

## BRIEFING: LEGAL GENDER RECOGNITION AROUND THE WORLD

On 3<sup>rd</sup> March the Scottish Government [introduced a Bill](#) to reform the Gender Recognition Act 2004. This follows two public consultations: [one in 2017/2018](#) and [one in 2019/2020](#).

If passed, the Gender Recognition Reform (Scotland) Bill would be a great improvement to trans men and women's access to legal gender recognition, and would make the process for amending the sex on their birth certificates much simpler and fairer.

### What is the Gender Recognition Act?

The Gender Recognition Act passed in 2004, following a European Court of Human Rights ruling in 2002. The court ruled that the UK Government must provide a way for trans people to update the sex on their birth certificate.

The Gender Recognition Act (GRA) allows trans men and women to apply for a gender recognition certificate (GRC), which they can use to change the sex recorded on their birth certificate – provided they meet a series of strict requirements.

**Trans people were already, and are now, able to update the sex marker on all of their other identity documents** – like their passport, driving licence, medical records, etc. – through a simple process of self-declaration. **It is only changing a birth certificate that requires going through the current gender recognition process.**

Gender recognition is devolved, but the Scottish Parliament agreed a legislative consent motion for the GRA 2004 to cover Scotland, so the current law is UK-wide.

### Why does the Gender Recognition Act need to be reformed?

The current process for changing the sex on a trans person's birth certificate is:

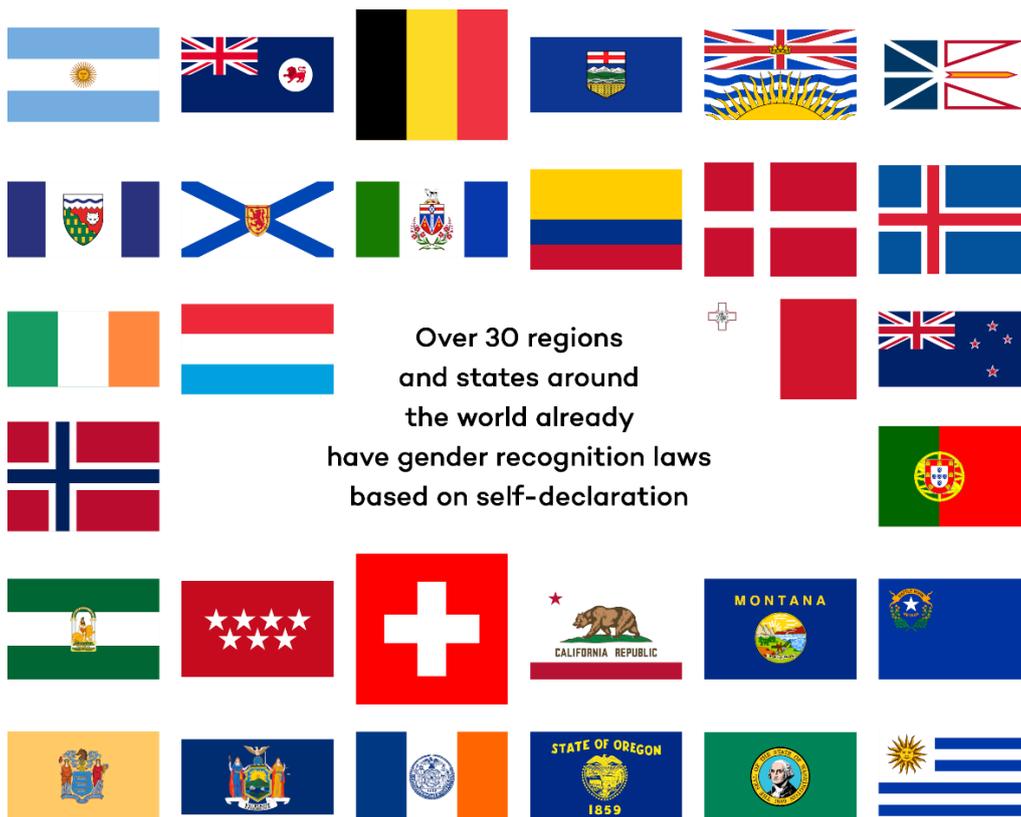
- **Stigmatising** of trans people as it requires a diagnostic psychiatric report of “gender dysphoria”, which reinforces the outdated assumption that being trans is a mental illness.
- **Intrusive and humiliating** because it requires trans people to provide extensive medical evidence about their bodies to a tribunal of doctors and judges who never meet them, despite there being no requirement to undergo hormonal or surgical treatments.
- **Too complicated** for many trans people to navigate, especially if they have poor literacy, are disabled or have lost old paperwork while homeless or fleeing domestic violence, as they need to provide evidence such as other updated identity documents, bank statements, and bills.

- **Expensive** as there are many hidden costs in gaining the evidence needed to apply, such as having to access private healthcare due to current waiting times to access NHS gender identity services being between 18 months and over four years just for a first appointment.
- **Needlessly slow** because trans people cannot apply until two years after they have been permanently living in their gender.
- **Exclusionary** of many trans people, including under 18s and non-binary people.

The above problems with the Gender Recognition Act deter most eligible trans people from applying and that leaves them in a risky legal limbo, with the sex recorded on their birth certificate not matching their other identity documents, and contradicting how they live their lives. This can cause serious harmful errors and difficulties, such as:

- Breach of their human right to privacy.
- Increased risk of experiencing harassment and discrimination in employment and services.
- Problems proving right to work in UK, applying for university/college courses and student loans, and entering a marriage or civil partnership correctly.
- Their death certificate may record their gender in a way that contradicts how they lived their life

[You can read more about the current problems with the law, and which aspects of the Bill we support and why, in our first briefing on the Gender Recognition Reform \(Scotland\) Bill.](#)



**Where in the world has a better model than Scotland?**

When it was introduced in 2004, the Gender Recognition Act was a world-leading piece of legislation. However the world has moved on since then, and many places across the globe have moved to a system of self-declaration.

**Self-declaration refers to a process of legal gender recognition that is demedicalised and administrative.** Rather than requiring evidence of any medical treatments or diagnoses, or that a person has been living in their gender, instead it relies on the declaration of the individual applying. The provisions in this Bill would see Scotland move to this model.

### Where else uses self-declaration?

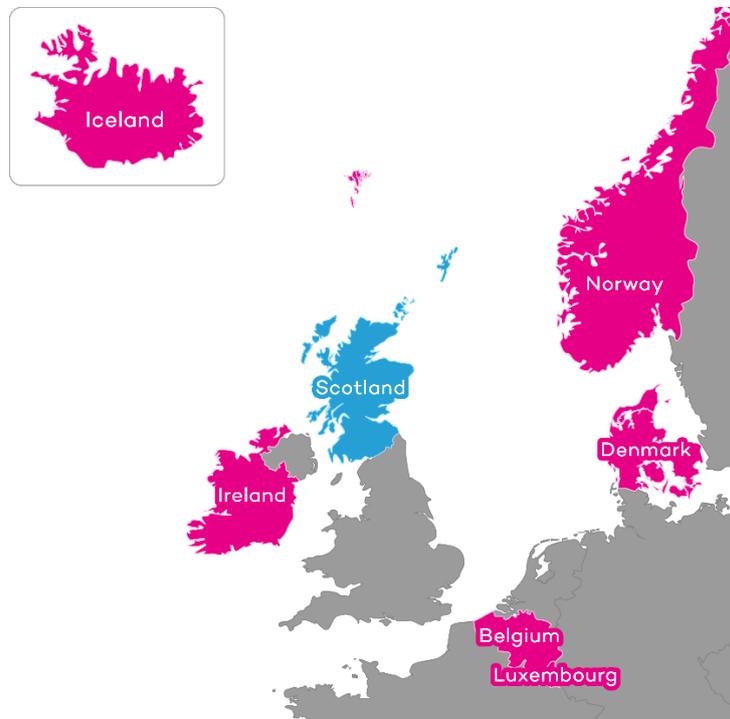
Starting with Argentina in 2012, **over 30 countries, regions, and states across 4 continents have adopted self-declaration laws.**<sup>1</sup>

These areas have a total population of over 275,000,000, which means that **more than a quarter of a billion people around the world today live in places with a self-declaration system** for legal gender recognition.

Just this week, Spain's Council of Ministers approved a Bill that would see them move to a system of self-declaration and introduced it to the Spanish Parliament.

We believe concerns about the Bill should be addressed respectfully and in full as part of the Parliamentary process, and have welcomed the scrutiny of the Equalities, Human Rights and Civil Justice Committee into the Bill. But the fact is that the proposed changes are well tested, and have been in place in all sorts of different societies worldwide for a number of years.

If passed, Scotland would move closer to the best practice of countries like Malta, Iceland and Argentina when it comes to upholding the human rights of trans people. The GRR Bill would not just bring us in line with some of the world leaders on gender recognition, but also some of our closest neighbours



*Ireland, Iceland, Luxembourg, Norway, Belgium and Denmark all already have progressive gender recognition laws.*

<sup>1</sup> [For a full list of jurisdictions see our response to the Equalities, Human Rights and Civil Justice Committee's Call for Views on the Gender Recognition Reform \(Scotland\) Bill at question 1](#)

But even so, the proposed changes would still not see us become a world leader. Two key areas where other places around the world have been even more ambitious are providing legal recognition for those under 16, and providing legal recognition for non-binary people (people who do not identify as men or women).

According to [ILGA Europe's Rainbow Europe Index 2022](#) released in May, **the UK is ranked 14<sup>th</sup> in Europe in terms of legal rights for LGBT people**, dropping from 10<sup>th</sup> place last year. ILGA gives the UK just a 53% score marking it as one of the lowest countries in western Europe - particularly shocking as we were at the top of the rankings back in 2015.

When we look at rankings based on legal gender recognition alone, the UK does even worse, sitting at 21<sup>st</sup> place, next to Slovakia and Russia.

### **What are the international human rights standards?**

As well as best practice from other countries, the proposals in the Bill would bring us closer in line with evolving human rights standards in this area.

The UN has been influential in establishing best practice for legal gender recognition, with their Independent Expert on protection against violence and discrimination on the basis of sexual orientation and gender identity recommending in 2018 that procedures should:

“Be based on self-determination by the applicant, be a simple administrative process, [and] not require applicants to fulfil abusive requirements, such as medical certification, surgery, treatment, sterilization or divorce.”

In 2015, [the Council of Europe passed Resolution 2048](#), which implored member states to take a range of measures to counteract discrimination against trans people. Section 6.2 concerns improvements to legal gender recognition, and says that states should:

“Develop quick, transparent and accessible procedures, based on self-determination, for changing the name and registered sex of transgender people on birth certificates, identity cards, passports, educational certificates and other similar documents; make these procedures available for all people who seek to use them, irrespective of age, medical status, financial situation or police record”

The Resolution also states that legal gender recognition:

- should not require sterilisation, any other medical treatment, or a mental health diagnosis;
- should not affect an applicant's ability to remain in an existing marriage, or affect the rights of their spouse and children;
- should include provisions for a third gender option; and
- should “ensure the best interests of the child are a primary consideration in all decisions concerning children”

**Scotland's current law is out of step with international best practice, and means that trans men and women face significant barriers to accessing their human rights.**

We welcome the fact that the Gender Recognition Reform (Scotland) Bill would remove many of these barriers, and ask that MSPs support these important changes.