

Gender Recognition Act Consultation Response

Executive Summary of Stonewall Scotland Response

Stonewall Scotland welcomes the consultation on reforms to the Gender Recognition Act, which we believe can greatly improve the lives of trans people in Scotland. The current GRA is sorely in need of updating, and we believe these proposals will help ensure trans people are properly recognised and treated with respect. We are pleased to support the Scottish Trans Alliance's Equal Recognition Campaign, which calls for self-declaration, recognition of non-binary identities, and recognition of young people under 18.

This summary contains our answers to the major questions in the response. Our full response can be found on our website.

Q1 - The initial view of Scottish Government is that applicants for legal gender recognition should no longer need to produce medical evidence or evidence that they have lived in their acquired gender for a defined period. The Scottish Government proposes to bring forward legislation to introduce a self-declaratory system for legal gender recognition instead. Do you agree or disagree with this proposal?

Agree

Stonewall Scotland strongly believes that a self-declaratory system for legal gender recognition is essential to bring the 2004 Act up to date with international best practice. Although the Gender Recognition Act 2004 was a notable step forward in the journey towards transgender equality, it is now considerably dated and in dire need of reform. The process it introduced is demeaning and intrusive to trans people, and it provides no scope for recognition of non-binary people.

The process of the gender recognition panel and continued pathologisation of trans identities has had a marked and clearly damaging effect on the physical and mental wellbeing of transgender people. The restrictions imposed on trans young people are out of sync with other rights afforded to those 16 years of age and older, causing a mismatch between their social and legal identities, as well as additional stress and trauma. Finally, a lack of non-binary inclusion leaves a significant portion of the trans population without any legal recognition, meaning that those who identify outside of the binary male and female boxes are left in limbo, forced to legally identify as something they are not.

Q2 - Should applicants to the proposed gender recognition system in Scotland have to provide a statutory declaration confirming they know what they are doing and intend to live in their acquired gender until death?

Yes

Stonewall Scotland believes that a system based on self-declaration is the best approach, bringing Scotland in line with international best practice. The process for statutory declaration in Scotland is already a fairly simple and straight-forward one, and is used very commonly by trans people for changing their legal name.

While it is important that individuals looking to change their gender do so with an intention to live in that gender permanently, we believe that the inclusion of an 'until death' clause is unnecessary. Fraudulent changes under statutory declarations are already illegal, and people changing their gender usually do so with an intention to remain in that gender permanently. As these proposals are about giving individuals autonomy over their own bodies and identities, we cannot see any benefit to this requirement

Q3 - Should there be a limit on the number of times a person can get legal gender recognition?

No

Under the current Act, there is no restriction on the number of times a person can apply for legal gender recognition, and Stonewall Scotland does not believe there is sufficient reasoning to introduce a cap under new legislation.

Q4 - If the Scottish Government takes forward legislation to adopt a self-declaration system for legal gender recognition, should this arrangement be open:

A. only to people whose birth or adoption was registered in Scotland, or who are resident in Scotland?

B. to everyone?

C. Don't know

B. To Everyone

We believe that in line with Scottish Government's commitment to being a welcoming, open place to all people, the Scottish Government must ensure that access to legal gender recognition is accessible to all. Furthermore, we believe that it is vital that no one should be prevented from accessing the benefits of legal recognition, including better access to services and reduced barriers to employment, simply because of where they are from.

Q5 - The Scottish Government proposes that people aged 16 and 17 should be able to apply for and obtain legal recognition of their acquired gender. Do you agree or disagree?

Agree

Stonewall Scotland strongly agree with this proposal. Many trans young people, just like adult trans people, live openly in their identified gender full time, many of them with the full support of their family and friends, as well as their schools and employers. Significantly, trans people around 16 and 17 years old are often at a point of change in their lives and will be interacting with new communities, be that entering further and higher education, entering the workforce, or planning to move away from home for the first time. It is vital that they are able to legally self-identify in order to avoid the distress caused by continually having to disclose their trans status, or being forced to provide what amounts to incorrect information about themselves when accessing new systems, such as payrolls and student matriculation processes.

Q6 - Which of the identified options for children under 16 do you most favour?

Option 1 – do nothing for children under 16

Option 2 – court process

Option 3 – parental application

Option 4 – minimum age of 12

Option 5 – applications by capable children

None of these options

Option 3 – parental application

It is essential that all young people have space to explore who they are and those who are trans should receive the specific support they need to understand what that means for them. By providing an accessible process to young trans people under 16 years old, the Scottish Government would be fulfilling its commitment to using the UNCRC as a framework to guide its work ensuring the rights of children and young people are recognised, respected and promoted equally.

It is extremely important to note at this stage that allowing trans young people under the age of 16 to access legal gender recognition is not about access to medical treatment, but about recognising them for who they are and supporting them to be themselves.

Q7 - Should it be possible to apply for and obtain legal gender recognition without any need for spousal consent?

Yes

Stonewall Scotland believes that the introduction of a requirement for spousal consent would be unnecessary and problematic. We are concerned that providing for a veto would give a spouse the potential for malicious behaviour in the case of a relationship breakdown.

Q8 - Civil partnership is only available to same sex couples. This means that the civil partners cannot remain in their civil partnership if one of them wishes to obtain a full Gender Recognition Certificate.

Should they instead be allowed to remain in their civil partnership? This would mean that a woman and a man would be in the civil partnership.

Yes

Due to the fact that the current Act's processes force trans people to live in their acquired gender and gather evidence of such for two years before they are able to apply for a GRC, they will have already taken measures to live in their gender identity for considerable time. This means that they will, for all intents and purposes, they will be living in mixed-gender civil partnerships already, and simply haven't received their legal recognition yet. Legally, they will be seen as same-sex, but this is a matter of administration – socially speaking, this change has already happened.

Q9 - Should legal gender recognition stop being a ground of divorce or dissolution?

Yes

Stonewall Scotland believes that having legal gender recognition as a specific ground for divorce or dissolution reinforces the discriminatory view that trans people are somehow dissatisfactory to be in a partnership with.

Q10 - Are any changes to section 22 (prohibition on disclosure of information) necessary?

No

We would be open to discussions about whether the implementation and enforcement of section 22 can be improved, but do not believe other changes are required at this time.

Q11 - Should a person who has been recognised in their acquired gender under the law of another jurisdiction be automatically recognised in Scotland without having to make an application?

Yes

Stonewall Scotland believes that those who have already been legally recognised in their acquired gender should have no reason to apply again for recognition in Scotland. Similarly to Question 4, we believe that recognising people in their acquired gender from when they arrive in Scotland is the only option in line with Scottish Government's commitment to making Scotland a welcoming, open place to all people from all backgrounds.

Q12 - Should Scotland take action to recognise non-binary people?

Yes

Stonewall Scotland strongly believes that non-binary recognition is a vital part of this proposal and strongly encourages the Scottish Government to create legislation to this effect. Updating the Gender Recognition Act to reflect the needs and rights of trans, including non-binary, people in the modern day is not only advisable, it is necessary to safeguard the physical, mental and emotional wellbeing of those people, along with their continued journey towards social and legal equality in today's society.

The Scottish Government has already dedicated itself to doing so within this Parliament session, with First Minister Nicola Sturgeon noting that with legal gender recognition comes public understanding of the barriers that non-binary people face. The Scottish Government has already identified that actions to ensure the inclusion of non-binary identities could lead to higher levels of understanding and acceptance, and reduce discrimination.

Q13 - If you answered Yes to Question 12, which of the identified options to give recognition to non-binary people do you support? You can select more than one option.

Option 1: Changes to administrative forms

Option 2: Book of Non-binary Identity

Option 3: Limited document changes

Option 4: Full recognition using proposed self-declaration system

Option 5: Incremental approach

Option 6: Amendment of the Equality Act 2010

Options 1, 3, 4 and 6.

Stonewall Scotland strongly believes that non-binary recognition is critically important in ensuring that Scotland's gender recognition laws are in line with international best practice. We support Option 4 – full recognition using proposed self-declaration system – as outlined in previous answers. We believe that steps taken to improve the process of recognition for binary

trans people must also be available to non-binary people, who deserve the same level of recognition and respect. Anything else would lead to an inconsistent and confusing system.

We also believe that pursuing Option 1 – changes to administrative forms, Option 3 – limited document changes, and Option 6 – seeking amendments to the Equality Act 2010 that , in addition to a self-declaratory system, are important in ensuring the proposed changes deliver full and comprehensive equal rights and protections for non-binary people in Scotland.

The ongoing lack of non-binary inclusion leaves a significant portion of the trans population without any legal recognition, meaning that those who identify outside of the binary male and female boxes are left in limbo, forced to legally identify as something they are not. As outlined in response to Question 1, a self-declaratory system for legal gender recognition would be a huge step forward for Scotland in remaining a world leader in social equality.

Q14 - At paragraph 7.26. and in Annex J we have identified the consequential legal impacts if non-binary people could obtain legal gender recognition using the proposed self-declaration system.

Are you aware of other impacts we have not identified?

Yes

We believe there are a number of pieces of historic legislation that will have been passed long before the recognition of non-binary identities were being considered. As a result, many of these laws and documents will include language that refers to men and women as binary constructs, where they describe situations intended to include all people. Updating language to reflect non-binary identities will also help eradicate male biased language in legislation.

We also believe that references to binary genders need to be amended to reflect the parental status of a person, rather than their gender, to recognise the role that person played in the relationship between parent and child.

Provisions would certainly need to be made to recognise non-binary people in marriage law, and allow them to enter into marriage and civil partnerships.

For victims of crime, we believe it would be reasonable for a non-binary individual to request that a person delivering a service to them be the gender of their choice, and not be matched based on sex characteristics or gender assigned at birth.

It is the strong view of Stonewall Scotland that trans women are women and trans men are men, and as such should have no impact on gender diversity quotas. Rather, we believe that the barriers to women in society are equally felt by trans women and non-binary people, and visibility of this population would support and benefit women's rights, not hinder them.

Q15 - Do you have any comments about, or evidence relevant to:

(a) the partial Business and Regulatory Impact Assessment;

(b) the partial Equality Impact Assessment;

(c) the partial Child Rights and Wellbeing Impact Assessment; or

(d) the partial Privacy Impact Assessment?

We agree with the content of the BRIA and detail our calculations in our full response.

We broadly agree with the content of the EIA, however we disagree with the argument that extending civil partnership to mixed-sex couples would undermine them in any way.

We mostly agree with the content of the CRWIA. However, we are concerned at the lack of detail in a number of key questions, which we detail in our full response.

We agree with the content of the PIA. However, a note should be made of the changes due to come into effect May 2018 when the General Data Protection Regulation comes into effect and any impacts this will have upon the proposals.

Do you have any further comments about the review of the Gender Recognition Act Q16 - 2004?

Stonewall Scotland would like to take the opportunity to address some of the more common misconceptions that are being perpetuated in the media and in public discourse around the impacts of these proposals. Several points have been raised by organisations and individuals who are claiming significant problems around what a self-declaratory process would mean for women especially, which are based on misunderstanding and public perception. Unfortunately, many of these points are problematic and are causing major distress and confusion. We have provided a detailed answer to these concerns in our full response.

Questions or queries? Please feel free to contact our campaigns team for further information.

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