

Equal Recognition: Review of the Gender Recognition Act 2004

It is really important for as many people as possible to respond to the Scottish Government's consultation on gender recognition. If you want to support the calls of the Scottish Trans Alliance's Equal Recognition campaign, you don't have to answer every question. This sheet explains the questions that most relate to the campaign calls and suggests some things you might want to cover in your answers.

For more information, visit: www.equalrecognition.scot

For the full consultation, visit: <https://tinyurl.com/GRAconsult>

Question 1: Self-declaration – The Scottish Trans Alliance, Equality Network, LGBT Youth Scotland and Stonewall Scotland **AGREE** with this proposal

The Scottish Government is proposing that Scotland should adopt a self-declaration system for legal gender recognition. We support the government's proposal, as this would bring Scotland in line with international best practice.

The current evidence requirements are intrusive and humiliating, violate trans people's right to privacy, and further stigmatise trans identities. They require trans people to submit a psychiatric diagnosis of gender dysphoria, as well as detailed reports of any medical treatments they have had as part of their transition. The current process is also difficult, time consuming and expensive. Applicants are required to have been living in their 'acquired gender' for at least two years. Applicants send their application to a tribunal who they never meet, and who don't have clear, definitive or publicly accessible decision-making criteria. It costs £140 for an application, as well as additional costs for medical reports (up to £80 per report).

Access to single-sex spaces and facilities, such as toilets, changing rooms, and women only services will not be impacted. Nobody is required to show a birth certificate in order to enter these spaces or services now, and this will not change. In fact, key women's services in Scotland has been including trans women on the basis of self-declaration for several years, with no reported problems.

We encourage everyone to respond, and in particular:

- If you are a trans person, you may want to explain why this matters to you.
- If you are an ally, you may want to leave a comment explaining why you feel trans people shouldn't need to provide evidence to have their identities recognised.
- If you are an organisation, you may want to leave a comment explaining that you already include and work with trans people on the basis of their self-declared gender identity, and that you welcome gender recognition law being brought in line with your practice.

Question 5: Legal gender recognition for 16 and 17 year olds

– We **AGREE** with this proposal

The Scottish Government is proposing that 16 and 17 year olds should be able to apply for legal gender recognition through the same process as people who are 18 and over. We support the government's proposal, as we think that 16 and 17 year olds right to apply for legal gender recognition should reflect the existing rights and legal provisions for 16 and 17 year olds. For example, 16 and 17 year olds can vote in elections, get married, and there is a general consensus in Scottish politics that 16 and 17 year olds have full legal capacity to make decisions that affect their lives.

Furthermore, many trans young people aged 16 and 17 will be at a stage of their life where they are making new starts. This may include getting a job, starting college or going to university. Because they aren't able to have their gender legally recognised, they often have to out themselves (disclose that they are trans) when starting these new opportunities. This can often mean that events that are supposed to be exciting and positive can be much more stressful, and issues relating to paper work can result in real barriers to actively engaging in education and employment.

We encourage everyone to respond, and in particular:

- If you are a trans young person, you may want to explain why this matters to you.
- If you are a trans person who wishes they had been able to get legal gender recognition sooner, you may want to leave a comment explaining why lowering the age would have made things better for you.
- If you are a parent of a young trans person you may want to leave a comment explaining why lowering the age matters to you.
- If you are an organisation that works with young people aged 16 – 17 or represent their views, you may want to explain how this proposal fits with existing legislation and connects to young people rights.

Question 6: Legal gender recognition for under 16s

– We favour **OPTION 3**

The Scottish Government is asking which of five options is the best approach for legal gender recognition for under 16s. We think that Option 3 (parental application) is the best approach, as it means that young trans people who are under 16 are able to obtain legal gender recognition, and would use existing administrative and legal frameworks. It also means that trans people under 16 will have access to a simple, accessible process, not reliant on assessment or scrutiny from outside experts.

A small but increasing number of trans young people under 16 in Scotland are able to be open about their gender identity and live happy, healthy lives with the support of their families and peers. At the moment, even those young people who

have been living for many years as themselves, and who are accepted by their families and schools, are unable to have their gender identity legally recognised.

With their parent's consent they can already change their gender on their medical records and passport but under the current system the gender on their birth certificate remains unchanged. This means they are left in an unacceptable legal limbo for years with their birth certificate conflicting with their gender identity, their other identity documents and the reality of their daily life. This can cause trans children and young people as well as their families significant distress and is a barrier to having their rights fully realised.

Extending legal gender recognition to trans young people is only about updating their birth certificates to reflect their identity – it would have no impact on decisions about medical treatments for trans young people.

We encourage everyone to respond, and in particular:

- If you are a trans young person, you may want to explain why this matters to you.
- If you are a trans person who wishes they had been able to get legal gender recognition sooner, you may want to leave a comment explaining why lowering the age would have made things better for you.
- If you are a parent of a young trans person you may want to leave a comment explaining why lowering the age matters to you.
- If you are an organisation that works with children, young people and families or represent their views, you may want to explain how this proposal will improve their rights. You may also want more broadly discuss children and young people rights and the importance of having their identity recognised at any age.

Question 12: Non-binary recognition

– We will answer **YES** to this question

The Scottish Government is asking if Scotland should take any action to recognise non-binary people. This question does not ask if non-binary people should gain full legal gender recognition, but if the government should do anything at all to improve the recognition of non-binary people in Scotland. At the minute there is little recognition for non-binary people in Scotland; as well as not having legal gender recognition, non-binary people are often routinely not recognised in service provision, on identity documents, and in employment. You can find out much more information about this at www.scottishtrans.org/non-binary

Question 12 asks if you think Scotland should take action about this lack of recognition. We think it should. Non-binary people's identities are just as valid as those of trans men and trans women, and it is vital that there are steps taken to ensure they are better recognised and included in society.

Question 13: How should non-binary people be recognised

- We favour **OPTIONS 1, 3, 4 AND 6**

The Scottish Government is putting forward six options for how increasing recognition of non-binary people might work. We think that non-binary people should have access to the same legal gender recognition process as trans men and trans women. For all of the reasons that the Scottish Government accepts and recognises that trans men and women should be able to have their gender legally recognised, it should follow that if they consider non-binary people's identities to be as legitimate and valid, that they should also have access to an equal legal gender recognition process. That is why option 4 should be selected.

Options 1 and 3 will ensure than non-binary people can complete forms in a way that is respectful and true to their identity, and have I.D. that reflects this.

We also think that updating the Equality Act is a vital legislative step for all transgender people, not just non-binary people. We think there are some issues with the way the government has explained this option, and you can read more about that in our full consultation submission online. Despite this, we still think that option 6 is an important step.

We encourage everyone to respond, and in particular:

- If you are a non-binary person, you may want to leave a comment explaining the impact of the current lack of recognition, both legal and otherwise, in Scotland.
- If you are an ally, you may want to leave a comment explaining the unjustness you feel in seeing non-binary friends, family members etc. not having recognition.
- If you are an organisation, you may want to leave a comment explaining how you recognise and include non-binary people in your service provision or work, and how you would like to see legal gender recognition take the same approach.
- If you are an organisation specialising in human rights, you may want to leave a comment explaining why non-binary people should be entitled to the same fundamental right to have their identities recognised as men and women.

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