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:

LGBT Health strongly agreed with the proposal to reform the gender recognition system to remove the need for medical evidence. The current system is outdated, overly medicalised, excessively intrusive, time consuming and expensive. Scotland should seize the opportunity to align itself with best international practice and move to a simpler system of self-declaration, that removes the need for a psychiatric diagnosis, does not pathologise trans identities and respects the dignity and privacy of transgender people who want to obtain legal gender recognition.

LGBT Health works with people on the basis of their self-declared gender identity and recognises the importance of social acceptance and legal recognition to the mental and emotional wellbeing of transgender people.

The 70 participants in our community consultation were unanimous in their support for the introduction of a self-declaration system. They told us:

“I shouldn’t have to be sent from doctor to doctor, who don’t know me at all, to have to tell them about who I am and wait to have that validated.”

“I have had to change how I talk about who I am with doctors, to the point of not being authentic, just so that I can fit into boxes that they understand. I feel I have to constantly filter my true feelings about my identity, in order to get recognised as something other than the sex I was assigned at birth. I deserve legal and social recognition because I am a human being.”

“Not all trans people want or need NHS treatment but all trans people do deserve to make decisions about their identity,”

“Just because I’m undergoing a gender transition, doesn’t make me unwell and incapable of making decisions about my own health and my own identity.”

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?

Not Answered

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?

Not Answered

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:

Not Answered

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:

Whilst we recognise there is no consistent international approach to people under 18 in relation to self-declaration, LGBT Health would support extending the right to legal gender recognition to 16 and 17 year olds. This would be in line with the legal rights 16 and 17 year olds have in Scotland and consistent with the consensus around their full legal capacity to make decisions affecting their own lives.

Not providing this legal recognition undoubtedly disadvantages trans young people and creates barriers to their positive and timely engagement with education, health and employment at a very critical time in their lives.

Community consultation participants were supportive of people aged 16 and 17 being able to obtain legal recognition of their acquired gender. One participant told us:
“My friend is 17 and absolutely should have the right to self-declare! They also (probably more than me) need to be able to go to university knowing that all their paperwork is in place to help them have a really affirmative experience. They don’t have a credit card so need to rely on their birth certificate more than I do. It’s super important that they can start their uni experience as they mean to go on - being respected and recognised as their true gender. It’s too distressing to think otherwise.”

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.: LGBT Health supports the need to put a gender recognition process in place for those under 16 and the importance for trans young people, and their families, of having their identity recognised. Trans young people under 16 are already able, with their parent’s consent, to change their gender on their medical records and passport. Extending this right, to enable them to also obtain legal gender recognition, through a process that is relatively simple, accessible and straightforward, would seem the best approach.

There was agreement among our community consultation participants that something should be put in place for children under 16. However there was not a consensus regarding the most favoured option. Whilst Option 3 was favoured by most, some participants also favoured Option 4 and some Option 5. Participants told us:

“I really worry for children whose parents to not support their transition or true gender identity. I was that child once, and know what it was like to be rejected for who I am. I know how badly it affected my confidence and sense of self-respect, to the point where I harmed myself a lot. I know what I wanted and would have been the best judge - if the option had been open to me.”

“Allowing children to self-identify, and change their bloody minds if they want to, would help reduce a lot of anxiety, distress and disordered behaviour. Where is the harm in letting children have their say about themselves? I just don’t see it.”

“Perhaps having parents involved would help to support the child. Ideally if they support them to self-declare that would be preferable.”

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.: LGBT Health strongly supports the removal of the requirement for spousal consent. This requirement has the potential to create an unhealthy power dynamic within the relationship, can cause additional distress, delays and add cost to the gender recognition process; we consider it a serious infringement of the rights of trans people to self-determination.

There was agreement among our community consultation participants that spousal consent should not be necessary to obtain legal gender recognition. Participants told us:

“Your identity is for you ONLY to decide, not your spouse or anyone else for that matter!”

“Allowing somebody else the power to support or prevent you from having legal recognition is absurd. This reminds me of when men had the power to prevent their wives from being able to work, vote or whatever - oppressive, unfair and illegal!”

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.: As an organisation committed to equality, LGBT Health strongly supports the recognition of mixed sex civil partnerships. Whilst for many civil partnerships were seen as a stepping stone towards marriage equality, for some they remain the preferred option, an option that should be open to both same and mixed sex couples.

The option of civil partnership (registered partnership) and marriage already co-exist for mixed and same sex partners in other countries, such as the Netherlands.

There was agreement among our community consultation participants that mixed sex couples should be able to be in a civil partnership. As one participant told us:

“I support equal marriage and civil partnerships all the way! The SNP claim to support the idea of a fair and equal society, which stands to reason they should make it possible for men and women to enter into a civil partnership.”

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.

LGBT Health's position is that there is no need for gender recognition to be a ground for divorce or dissolution. This simply serves to perpetuate a lack of acceptance of trans people and their right to self-determination, as well as prejudice around lesbian/gay/bisexual identities.

There was agreement among our community consultation participants that this should not be a ground for divorce or dissolution. Participants told us:

‘Legal gender recognition or being trans should not affect property or access to children in the event of marriage / civil partnership breakdown.’

‘It’s completely arbitrary and perpetuates the idea that trans people are being tricksters or liars.’

Other aspects of the 2004 Act

10 Are any changes to section 22 (prohibition on disclosure of information) necessary?
Not Answered

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.

LGBT Health's position is that Scotland should recognise GRCs issued by the UK Gender Recognition Panel, as well as those issued elsewhere.

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.

LGBT Health strongly supports the need for steps to be taken to advance the recognition of non-binary people. It is abundantly clear that the lack of legal recognition, inclusion and visibility experienced by non-binary people is negatively impacting on their mental and emotional health and their ability to fully participate in their communities.

Our non-binary consultation events highlighted the many challenges individuals face, and the benefits that legal recognition would afford, as a significant step towards greater recognition, acceptance and inclusion.

There was agreement among our community consultation participants that non-binary people should be recognised.

We had 19 participants at our 2 non-binary consultation events. They told us:

“I know this is going to mean a lot of change for many services, but without this change, I remain unprotected and totally invisible. It also means I have to lie or pretend to get access to a service which causes great distress and anxiety. No legal protection for non-binary people is extremely bad for mental health. For me at least, so bad that I have considered dying as a less painful option.”

LACK OF LEGAL PROTECTION AND RECOGNITION

Non-binary people spoke at length about the impact on them of their lack of legal recognition, the invisibility, distress and alienation this causes. They told us:

“I am non-binary, I am not male or female, so without legal recognition my rights are not recognised or protected. This means I am vulnerable and disadvantaged in so many ways. I just want to live my life and be respected for who I know I am. I am not confused or sitting between ideas, I am a non-binary identifying person who is genderqueer.”

“Non-binary people have no legal recognition and it’s very important for non-binary people to feel that they exist. And feel that they have the same rights and legal status as anyone else.”

“The whole system is binary – and that makes me feel like I don’t fit anywhere.”

“Given that there is no legal protection, I feel completely invisible and with no sense of hope that this will change. Not just some places... almost every place. It’s why this [non-binary] group is important, but not enough”

“How do we prove or evidence our identity when there is such a lack of formal recognition of non-binary identities (forms and tickboxes etc..) it just continues to keep those voices and identities in the dark.”

“Legal protection would take it out of the medical zone and makes non-binary identities more visible in a social and political environment. Maybe then the wider population can start to learn about what it means.”
“It feels like including non-binary legal recognition in this legislation would be the first step towards real change. First legislation and then hearts and minds, because sadly people need to know something actually legally exists before they start to react.”

“The invisibility and illegitimacy of non-binary people’s identities, creates dysphoria and distress and poor mental health for me. Legal recognition can make people healthier.”

“Not so long ago (and still in many places) women have been invisible and their needs, potential and place in society lowered. This gender oppression prevents people achieving, succeeding, feeling visible and feeling powerful. There are parallels here for non-binary people, and legal recognition helps to address this inequality.”

ACCESS TO SERVICES
Lack of understanding from service providers is a real issue for individuals, and acts as a barrier to their engagement. People told us:

“I was heavily questioned by a psychiatrist, and felt they were gate-keeping services from me if I didn’t start to identify differently. I have body dysphoria but I confidently identify as non-binary and the doctor continues to try and push the notion that I have a sense of confusion about this. It’s so frustrating - I do exist!”

“I have to hide who I am in so many service settings, that I feel invisible. I am scared of being rejected for services that I know can help reduce my distress, but I don’t get the impression anyone from the NHS asks or cares about the impact that is having on me.”

“There are so few professionals who have the understanding and can support adequately.”

ADMINISTRATIVE FORMS
About how bureaucracy excludes non-binary people, and the impact of this, participants told us:

“All bureaucracy is binary. My bank had 21 titles to choose from but not Mx.”

“Mine lets me choose Mx for my title but then I still have to choose Male or Female for my gender – makes no sense to them or me.”

“I don’t understand why gender monitoring is so important. Why should I have to have my fluid identity squeezed into a restrictive set of boxes that feels completely wrong.”

“Medical records are based on M/F too and then medical services e.g. screening are based on that.”

“There’s knock-on effects to services – these would be improved if there were 3 legal gender options.”

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.: LGBT Health supports the right of non-binary people to have access to the same legal gender recognition as trans men and trans women, including the right to change records and identity documents, as well as gender recognition using a self-declaration system.

We do not consider further research needs to be commissioned, before steps can be taken to ensure the fundamental right of non-binary people to have their identities recognised.

We fully acknowledge that not just IT and wider systems (such as the CHI number) will need to be updated to accommodate these changes, but also that legislation such as the Equality Act 2010 will need to be amended to include non-binary people; this will inevitably take time and will need to be undertaken gradually. However without a commitment to these changes we will simply not be able to achieve non-binary inclusion.

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.

Not Answered

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

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

Not Answered

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:
We warmly welcome this consultation and the Scottish Government’s commitment to reviewing the Gender Recognition Act. This review affords the Scottish Government a real opportunity to be a leader in promoting trans and non-binary equality. The 2004 Act was seen as groundbreaking legislation in its time, but is now very outdated. Better models, which are more firmly rooted in a rights-based approach, and use the principle of self-declaration, are now being adopted elsewhere in the world and should be introduced in Scotland. The need for recognition of non-binary people is now also pressing, to ensure we can address the inequality and invisibility they currently experience.

In the words of one of our community consultation participants "I am waiting with baited breath to find out if Scotland’s government is the government I hope it is. A government that supports equality, fairness and good health for all its people."

About You

What is your name?
Name: Maruska Greenwood

What is your email address?
Email: 

Are you responding as an individual or an organisation?
Organisation

What is your organisation?
Organisation: LGBT Health and Wellbeing

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.

LGBT Health promotes the health, wellbeing and equality of lesbian, gay, bisexual and transgender (LGBT) people in Scotland. We provide support, services and information to improve health and wellbeing and reduce social isolation.

We have found there is a strong demand for specialist tailored support services to address the often complex and little understood challenges individuals experience. This support enables trans people and those questioning their gender identity to: increase their understanding and knowledge around gender reassignment, treatment and support options; improve their confidence, self-esteem and resilience; access social opportunities to meet peers.

LGBT Health is the main third sector agency providing support to transgender and non-binary adults. We have now been delivering a responsive trans-specific programme for over 10 years, with a well-established programme of individual and group support delivered in Edinburgh and Glasgow. Last year our Trans Support Programme provided one-to-one support to 310 individuals and 557 trans and non-binary people attended our groups activities.

In addition to these trans-specific programmes, many trans and non-binary people also engage with our wider LGBT projects, including our social programme, mental health support, 50+ programme and LGBT Helpline. Around 1 in 3 of our beneficiaries identify as transgender, and 1 in 8 as non-binary.

LGBT Health also plays an important role in ensuring trans people are informed, consulted and engaged. In relation to the reform of the Gender Recognition Act we hosted four community consultations over January and February 2018, including a couple in partnership with the Scottish Trans Alliance. Through these consultations we were able to engage with 70 individuals, including 19 people who attended non-binary groups in Glasgow and Edinburgh.

Our organisational consultation response looks to reflect the views expressed in these consultation events, and the quotes provided come from these events.

Where are you resident?
Scotland

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

Publish response with name