers is likely to have had little media attention it seems inaccurate to suggest that issues associated with sex and gender haven’t been extremely high profile in recent months.”
 - “We found the impact assessment to be relatively limited in that it is primarily focussed on the positive impacts of the policy for transgender registrants. We have highlighted some possible impacts on other groups with protected characteristics and potential use of information on gender by members of the public as a proxy for birth sex.”

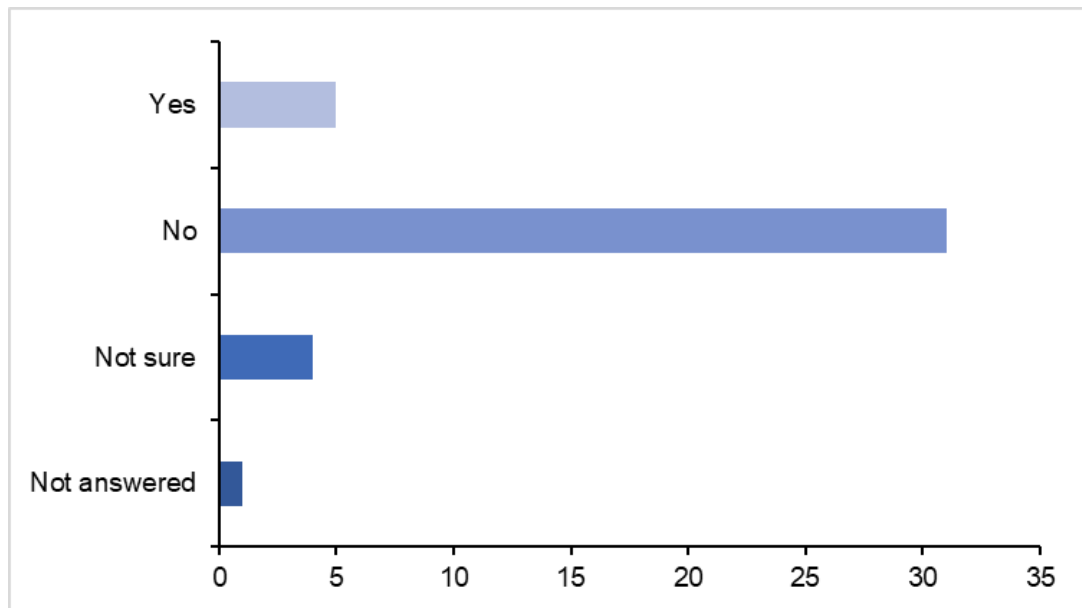


Figure 5: Are there any other impacts (including financial) of the policy that you would like to tell us about?

Other comments

36. We also received general comments about our policy, asking whether it was necessary to provide information on a registrant's gender on the GOC register and, if so, why that was in the public interest to provide.
37. A sample of the comments we received in response to this question are in the box below.

"Why do we have to even list gender. It does not affect the individual ability to practice." (Optometrist)

"I cannot see the need for the policy in the first place, as I do not understand why gender is included in the public register." (Therapeutic prescribing optometrist)

"We would like the GOC to have clarified what they believe the ongoing purpose is of including gender on the public register and engaged with some of the potential complexities from a public interest and public protection perspective. Our policy position is that only information necessary for public protection should be on the register...". (PSA)

Conclusions

General comments

38. Some stakeholders questioned why we provide information on gender on the register. The Opticians Act 1989 specifies that we shall maintain a register of optometrists and dispensing opticians and “and such other particulars as may be prescribed”. It does not require us to publish a registrant’s gender, although we have historically done so.
39. On balance we consider that we should no longer include information on gender on the public register. This is because it is not necessary for public protection purposes, we believe there is little use of this information by the public and members of the public have alternative means to obtain this information. Therefore, alongside this response, we are issuing a consultation on removing information on a registrant’s gender from the public register.

Amendments to the policy

40. Overall, support for the content of the policy was not overwhelming, with some suggestions of changes and a number of critical remarks about the GOC involvement with changing gender.
41. Most respondents thought that there was nothing unclear or missing in the policy. However, some respondents identified changes to make to the policy, related to the details of the process or to the language used.

Discrimination against stakeholders with specific characteristics

42. Overall, most respondents did not think there were any aspects of the policy that could discriminate against stakeholders with specific characteristics or were unsure about this. Twelve respondents thought that the policy could discriminate against some groups. Examples of groups that could be discriminated against included women and those from religious groups who might wish to receive same-sex optical care.

Positive impact on stakeholders with specific characteristics

43. Overall, only a quarter of respondents thought that the policy had any positive impacts on stakeholders with specific characteristics. The group most identified as being positively affected by this change were those registrants who are transgender.

Any other impacts

44. Some stakeholders outlined other possible impacts, which included impacts on registrants of the costs of administering this policy and the impact that supporting and facilitating such a policy could have on the GOC’s credibility.

Changes to the policy

45. We are committed to supporting registrants who wish to update their gender on our register and ensuring compliance with the GRA and the Equality Act 2010.
46. After considering feedback received during the consultation and a review of the policy since consultation, we will make the following amendments to the policy:
- amend language used to say “sex registered at birth”, rather than ‘sex assigned at birth’;
 - ensure that the application form and registrations database allow us to record the language which best reflects a registrant’s identity;
 - include a timeline to explain how long it takes to update the register once an application to change gender has been submitted;
 - clarify the reference to third party authorisation on the application form for changing gender;
 - review the list of evidence that can be used to verify identity, to ensure that it remains up to date and appropriate;
 - explain any public protection reasons why we would not agree applications to change a registrant’s gender, the process that we would follow in such circumstances and who would make a decision on this point;
 - amend our process so that applications to change gender go straight to an inbox which can only be accessed by a registrations manager, rather than the general registration inbox. and
 - review the references in paragraphs 4.2.2 and 4.2.4 to permitting disclosure of a registrant’s gender reassignment when required by statute or as part of sharing information with employers on fitness to practise history, to ensure that those paragraphs comply with the relevant legislation
47. We are issuing a consultation on removing information on a registrant’s gender from the public register. Therefore, implementing some of these changes is not considered practical for a short period of time. Once the outcome of the new consultation is known, we will consider whether any outstanding changes need to be applied.
48. In the meantime, we will amend our process so that applications to change gender go straight to an inbox which can only be accessed by a registrations

manager, rather than the general registration inbox. This will protect the rights and confidentiality of registrants.

Next steps

49. As noted above, alongside this response, we are issuing a consultation on removing information on a registrant's gender from the public register.
50. Even if we decide to remove gender from the public register, we will still need to have a process to support those registrants who wish to change gender. We will need to keep information internally on the gender of our registrants, so that we can carry out equality and diversity monitoring and so that we can share appropriately anonymised information on the gender of our registrants with commissioners and other stakeholders.