



## **Consultation response to the Scottish Government's Review of the Gender Recognition Act**

### [About the STUC](#)

The STUC is Scotland's trade union centre. Its purpose is to coordinate, develop and articulate the views and policies of the trade union movement in Scotland; reflecting the aspirations of trade unionists as workers and citizens.

The STUC represents over 560,000 working people and their families throughout Scotland. It speaks for trade union members in and out of work, in the community and in the workplace. Our affiliated organisations have interests in all sectors of the economy and our representative structures are constructed to take account of the specific views of women members, young members, Black members, LGBT+ members, and members with a disability, as well as retired and unemployed workers.

## CONSULTATION QUESTIONS

### Question 1 (Paragraphs 3.01 - 3.29)

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-declaration system for legal gender recognition instead.

Do you agree or disagree with this proposal?

Agree   
Disagree   
Don't know

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

### Q1

Trans people are some of the most disadvantaged and discriminated people in Scotland and the UK.<sup>i</sup>

Members of the STUC's LGBT+ Committee are aware of a number of cases of trans workers being discriminated against in their workplace and our guide "Supporting Trans Workers: A Guide for Trade Unionists"<sup>iii</sup> is designed to help Trade Unionists better understand the issues around trans equality and support trans workers.

It is crucial that wider society and the legal system allows trans people to fully access their human rights. As the consultation outlines, requiring someone seeking legal recognition of their acquired gender to have been medically treated or diagnosed is a breach of their right to respect for their private life under Article 8 of the ECHR and is not in line with the Yogyakarta Principles.

There is evidence that trans people face a number of barriers in accessing health services,<sup>iii</sup> so removing requirements for applicants to provide medical evidence that they have lived in their acquired gender for two years would be in line with best practice and would minimise barriers for trans people accessing their human rights.

### Question 2 (Paragraphs 3.30 – 3.34)

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   
No   
Don't know

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

Q2

While we support a statutory declaration requiring individuals to confirm they know what they are doing, we would raise questions about the wording required 'to live in their acquired gender until death'. While some individuals may be happy to commit to this, other individuals might find this problematic, fearing it could entrench gender stereotypes.

For example, in relation to gendered workplace dress codes, STUC's 2016 Congress passed a motion stating: "While all workers are affected by these policies [on gendered dress codes], it is typically those who are at the beginning of, or are considering social gender transition, who suffer most. The extreme anxiety, which often occurs around expressing your gender in a new way, is compounded by the fear of being disciplined by management. Non-binary workers find it difficult or impossible to follow a gendered dress code and be true to their own identity."

The wording live in their acquired gender until death could be difficult for people who identify as non-binary.

Question 3 (Paragraphs 3.35 – 3.39)

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

Yes

No

Don't know

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

Q3

Fundamentally, this should be about giving freedom to those who don't have it. People can get married as many times as they wish to, so there should not be an arbitrary limit on the number of times a person can get legal gender recognition.

The process of undergoing gender reassignment is not a simple one – requiring significant documentation changes for example - so we would suggest any fears that the system will be open to abuse are unfounded.

Question 4 (Paragraphs 3.40 – 3.47)

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?

or

(B) to everyone?

or

(C) Don't know

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

Q4

This would extend freedoms and human rights to the maximum number of people, recognising the importance of international solidarity with people who don't have these rights. It also make Scotland a more welcoming place for those who wish to come here and ensure trans people can access their rights on day 1 of arriving in Scotland.

Question 5 (Paragraphs 4.04 - 4.07)

(This question relates to the reduction of the minimum age of applicants for legal gender recognition to those aged 16 and over from the current age of 18. Question 6 will ask your views on the options for people younger than 16).

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

Agree

Disagree

Don't know

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

Q5

At the age of 16 you can change your name, leave school, get a job, vote in elections, and enter into marriage or a civil partnership.

Given the evidence that trans pupils are particularly disadvantaged, with more than two in five having tried to take their own lives,<sup>iv</sup> and the evidence that transitioning improves trans people's mental health,<sup>v</sup> we should be supporting young people to apply and obtain legal recognition at 16.

Question 6 (Paragraphs 4.08 – 4.41)

Which of the identified options for children under 16 do you most favour? (Please select only one answer).

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

<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>

Q6

One single approach is likely to lead to constraints and issues for certain children under 16. For example a focus on ‘capable children’ could be a barrier and lead to discrimination against disabled people, such as those with autism. Similarly, while many parents of trans children are supportive of their desire to transition, not all are so this may risk the rights of some children. This suggests that a number of options should be kept open.

We would also urge that puberty blockers are made available to those who wish to use them. Puberty blockers can prevent irreversible sexual changes happening and give trans people more time to develop a clearer gender identity.

Question 7 (Paragraphs 5.01 – 5.08)

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

Yes   
No   
Don't know

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

Q7

Individuals should be free to obtain their human rights without the consent of others. Spousal consent risks giving a partner inappropriate power and issues of coercive control.

As the consultation mentions, Ireland and Denmark do not require a married transgender person to obtain the consent of their spouse.

Question 8 (Paragraphs 5.10 – 5.16)

Civil partnership is only available to same sex couples. This means that 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   
No   
Don't know

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

Q8

Civil partnerships and marriage should be open to everyone, including people who identify as non-binary, same-sex couples and opposite-sex couples.

Having to convert from a civil partnership to a marriage because one of the individuals involved has acquired a new gender is unnecessary and burdensome.

Allowing a woman and a man to be in a civil partnership would be an important first step in moving to full equality in marriage and civil partnerships.

Question 9 (Paragraphs 5.17 – 5.21)

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

Yes   
No   
Don't know

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

Q9

As mentioned in response to Q7, individuals should be free to obtain their human rights without the consent of others. Should a marriage or civil partnership breakdown following an individual obtaining legal recognition of their acquired gender, then divorce or dissolution should be taken forward on the grounds that the relationship has broken down irretrievably.

Question 10 (Paragraphs 6.01 – 6.06)

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

Yes   
No   
Don't know

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

Q10

While not specifically relating to section 22, we do not support the exceptions in the 2010 Equality Act which allows for religious bodies to impose restrictions on the categories of people they wish to employ in a limited range of roles, for example, as a minister of religion. We believe this should be amended.

Question 11 (Paragraphs 6.23 – 6.31)

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   
No   
Don't know

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

Q11

This would minimise the burden on individuals who have come to this country having to go through another process and/or translate documents. It would also be in keeping with the spirit of a self-identification model.

Question 12 (Paragraphs 7.01. – 7.06.)

Should Scotland take action to recognise non-binary people?

Yes   
No   
Don't know

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

Q12

People who identify as non-binary people are extremely disadvantaged in society and the workplace. An estimated three in ten experienced a hate crime or incident because of their gender identity in the last 12 months.<sup>vi</sup> Half have hidden or disguised the fact that they are LGBT at work because they were afraid of discrimination.<sup>vii</sup>

As the consultation outlines, the Yogyakarta Principles emphasise:

“Each person’s self-defined... gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom.”

It is therefore right that Scotland takes action to recognise non-binary people.

Question 13 (Paragraphs 7.08. – 7.41.)

**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                         | <input checked="" type="checkbox"/> |
| Option 2: Book of Non-binary Identity                             | <input type="checkbox"/>            |
| Option 3: Limited document changes                                | <input checked="" type="checkbox"/> |
| Option 4: Full recognition using proposed self-declaration system | <input checked="" type="checkbox"/> |
| Option 5: Incremental approach                                    | <input checked="" type="checkbox"/> |
| Option 6: Amendment of the Equality Act 2010                      | <input checked="" type="checkbox"/> |
| None of the above options   | <input type="checkbox"/>            |

If you want, you can give reasons for your answer, add comments or, if you think none of Options 1 to 5 is suitable, describe your preferred option.

Q13

Fundamentally we believe people who identify as non-binary should have access to the same rights and systems as transmen and transwomen. As such, non-binary people should be included in the self-declaration model.

Additionally, this should be supplemented by changes to administrative forms, documents, and the Equality Act to ensure that people who identify as non-binary (who we know are discriminated against as a result of their gender identity) are covered in the same way as those covered by the gender reassignment protected characteristic.

We do not believe cost implications are an adequate reason not to make these changes and reasonable adjustments should and can be made. It must be possible to see progress being made, particularly within the public sector, to ensure that non-binary people are able to access their rights.

Question 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.

Are you aware of other impacts we have not identified?

- |            |                                     |
|------------|-------------------------------------|
| Yes        | <input type="checkbox"/>            |
| No         | <input checked="" type="checkbox"/> |
| Don't know | <input checked="" type="checkbox"/> |

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

Q14

Question 15 (Paragraphs 8.01. – 8.06.)

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) partial Child Rights and Wellbeing Impact Assessment; or
- (d) the partial Privacy Impact Assessment?

Yes   
No

If you answered Yes, add your comments or evidence.

Q15

Question 16

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

Yes   
No

If you answered Yes, add your comments.

Q16

<sup>i</sup> <http://www.gov.scot/Topics/People/Equality/Equalities/DataGrid/Transgender> and <https://www.tuc.org.uk/sites/default/files/LGBTreport17.pdf>

<sup>ii</sup> <http://www.stuc.org.uk/files/LGBT/webpage/A%20Guide%20for%20Trade%20Unions%20on%20Trans%20Equality%2007052015.pdf>

<sup>iii</sup> [https://www.equalityhumanrights.com/sites/default/files/key\\_facts\\_and\\_findings-transgender\\_0.pdf](https://www.equalityhumanrights.com/sites/default/files/key_facts_and_findings-transgender_0.pdf)

<sup>iv</sup> [http://www.stonewall.org.uk/sites/default/files/the\\_school\\_report\\_2017.pdf](http://www.stonewall.org.uk/sites/default/files/the_school_report_2017.pdf)

<sup>v</sup> <https://www.sciencedirect.com/science/article/pii/S0001879116300690>

<sup>vi</sup> <http://www.stonewall.org.uk/lgbt-britain-trans-report>

<sup>vii</sup> <http://www.stonewall.org.uk/lgbt-britain-trans-report>