



Gender Recognition Reform (Scotland) Bill consultation Zero Tolerance response May 2022

Women's rights and trans rights are not just compatible, but complementary and mutually inclusive. We welcome and support the reform of the Gender Recognition Act as a step toward equality and acceptance for trans and non-binary people.

As an organisation focusing on primary prevention of violence against women and girls (VAWG), we recognise that from birth, all of us are exposed to gender stereotypes and binaries which contribute to gender inequality and VAWG – for instance, the notion that women should be submissive, and men should be assertive and dominant. To eliminate these stereotypes is an essential part of ending the stigma and violence that trans and non-binary people experience.

The stigma and inequality are evident in the fact that trans women are twice as likely to experience domestic abuse than cis women and 47% of trans people have experienced sexual assault at some point in their lives. [1] Scottish Trans Alliance found 80% of trans respondents to a survey on their experiences of violence stated they had experienced emotional, sexual or physical abuse by a current or former partner and a quarter told no one about the abuse they experienced. [2]

[1] Scottish Trans Alliance (2010) Out of Sight, Out of Mind?

Transgender people's experiences of domestic abuse

https://www.scottishtrans.org/wp-content/uploads/2013/03/trans_domestic_abuse.pdf

[2] Stonewall and YouGov (2018) LGBT in Britain: Home and Communities

https://www.stonewall.org.uk/sites/default/files/lgbt_in_britain_home_and_communities.pdf

Office of National Statistics (ONS) (2018) Domestic Abuse Findings
<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabusefindingsfromthecrimesurveyforenglandandwales/yearendingmarch2017>

The US Transgender Survey Report (2016)
<https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>

Q. 1 The removal of the requirement for a medical diagnosis of gender dysphoria and supporting medical evidence.

Zero Tolerance supports the Bill's removal of the requirement for a medical diagnosis of gender dysphoria and supporting medical evidence. This brings Scotland in line with the World Health Organisation (WHO): in 2019 they removed gender identity disorder from their diagnostic guidelines and no longer describe it as a 'mental disorder'. [3] Being trans is not a mental illness and therefore requirement of a medical diagnosis should be removed. Many trans people are deterred from applying for a gender recognition certificate on this basis. The removal of medical diagnosis and supporting evidence is essential to transition to a self-declaratory system. A self-declaratory system is important as it recognises trans people as experts in their lived experience and their gender. It removes structural barriers to gender recognition such as the requirement of medical diagnosis and evidence, that form an intrusive, humiliating, and unnecessary process. [4]

[3] Human Rights Watch (2019)
<https://www.hrw.org/news/2019/05/27/new-health-guidelines-propel-transgender-rights>

[4] Policy Memorandum for Gender Recognition Reform
<https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/gender-recognition-reform-scotland-bill/introduced/policy-memorandum-accessible.pdf>

Q. 2 Provisions enabling applicants to make a statutory declaration that they have lived in the acquired gender for a minimum of three months (rather than the current period of two years) and that they intend to live permanently in their acquired gender.

As acknowledged in the Policy Memorandum for Gender Recognition Reform, the current process provided under the Gender Recognition Act 2004 is humiliating, physically intrusive, and emotionally invasive [5].

It is also complicated and time consuming, making it inaccessible to many people from less privileged backgrounds. For example, current application requirements need a large amount of personal and medical information that covers a significant period of time, that not all will have access too. Even for those who have all the necessary evidence the application is long and laborious and there are hidden costs such as updated identity documents and doctors' notes which can cost up to £150. There are also the potential emotional costs of being rejected based on the unseen criteria on which applications are assessed.

By moving to a self-declaratory system, Scotland is taking crucial steps in the elimination of the structural stigma [6] and inequality that permits violence against trans women and non-binary people. It will challenge the harmful notions of the gender binary that perpetuate and reinforce inequality and violence against all women by policing what it means to be a man or woman through strict gender stereotypes. Violence is perpetrated against **all** women to maintain patriarchal control. It is also perpetrated against gender non-conforming people; on the basis they have strayed from the gender binary and the associated expectations and stereotypes as a result of "behaving as if they were free." [7] Of course, no amount of conformity can ever truly protect anyone but allows the patriarchy to blame victim-survivors for the violence they experience. Non-conformity presents a risk to the patriarchy and its norms and is punished with patriarchal violence for which the victim-survivor is always blamed.

We do not have a formal position on the proposal that applicants must live in their acquired gender for at least three months before they can apply for a GRC. However, many LGBTI organisations, to whose expertise we would defer, assert that this specific time period is arbitrary. The expertise of our partner organisations and specialists in trans rights emphasise support for a system that is transparent, accessible, and quick, as outlined in Article 31 of the Yogyakarta Principles [8]

[5] Policy Memorandum for Gender Recognition Reform

<https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/gender-recognition-reform-scotland-bill/introduced/policy-memorandum-accessible.pdf>

[6] Structural stigma is stigma embedded in law, policies and practices that results in unfair treatment i.e., current Gender Recognition Act

[7] Griffin, S. (1971) 'Rape: The All-American Crime', *Ramparts Magazine*, Vol. 10 Issue 3, p. 35

[8] http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf

Q. 3 Whether applications should be made to the Registrar General for Scotland instead of the Gender Recognition Panel, a UK Tribunal.

We support the Bill's proposal to change the process that removes the need for a panel of doctors and judges to decide whether someone deserves legal recognition or not. We support change to the Registrar General for Scotland which would recognise trans people as experts in their own genders. Additionally, as the Bill would remove the requirement for evidence, there would be nothing for the Panel to examine, and it would be an unnecessary step in what could be an increasingly streamlined process.

Q. 4 Proposals that applications are to be determined by the Registrar General after a further period of reflection of at least three months.

We note concerns that the inclusion of a reflection period would undermine the move to a system of self-declaration and reinforce some of the harmful assumptions implicit in the current GRA process – primarily, that trans people can't know their own gender. [9] This also seems unnecessary considering you must live in-line with your gender for 3 months and after swearing under oath an intention to live in that gender for the rest of your life.

[9] Scottish Trans Alliance response to Gender Recognition Act 2004 consultation:

<https://webarchive.nrscotland.gov.uk/20190711105447/https://www2.gov.scot/Resource/0053/00539302.pdf>

Q. 5 Whether the minimum age for applicants for obtaining a GRC should be reduced from 18 to 16.

We agree that the minimum age for applicants obtaining a GRC should be reduced from 18 to 16. We also feel that there should be a mechanism to enable those under 16 to obtain legal gender recognition.

As an organisation focusing on primary prevention of violence against women and girls (VAWG), we recognise that children are exposed to gender-conforming stereotypes and binaries which contribute to gender inequality and VAWG from birth.

For instance, the notion that women should be submissive, and men should be assertive and dominant. Breaking down these stereotypes with children at an early age and supporting children and young people who are gender non-conforming to be themselves is an essential part of ending the stigma and violence that trans and non-binary people experience.

Therefore, we are supportive of enabling young people aged 16 and 17 years old to apply for legal gender recognition and echo the comments from LGBT Youth Scotland that this is line with all the rights and responsibilities that young people obtain at the age of 16. [10]

We also have concerns about no provision being made for children under 16 to obtain legal gender recognition. There is positive work being done in Scotland to tackle gender stereotypes and gender-based violence in schools [11] and to make education LGBTI inclusive. However, the bullying and harassment of trans and non-binary young people continues as evidenced in LGBT Youth Scotland's most recent report which found that 69% of LGBTI young people believe transphobia to be a problem in Scotland. [12] We note comments from Stonewall Scotland that some children suffer because of the discrepancy between their legal and social identities. [13] We support moves to normalise trans identities from an early age – as such, there should be a mechanism to enable those under 16 to obtain legal gender recognition. We defer to the responses from LGBT Youth Scotland and the Children and Young People's Commissioner for Scotland on this issue.

[10] <https://www.lgbtyouth.org.uk/media/1794/guide-to-responding-to-the-gra-consultation.pdf>

[11] <https://www.zerotolerance.org.uk/equally-safe-at-school/>

[12] <https://webarchive.nrscotland.gov.uk/20190711105724/https://www2.gov.scot/Resource/0053/00539455.pdf>

[13] LGBT Youth Scotland (2022) Life in Scotland for LGBT Youth Scotland

Q. 6 If you have any comments on the provisions for interim GRCs.

An interim GRC is given to a trans person when their spouse does not consent to their application for a Gender Recognition Certificate (GRC).

We do not take a formal position on this issue but defer to the expertise of our partner LGBTI rights organisations. Both partners in a marriage should have the right to gender recognition and to dissolve a partnership that they no longer want to be in. However, it is stigmatising to suggest that a trans person's gender is one of the few limited grounds for divorce in Scotland. Ideally if a situation arose where one partner in a marriage changed their gender identity and their spouse no longer wished to continue the relationship, this should be grounds for a 'no fault' divorce so they can make a statement of irretrievable breakdown without blaming a person's gender identity.

Q. 7 If you have any comments on the provisions for confirmatory GRCs for applicants who have overseas gender recognition.

This appears straightforward, and we have no comment.

Q. 8 If you have any comments on the offences of knowingly making a false application or including false information.

New section 8S provides that a "person of interest" can apply to the sheriff court to revoke a gender recognition certificate which they believe was issued fraudulently or was otherwise invalid. While the Bill's Explanatory Notes state that a "person who has an interest" is a "spouse, civil partner or child of a person who has obtained a GRC", and we support the existence of a mechanism to apply for a GRC to be revoked if the application was fraudulent, we have serious concerns that this section is too widely drawn. [14] As it currently stands, this provision could mean that trans people may have to defend their identity and transition in court if a "person of interest" files to revoke their GRC simply because they do not like or want to accept their transition.

The literature has established that trans and non-binary people are at greater risk of domestic abuse and coercive control. [15] Zero Tolerance would like to raise the need for greater clarity in this area - section 8S could create another avenue for an abusive partner or parent to exert power and control over the lives of the victim-survivor by trying to invalidate their transition. 73% of respondents to a Scottish survey on trans experiences of violence and abuse in relationships asserted that their partner tried to control or undermine their transition and trans identity as a part of this abuse. [16]

New section 8U provides that “The Registrar General for Scotland may by regulations make provision for or about [...] information or evidence to be included in an application [...] in addition to the information and evidence required by this Act”. [17] We would like further information about what information or evidence could be required “in addition” to the standard information and evidence required from applicants, as this suggests that the Registrar General could request information like that currently required (i.e., a psychiatric diagnosis of gender dysphoria), which would defeat the purpose of the Bill.

New section 22A which makes it an offense to falsely apply or give false information when applying for a gender recognition certificate could be delivered through existing legislation. [18] For instance, it is already an offense to provide false statements and declarations in Section 44 of the Criminal Law (Consolidation) (Scotland) Act 1995.

It is stigmatising to include this specifically in this legislation as it reinforces some of the harmful assumptions implicit in the current GRA process. Namely, that trans people should be treated with suspicion when trying to attain a Gender Recognition Certificate.

[14] Policy Memorandum for Gender Recognition Reform

<https://www.parliament.scot/-/media/files/legislation/bills/s6->

[bills/gender-recognition-reform-scotland-bill/introduced/policy-memorandum-accessible.pdf](#)

[15] Peitzmeier S. M., Malik M., Kattari S. K., Marrow E., Stephenson R., Agénor M., Reisner S. L. (2020) 'Intimate Partner Violence in Transgender Populations: Systematic Review and Meta-analysis of Prevalence and Correlates', *Am J Public Health*, 110(9), pp. 1-14;
Stonewall and YouGov (2018) LGBT in Britain: Home and Communities
https://www.stonewall.org.uk/sites/default/files/lgbt_in_britain_home_and_communities.pdf

Stonewall and NFP Synergy (2018) Supporting trans women in domestic and sexual violence services
https://www.stonewall.org.uk/system/files/stonewall_and_nfpsynergy_report.pdf

[16] Scottish Trans Alliance (2010) Out of Sight, Out of Mind?

[17] Policy Memorandum for Gender Recognition Reform
<https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/gender-recognition-reform-scotland-bill/introduced/policy-memorandum-accessible.pdf>

[18] Gender Recognition Reform (Scotland) Bill Explanatory Notes
<https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/gender-recognition-reform-scotland-bill/introduced/explanatory-notes-accessible.pdf>

Q. 9 If you have any comments on the removal of powers to introduce a fee.

We support the removal of powers to introduce a fee as this makes gender recognition more accessible to people from less privileged backgrounds in contrast to the current system which has a financial implication. This removes some of the structural barriers and inequality that permits violence against trans and non-binary people.

Q. 10 If the Bill's intended policy outcomes could be delivered through other means such as using existing legislation or in another way?

As previously asserted new section 22A which makes it an offense to falsely apply or give false information when applying for a gender recognition certificate could be delivered through existing legislation.

[19] For instance, it is already an offense to provide false statements and declarations in Section 44 of the Criminal Law (Consolidation) (Scotland) Act 1995.

It is stigmatising to include this specifically in this legislation as it reinforces some of the harmful assumptions implicit in the current GRA process. Namely, that trans people should be treated with suspicion when trying to attain a Gender Recognition Certificate.

[19] Gender Recognition Reform (Scotland) Bill Explanatory Notes
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Q. 11 If you have any suggestions for how this Bill could be amended. If so, please provide details.

As we have suggested at other points during this consultation response there are several ways that this Bill could be amended, and we shall reiterate them here.

We would advocate for the inclusion of legal recognition for non-binary people and the inclusion of trans and non-binary people under the age of 16 in accordance with recommendations by LGBT Youth Scotland and the Children and Young People's Commissioner for Scotland on this issue.

New section 8S provides that a “person of interest” can apply to the sheriff court to revoke a gender recognition certificate if they believe it was issued fraudulently or otherwise invalid. The Bill’s Explanatory Notes state that a “a “person who has an interest” is a “spouse, civil partner or child of a person who has obtained a GRC” and this is incredibly broad. [20] While we support the existence of a mechanism to revoke fraudulent applications, as it stands a “person of interest” could file to revoke a person’s GRC simply because they do not accept or want them to transition. This could create another avenue for an abusive partner or parent to exert power and control over the lives of the victim-survivor by trying to invalidate their transition. 73% of respondents to a Scottish survey on trans experiences of violence and abuse in relationships asserted that their partner tried to control or undermine their transition and trans identity as a part of this abuse. [21]

New Section 8U provides “The Registrar General for Scotland may by regulations make provision for or about [...] information or evidence to be included in an application [...] in addition to the information and evidence required by this Act”. Further information must be given as if the information or evidence required “in addition” is a medical diagnosis of gender dysphoria or supporting medical evidence, this invalidates the move to self-declaratory system. A self-declaratory system is important as it recognises trans people as experts in their lived experience and their gender as well as removing structural barriers to gender recognition that are intrusive, humiliating, and unnecessary. [22]

In Section 2 of the Bill, it states that applicants must either have been born in Scotland or be ordinarily resident here. Broadly we understand why this is important, but it is essential for trans asylum seekers and refugees to be granted gender recognition certificates. For example, Malta has set a precedent by adopting specific provisions in their own gender recognition legislation which has been praised by the EU. [23]

[20] Policy Memorandum for Gender Recognition Reform
<https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/gender-recognition-reform-scotland-bill/introduced/policy-memorandum-accessible.pdf>

[21] Scottish Trans Alliance (2010) Out of Sight, Out of Mind?

[22] Policy Memorandum for Gender Recognition Reform
<https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/gender-recognition-reform-scotland-bill/introduced/policy-memorandum-accessible.pdf>

[23] https://tgeu.org/wp-content/uploads/2015/04/Malta_GIGESC_trans_law_2015.pdf

Q. 12 Any other comments on the Bill.

Women's rights and trans rights are not just compatible, but complementary and mutually inclusive. We welcome and support the reform of the Gender Recognition Act as a step toward legal equality for trans and non-binary people. As a feminist organisation working to eradicate all forms of men's violence against women, we challenge the gender inequality that is central to it. Namely, the underlying assumption at the core of this inequality - the patriarchal assertion that gender is binary (male and female).

The gender binary perpetuates violence against women and gender non-conforming people by policing what it means to be a man or woman through strict gender stereotypes. Violence is perpetrated against women, including trans and non-binary people, on the basis they have strayed from the gender binary and these stereotypes for "behaving as if they were free." [24] This presents a risk to the patriarchy and its norms, and they are punished with patriarchal violence.

Trans and non-binary people are explicitly targeted for hate crime, often perpetrated in the form of sexual harassment or sexual assault. [25] Furthermore, the complex restrictions of the current gender recognition process particularly discriminate against trans people who are disabled, migrant, minority ethnic, unemployed, homeless, fleeing domestic abuse, young, or non-binary.

The proposals for gender recognition reform are entirely about the process for changing an individual's sex on their birth certificate. Though we do not provide direct services Rape Crisis Scotland and Scottish Women's Aid provide trans-inclusive services and do not require the sight of a birth certificate to access services or membership. All access to membership and services is based on self-identification and as result this legislation this will not affect services that support those experiencing violence. [26]

[24] Griffin, S. (1971) 'Rape: The All-American Crime', *Ramparts Magazine*, Vol. 10 Issue 3, p. 35

[25] Scottish Trans Alliance (2010) Out of Sight, Out of Mind? Transgender people's experiences of domestic abuse

[26] Review of the Gender Recognition Act 2004: A Consultation. Scottish Women's Sector Response, February 2018.