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: We, the elected committee of LGBT workers for Unite the Union (Scotland) support the introduction of a self-declaration system for legal gender recognition. It is our view that the current evidential obligations; demonstrating 2 years of transition is unnecessary and the medical diagnoses requirement dehumanising of the applicant. Unite already recognises our members right to self-define their gender identity, manifesting our commitment via inclusive form options and progressive policies governing gender specific elected posts.

Scotland should seek to reflect the models currently in operation in Malta, Norway and the Republic of Ireland, which afford greater autonomy to members of the trans community without onerous administrative burdens or intrusive assessments.

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?

Yes

If you want, you can give reasons for your answer or make comments: We, the elected committee of LGBT workers for Unite the Union (Scotland) agree that applicants under a new self-declaration system should require a statutory declaration confirming their understanding and intention to live in their acquired gender until death.

A statutory declaration will ensure that the process is legally robust, deters false statements via criminal repercussion and will engender greater respect from the public and employers.

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

No

If you want, you can give reasons for your answer or make comments: We, the elected committee of LGBT workers for Unite the Union (Scotland) oppose a limit on the number of times a person may obtain legal gender recognition. Maintaining the current unrestricted position under the 2004 act will ensure that individuals retain the greatest autonomy over their identity. With the introduction of a statutory declaration, we feel this will deter any frivolous application(s).

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: We, the elected committee of LGBT workers for Unite the Union (Scotland) believe that a future self-declaration system for legal gender recognition should be open to all regardless of birth origin or residency status.

Our union is ardently opposed to discrimination based on nationality and feel that a system operating in this way would predominantly marginalise trans people of colour. Additionally, a system limited by nationality/residency would form a barrier to integration for those seeking asylum.

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: We, the elected committee of LGBT workers for Unite the Union (Scotland) support the proposal that 16 and 17-year olds be able to obtain legal gender recognition through the same process as those who are 18 and over.

16 and 17-year olds in Scotland are already capable of undertaking such commitments as; marriage/civil-partnership, full time employment and voting. Excluding this age group denies them the facility to exercise the autonomy our society already holds them to possess.

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.:
We, the elected committee of LGBT workers for Unite the Union (Scotland) believe that legal gender recognition should be obtainable for under 16s, if those with parental rights and responsibilities for the child consent and make an application on their behalf.

The parental application framework will assist in ensuring that the interests of trans people under the age of 16 are protected when undertaking this major decision and their wishes accurately articulated during the process.

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.:
We, the elected committee of LGBT workers for Unite the Union (Scotland) support the position that trans people should be able to obtain legal gender recognition without requiring spousal consent.

Should Spousal consent be required to obtain legal gender recognition, this will function as a form of veto against an individual’s right to self-determination. Additionally, this consent requirement may be wielded maliciously by an estranged spouse against their counter-part.

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, the elected committee of LGBT workers for Unite the Union (Scotland) believe that a person who obtains legal gender recognition should be able to remain in a civil partnership.

It is our position that civil partnerships should not be limited to same-sex couples, but available to mixed sex couples as an alternative to marriage.

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

If you want, you can give reasons for your answer or add comments.:
We, the elected committee of LGBT workers for Unite the Union (Scotland) believe that gender recognition should cease being a ground for divorce. Maintaining the principle that Trans status can be held as material to the dissolution of a marriage stigmatises people based on grounds outwith their control.

Other aspects of the 2004 Act

10 Are any changes to section 22 (prohibition on disclosure of information) necessary?
No

If you answered Yes, describe the changes you consider are needed.:
We, the elected committee of LGBT workers for Unite the Union (Scotland) believe that no changes need to be made under section 22 of the Gender Recognition Act. The current provisions we deem as sufficient in protecting trans people’s identities.

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.:
We, the elected committee of LGBT workers for Unite the Union (Scotland) believe that a person who has a gender recognition from another country should be automatically recognised in Scotland.

Our union is ardently opposed to discrimination based on nationality and feel that a system that requires an additional declaration for gender recognition would place an unnecessary burden upon trans people.

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: We, the elected committee of LGBT workers for Unite the Union (Scotland) support action being taken to recognise non-binary people in Scotland.

The identities of non-binary people are as valid as those who adhere to male/female. Requiring that non-binary individuals identify as a gender that does not reflect them, suppresses the ability to express themselves and determine their own identity.

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: We, the elected committee of LGBT workers for Unite the Union (Scotland) support the following actions:

Option 1. Scottish Government and Scottish public bodies undertake a review of all administrative forms to ensure that (where possible) they ask questions about gender in ways that are inclusive of non-binary people.

Option 3. The Scottish Government pursues changes to key identity documents e.g. passports and driving licenses.

Option 4. Non-binary people have access to full legal gender recognition, under the proposed system of self-declaration utilising a statutory declaration.

Option 6. Seek amendment to the Equality Act., e.g. updating the protected characteristic of ‘gender reassignment’ to ‘gender identity’.

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.

No

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

No

If you answered Yes, add your comments: About You

What is your name?

Name: [Redacted]

What is your email address?

Email: [Redacted]

Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation: LGBT Committee Scotland, Unite the Union

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: Unite the Union organises, recruits and represents workers with the aim of defending and improving its members’ wages and working conditions. Using the resources of our union, we support our members’ struggle for empowerment in the workplace including the use of strike action. Through this we defend and improve the social and economic well-being of members, their families, both directly and via commensurate policies in relation to society both domestically and
We promote equality and fairness for all, including actively opposing prejudice and discrimination on grounds of gender, race, ethnic origin, religion, class, marital status, sexual orientation, gender identity, age, disability or caring responsibilities.

Where are you resident?

Scotland

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

Publish response only (without name)