

equal recognition

**Campaign to reform the
Gender Recognition Act**



EQUALITYNETWORK
LGBTI Equality and Human Rights in Scotland



Intro

Following the introduction of equal marriage, transgender rights are now our key legislative priority. Some trans equality issues, such as flaws in the Equality Act, remain reserved to the UK Parliament. Fortunately, the Scottish Parliament has the power to reform the Gender Recognition Act.

Back in 2004, for all its flaws, the Gender Recognition Act marked a significant step forward for the rights of trans women and trans men. However, there has been substantial international progress on trans rights over the last decade and the Gender Recognition Act is now outmoded and urgently in need of reform. The recent Parliamentary Assembly of the Council of Europe resolution on discrimination against transgender people in Europe calls on member states to *“develop quick, transparent and accessible procedures, based on self-determination, for changing the name and registered sex of transgender people.”* Ireland, Malta and Denmark have already led the way in Europe on this, it is time for Scotland to also reform its law to enable everyone to have their gender identity equally recognised and valued by the state.

We are calling for the Scottish Government to:

- 1. Remove the psychiatric diagnosis requirement from legal gender recognition**
- 2. Reduce the age at which people can get legal recognition of the gender they live as**
- 3. Provide legal recognition for people who do not identify as men or women**



WHAT IS GENDER RECOGNITION?

The gender on a person's birth certificate is their legal gender. It can only be changed using the gender recognition process introduced by the Gender Recognition Act 2004. Decisions are made by a tribunal panel and are completely separate from decisions about gender reassignment medical treatment.

1

Remove the psychiatric diagnosis requirement from legal gender recognition

WHAT'S THE PROBLEM?

In order to change the gender on their birth certificate, the Gender Recognition Act 2004 requires a person to submit a highly detailed psychiatric report confirming they have been diagnosed with gender dysphoria, how that diagnosis was determined and any treatment they have received. This intrusive and humiliating requirement violates trans people's right to privacy and self-determination and adds to the stigma that they already face.

The **World Professional Association for Transgender Health (WPATH)** medical professionals who created the international standards of care for approving trans people's access to hormones and surgeries, agree that this diagnosis requirement should be removed from legal gender recognition processes: *"No particular medical, surgical, or mental health treatment or diagnosis is an adequate marker for anyone's gender identity, so these should not be requirements for legal gender change."*

WHAT ARE WE ASKING FOR?

New legislation to introduce a straightforward administrative gender recognition process that is in line with international human rights standards and reflects European best practice. The psychiatric diagnosis requirement should be scrapped in favour of a self-declaration process which respects the autonomy of the individual applying.

"Nobody but me can confirm my gender identity. It is terribly insulting to have to get the permission of a psychiatrist in order to get my birth certificate changed."

Becky Kent, Trans Activist

2

Reduce the age at which people can change their birth certificates

WHAT'S THE PROBLEM?

Young people under 18 years old are currently prevented from accessing legal gender recognition. Increasing numbers of young people are transitioning, with the full support of their parents, to live as the gender they identify as. Although they can satisfy all of the other conditions required to change the gender on their birth certificate, young people are denied this human right purely because of their age. This places them at risk of significant discrimination and violations of their privacy in education and employment due to the sex on their birth certificate not reflecting the gender they live as.

WHAT ARE WE ASKING FOR?

New legislation should enable people to apply for gender recognition from 16, the age at which young people in Scotland are deemed to have full legal capacity. Children under 16 should also be able to access gender recognition with just the additional requirement that a parent or legal guardian provides their consent. Young people who transition already need a great deal of support from their parent(s) or legal guardians who have to make decisions based on what is best for their child, this would be another such decision.



“I’m currently 17 and am going away to college next year. I would much prefer to have myself as male on the official records, but they need to have my ‘real’ details on the system.” **Young trans person**

3

Provide legal recognition for people who do not identify as men or women

WHAT'S THE PROBLEM?

Unlike other trans people, non-binary people currently have no legal recognition of their gender at all.

Every time they use health services, apply for a job, go to college, or interact with the state in any way, non-binary people are told that their existence is not valid; they must fit in to one of two categories, both of which undermine how they actually live and identify.

Scotland is falling behind the growing number of countries who recognise that some people do not identify as men or women and provide them with a gender-neutral option for legal documents, such as birth certificates and passports, to respect their non-binary gender. Currently Australia, New Zealand, India, Nepal, Pakistan, Argentina, Denmark and Malta, all allow gender-neutral birth certificates, passports, or other official documentation.

WHAT ARE WE ASKING FOR?

New gender recognition legislation should reflect the fact that some people do not identify as men or women and allow people to choose to amend their birth certificates to be gender neutral. This must not be something that anyone is forced into doing but should be available as a legal option.

“For me Equal Recognition would mean being able to proudly say that my gender identity is legal and valid, without having to face abuse or ridicule.”

Gemma Moncrieff, Non-binary Scotland



WHAT IS NON-BINARY?

People who have a non-binary identity don't identify as solely either men or women, they strongly identify as either having a gender which is in-between or beyond those two categories or as having no gender. (Having a non-binary gender identity is different from being born with an intersex body.)



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