The Gender Recognition Act 2004

1 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.

Agree

If you want, you can give reasons for your answer, or make comments.:

2 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?

No

If you want, you can give reasons for your answer or make comments.: 

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

Don’t know

If you want, you can give reasons for your answer or make comments.: 

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

B. to everyone?

If you want, you can give reasons for your answer or make comments.: 

5 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

If you want, you can give reasons for your answer or add comments.: 

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

Option 3 – parental application

If you want, you can give reasons for your answer, add comments, or describe your preferred option if none of the options given reflects your views.:

Marriage and Civil Partnership

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

Yes

If you want, you can give reasons for your answer or add comments.: 

8 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.

Yes

If you want, you can give reasons for your answer or add comments.: 
We also believe in civil partnerships being open to all relationships.

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

Don’t know

If you want, you can give reasons for your answer or add comments.: 

Other aspects of the 2004 Act

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

Don't know

If you answered Yes, describe the changes you consider are needed.:

11 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

If you want, you can give reasons for your answer or add comments.:

Non-binary people

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

Yes

If you answered No, and if you want, you can give reasons for your answer.:

13 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.


If you want, you can give reasons for your answer, add comments or, if you think none of Options 1 to 6 is suitable, describe your preferred option.:

14 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.

Don't know

If you answered Yes, describe the impacts you have identified.:

Conclusion

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

No

If you answered Yes, add your comments or evidence.:

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

Yes

If you answered Yes, add your comments.:

INTRODUCTION

Section 19 of the Gender Recognition Act 2004 concerns the area of sport, and makes provision for the regulators of sports competitions to be exempt from allowing transgender people to compete in their acquired gender under particular conditions. These provisions were reinforced and updated by section 195 of the Equality Act 2010.

LEAP Sports understands and recognises that the scope of this current review does not include any specific review of the Act in relation to sport or any consultation in relation to sport. Based on our experience and our consultation with transgender (including non-binary) participants in sport, we believe that a review of this area is required and would highlight this to the current review.

LEAP Sports works across Scotland at individual, group, community, organisational and societal levels. We have gained considerable experience in many individual situations experienced by trans participants, and we hear regularly from sports groups and bodies working on these issues. Over the past year we have been conducting focus groups on trans people’s experiences in sport and discussing experiences with individuals. This response pulls heavily on those discussions and our broader experience of supporting individuals. Further examples of our work specifically in relation to the experiences of trans people in sport in Scotland, can be found at these links:

https://leapsports.org/events/campaigns-and-resources/let-me-be-brave

EXPERIENCE AND CONSIDERATIONS
The way in which the issue of transgender participation in competitive sports is often addressed - as a question of whether or not that participation carries with it ‘unfair advantage’ - is problematic, alienating and off-putting to many community members.

Rather than ask if transgender people have an unfair advantage within competitive sports, we should ask why much of existing competitive criteria has not been constructed with the interests or welfare of trans people in mind - in terms of legislation, facilities and culture, right up to the starting line.

It is important to understand that the ‘validity’ of an individual’s gender identity rests solely on their own self-identification. As it stands, much of the language surrounding trans participation in sport blurs this understanding by equating gender with physical characteristics and this is reinforced by the current wording in section 19 which describes ‘gender affected’ in relation to physical characteristics of physical strength, stamina or physique. Such an approach fails to take account of other determinants of advantage, such as economic resources, access to training facilities, other natural physical or bodily advantages or any other aspect of a participant’s circumstances which may endear relative advantage.

In order to understand this, it is necessary to look at the lived experiences of trans individuals and here are some examples from those whom we have met as part of our work and consultation and who are happy to share their stories:

(1) G is a 54 year old trans woman who previously played in a men’s rugby team. At age 44 and following 4 years out of the sport she made an approach to play in women’s rugby and has found the process of trying to gain permission to play in a women’s team so problematic that she is now 14 years on without being able to play in any competitive games. She has continued a relationship with the sport through coaching but reported to us that she wishes that she’d never bothered to even seek permission to play as at least she’d still be playing now.

(2) C is a 33 year old trans woman who previously played in a men’s football team. Following the correct protocols, C has spent 3 years out of match play and reports to us a ‘shifting sands’ approach to what she needs to do in order to be eligible to play. C’s story of letters, emails and clarifications in order to get back to match play demonstrates a level of determination and tenacity that individuals need to possess in order to just participate and our experience shows that this is a small minority who are able to persist on this journey.

(3) T is a 22 year old trans man who has no history of playing rugby and now wishes to play rugby in a men’s team. The team are supportive of T and want to include him, he trains with them and he plays in friendly intra-club matches. T is not currently allowed to play with the team when they compete as it is deemed to be too high risk for him to do so. T believes that as the perceived risks are to him rather than other players, (despite his size, weight and stature outstripping over half of his own club) then it should be his choice whether to play.

(4) A is a 14 year old trans girl who has a history of participation in gymnastics. She trained in a mixed group but started the process of competing against other girls. On reaching puberty there were complaints about A’s participation and A and her family have found it easier to withdraw than to ‘battle’ the rules and attitudes they believe they have encountered.

There is no reliable data on numbers of affected individuals and scale and our own comments here relate to our experience and our own consultation. We have found that transgender participants on the whole wish to take part or to compete according to their gender identity rather than their birth sex. We know of many examples of those with gender identity and expression as men or trans men, but who continue to compete in women’s sport as this is where the rules currently allow them to compete. For many others, the implications of this are complex and may compound experiences of gender dysphoria. There are significantly fewer examples of where trans women continue to compete in men’s sport, and indeed we only know of one example of this currently happening. On the whole therefore, people are choosing to drop out of sport, avoid competitive or team sports, or seek out trans-only or explicitly trans-inclusive sports options.

Sport organisers have long struggled to include transgender participants within the binary structure of sport, especially within sport competitions. Exclusion of participants whose gender identity varies from that assigned as a result of their birth sex, has not only affected participants, but has served to erase and symbolically marginalise all individuals who are different by virtue of their transgender status and we believe that without taking steps to address this in some way, we maintain this inequality.

CONCLUSION

We would ask the review to consider our evidence and our experience which shows that although these provisions relate to regulation, that the trickle-down effect of this means that complex rules concerning eligibility criteria are being applied in blanket ways at all levels within sports participation pathways and that this is creating significant barriers to access and participation of trans people right throughout sport.

It is our view therefore that the spirit of this review which is concerned with increasing the rights and experiences that transgender people face in our society, should extend to the area of sport within the current section 19. If the spirit of the new legislation is a move towards greater self-identification, then no change at all to the current section 19 would put that markedly out of step with the legislation. Notwithstanding our aforementioned recognition of the scope of this review, we therefore would ask for consideration of the following changes:

• Distinguish between eligibility required in elite / high level competitive sport and self-identification in sport at a grassroots level OR alternatively suggest that a proportionate approach is required in relation to level of competition;
• Clarify that any sports regulator works in the spirit of inclusion and support for the rights of transgender participants;
• Consider a follow-up recommendation that further work is taken in this area.

We strongly believe that such change would support and allow for a stronger approach to national guidance concerning the self-identification of trans people within grassroots and lower level ‘league’ competition and would ultimately begin a very welcome journey to better access and participation of trans people in sport in Scotland.

About You

What is your name?

Name: [ ]

What is your email address?
Email: 

Are you responding as an individual or an organisation?
Organisation

What is your organisation?
Organisation:
LEAP Sports Scotland

If you are responding as an organisation and want to tell us more about your organisation’s purpose and its aims and objectives, you can do so here.

If you are responding to this consultation as an organisation and want to tell us more about your organisation’s purpose and its aims and objectives, please do that here: LEAP Sports is Scotland’s LGBTI sports charity, working to:
• remove the structural, social and individual barriers which prevent lesbian gay bisexual transgender and intersex people from accessing, participating and excelling in Scottish sport
• eradicate homophobia, biphobia and transphobia within sport

More information available at www.leapsports.org

Where are you resident?
Scotland

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:
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