



FIVE REASONS TO SUPPORT REFORMING THE GENDER RECOGNITION ACT

What the Act is, how it works, and
why reform is necessary



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Trans

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Trans equality in Scotland

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Common Abbreviations & Terms

- **GRA** Gender Recognition Act 2004
- **GRR** Gender Recognition Reform (Scotland) Bill
- **GRC** Gender Recognition Certificate
- **GRP** Gender Recognition Panel
- **Trans or Transgender** A person who does not fully identify with their sex recorded at birth
- **Trans Man** A person who was recorded female at birth but has a male gender identity and therefore transitions to live as a man
- **Trans Woman** A person who was recorded male at birth but has a female gender identity and therefore transitions to live as a woman
- **Non-binary** A person who does not fully identify as either a man or a woman, but as something else. Not all non-binary people consider themselves to be trans, but many do.

INTRODUCTION



We all want to be able to be true to ourselves, and have that accepted and supported by our friends, family, and communities.

But for too many trans people in Scotland, an unfair process for changing the sex recorded on our birth certificates is holding us back. This means that at important moments in our life – like starting college or a new job, or when getting married – we have to show a document that doesn't reflect who we truly are.

In March 2022, the Scottish Government introduced the Gender Recognition Reform (Scotland) Bill, which aims to improve and simplify the process by reforming the Gender Recognition Act 2004.

In the nearly 20 years that have passed since the GRA was

introduced, an increased understanding of and support for trans people means it's time for Scotland to make changes to this law, just as many other countries have done in Europe and around the world.

Voting for this Bill is an opportunity for MSPs to have a positive impact on the lives of trans people across Scotland, and to support our freedom to live as our true selves.

This booklet is designed to give a quick overview of how things currently work. But more importantly, why everyone should support crucial changes to make the law better.

Vic Valentine
Scottish Trans Manager



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THE GENDER RECOGNITION ACT

The Gender Recognition Act 2004 (GRA) is what allows trans men and women* in Scotland and the rest of the UK to amend the sex on their birth certificate.

They can do so by obtaining a Gender Recognition Certificate (GRC). The Registrar General of their nation of birth within the UK then uses the GRC to update the sex recorded on the person's birth certificate.

Before they do this, trans people can already "self-declare" a change of sex on their passport and driving licence, and doing so does not require a GRC or a diagnosis of gender dysphoria (but more on that later).

The GRA was introduced in response to a ruling from the European Court of Human Rights in 2002, which found that being unable to change their birth certificates was a breach of British trans people's human rights, specifically the Article 8 right to respect for private and family life.

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- * The current Act only allows a birth certificate to be changed from male to female or female to male, and does not give legal recognition for non-binary people who do not identify as male or female. The Gender Recognition Reform (Scotland) Bill also does not include legal recognition for non-binary people.

THE GRA EXPLAINED

Effects of receiving a Gender Recognition Certificate

The main purpose of obtaining a GRC is to allow a trans person to update the sex on their birth certificate.

It is also the final piece in the puzzle in ensuring that trans men and women are recognised as who they are.

Section 9 of the GRA describes this effect:

“Where a full gender recognition certificate is issued to a person, the person’s gender becomes for all purposes the acquired gender (so that, if the acquired gender is the male gender, the person’s sex becomes that of a man and, if it is the female gender, the person’s sex becomes that of a woman).”

“Acquired gender” here means the gender that a trans person lives and identifies as. So a trans man, who obtains a GRC, is recognised as male, and a trans woman, who obtains a GRC, is recognised as female.

The effect of obtaining a GRC would not change if the Gender Recognition Reform (Scotland) Bill passes – just the process for applying for one.



FIVE REASONS

1 UNFAIR BARRIERS IN THE CURRENT PROCESS

2 BEING SEEN FOR WHO YOU ARE IN LIFE'S IMPORTANT MOMENTS

3 RESPECTING HUMAN RIGHTS



S FOR REFORM

4 SCOTLAND IS TRAILING BEHIND OTHER COUNTRIES

5 WHEN PEOPLE KNOW HOW IT WORKS, THEY THINK IT SHOULD CHANGE

REASON ONE

Unfair barriers in the current process

The Gender Recognition Reform (Scotland) Bill wouldn't give trans people any new rights, but it would remove the significant barriers there are to accessing our right to legal gender recognition.

In order to obtain a Gender Recognition Certificate, trans people in the UK must submit an application to the Gender Recognition Panel containing large amounts of evidence to “prove” that they are trans and deserve recognition.

Here are some of the key issues with the current Act that prevent trans people in Scotland from obtaining a Gender Recognition Certificate:

PSYCHIATRIC DIAGNOSIS

One of the pieces of evidence required under the current system is a diagnosis of “gender dysphoria”.

To obtain this diagnosis, trans people either have to wait several years to be seen at a Gender Identity Clinic, or pay up to several hundred pounds to be seen by a private psychologist or psychiatrist.

Being unable to access legal rights without the approval of a psychiatrist is stigmatising for many trans people, and contributes to a false understanding that our identities are a product of mental ill health.

It also creates a significant barrier to our legal rights by requiring evidence from a doctor, rather than listening to trans people ourselves.





RUSS

Trans man, West Lothian

“It’s brought me a lot of joy, my transition. It’s been fantastic. I just wish I’d done it decades earlier.”

When Russ was 19 and first told a psychiatrist that he was actually a man, he was told that this was a symptom of a mental illness and was subjected to Electro Convulsive Therapy, which he describes as “conversion therapy on the NHS.”

Because of the abuse that Russ has faced at the hands of psychiatrists in the past, and the negative impact this has had on his life, he strongly objects to the idea that a psychiatric report and evidence is needed to be legally recognised.

Watch Russ’s video and learn more about his story here: scottishtrans.org/russ

MEDICAL EVIDENCE

Even though there is no requirement to have had any medical treatment, the application requires highly detailed and personal information about any gender affirming treatments or surgeries the applicant has received.

It also requires the applicant to explain why they *haven't* opted for certain treatments.

Many applicants feel as though they then must transition in a way the Panel considers “acceptable” in order to receive legal recognition.

TWO YEARS OF EVIDENCE

Evidence must be provided of “living in the acquired gender” for at least two years, and must be spaced evenly across those two years.

This evidence must be from a variety of sources, such as bank letters and bills, but also ID such as passports which can be expensive to update.

There are many people who have been living in their gender for two years but who don't have the documents to prove it, such as refugees from countries not supportive of trans people.

HIDDEN COSTS

While the application fee for a GRC is only £5, the cost of obtaining the necessary documents can be very big:

New Passport	£75-80
New Driving Licence	£17-34
Doctor's Note	£100-150
Private psychiatrist	£330
Total	£522-594

This is a huge cost for accessing a legal right.

The wait to be seen at an NHS Gender Identity Clinic in Scotland can be more than four years, forcing many trans people to seek private healthcare if they want to obtain a GRC.

DECIDED BY PANEL

Applicants are reviewed by the Gender Recognition Panel, who only meet a few times a year and never meet the applicant themselves.

For many people this means that the application is not a formal or administrative process, but feels as though their identity and right to recognition is put on trial, and that they must present themselves in a way that fits the Panel's idea of what a trans person should be.

AGE

Currently applicants must be at least 18 to apply for a GRC, although young people can apply to change the sex on their passport and driving licence at 16.

This means there is a 1-2 year gap where trans young people may have no choice but to have mismatching documents that out them as trans to new employers or universities.

BINARY CHOICES

The current legal gender recognition system in the UK only allows for applicants to change the sex on their birth certificate from male to female, or female to male.

This means that non-binary people, who do not identify as either, have no option for legal recognition, and are forced to use documents which cannot reflect how they live their lives.

Most countries, states, and regions around the world which have improved their legal gender recognition process to use the self-declaration model proposed in the Bill have options for non-binary trans people.

As non-binary people form an increasingly large section of the trans community this lack of recognition becomes more of an issue for more people.

However, the GRR Bill as introduced **still does not include provisions for non-binary legal recognition.**



REASON TWO

Being seen for who you are in life's important moments

While a birth certificate is rarely used as a form of ID, the times when it is required are often very significant events within our lives.

It is important for trans people to be seen and reflected as who we really are at these key moments.

For trans people, being incorrectly referred to or recorded by names and genders that don't match how we think of ourselves is not just incorrect or inconvenient, but can be deeply upsetting and hurtful. In some instances, it can also cause us to face discrimination and harassment.

Here are some examples of key life stages where a birth certificate may be required:

FIRST JOB / UNIVERSITY

Although not legally required, some employers and universities ask for birth certificates for ID, or to check eligibility to work in the UK.

If a person has a different sex on their birth certificate compared to their passport and driving licence, and which does not match how they live and identify, they have no choice but to “out” themselves as trans.

Many trans people prefer to wait until they have built trust before coming out to others at school or work – and should be able to make decisions about when to share private information about their lives. But the current process for updating a birth certificate means this isn't possible for many trans people.





JAMIE'S STORY

“I’m considering legal gender recognition in the future, because, I suppose for me, it would just be a sense of...peace.”

Both of Jamie’s parents are fully supportive of his transition, and while they say they have both had to learn a lot along the way, they’ve been there for key moments like helping Jamie to pick his new name.

Jamie is 17, which is currently too young to apply for legal gender recognition. This is despite changing his name and gender on all his other ID documents and being fully out to his friends and family.

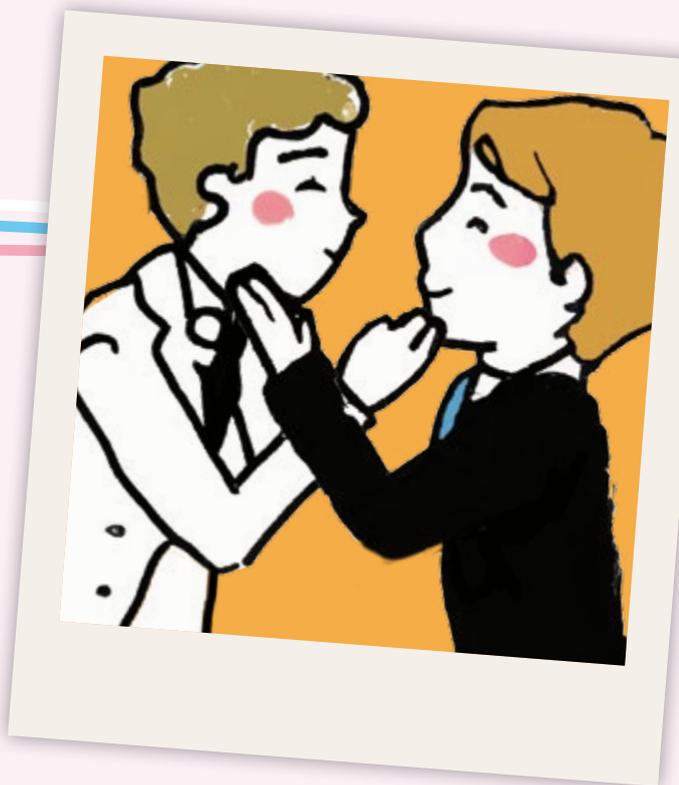
To hear more about Jamie and his family watch their video here: scottishtrans.org/jamie

MARRIAGE & CIVIL PARTNERSHIP

A wedding should be a time of celebration and excitement.

We now have equal marriage and civil partnerships (and so a trans person and their partner can marry or enter a civil partnership no matter the combination of the sexes on their birth certificates).

However, when providing notice, both partners have to provide their birth certificate to their local registrar. This can mean many trans people without a GRC feeling as though they are starting their life with their future spouse on the wrong foot, not really seen for who they are, as an individual or a couple. This can cause a great deal of distress and upset at what should be a time of joy.





SARAH'S STORY

“As soon as I made that transition, my life switched round too. And became so much more... fun!”

Sarah has been unable to apply for a Gender Recognition Certificate, despite transitioning more than thirty years ago. At first, this was because all of the household bills she could have used for evidence were under her partner's name.

However, she realised that she would face an additional barrier. She accessed medical treatment so long ago, and under the care of a GP, that she also doesn't have the medical evidence needed to apply.

Because Sarah was not able to provide this evidence for a GRC, she was unable to marry her partner before he passed away.

Watch Sarah's video and learn more about her story here:

scottishtrans.org/sarah

PENSIONS

Pension age is now equalised between men and women for the overwhelming majority of people in Scotland, but this is not the case for a small number of people who were born when the ages were different.

This means that a trans women who does not have a GRC may not be able to retire at same age as other women in her workplace.

Many trans people are also not aware of this discrepancy, and we know of community members who have had their retirement plans ruined by difficulties in acquiring a GRC.

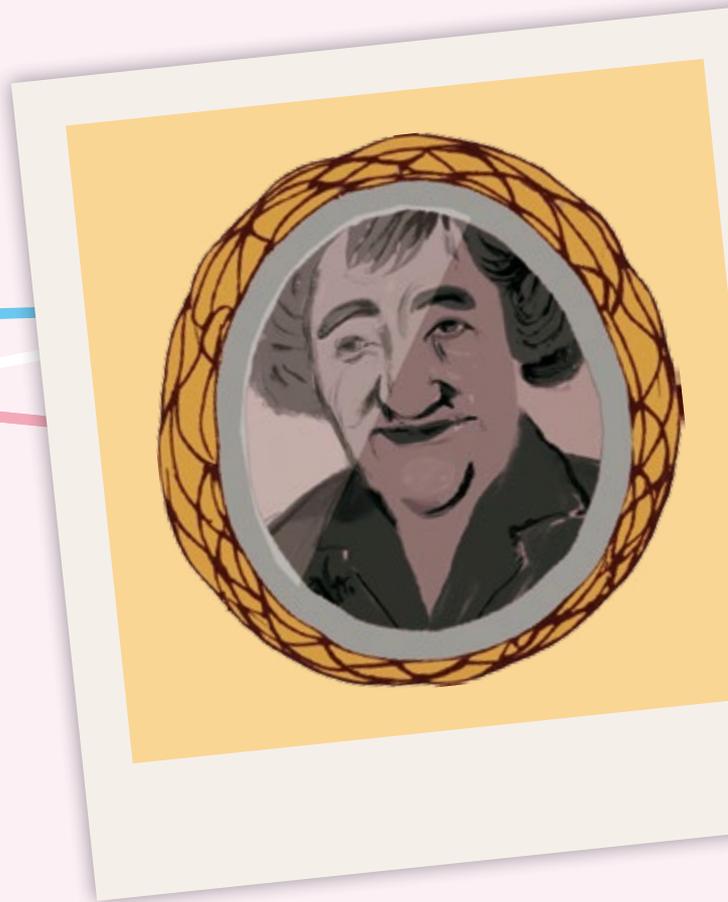


DEATH

Registrars have some discretion when issuing death certificates. However, the only way to be certain of what will be on your death certificate is if you have updated your birth certificate. So, if a trans person hasn't received a GRC, then their death certificate may inaccurately reflect how they lived their life.

This can be very difficult for trans people who are approaching the end of their lives, especially if they do not feel they have the time to make an application or receive a GRC as there is no system in place for accelerating the process for someone who is terminally ill.

It also creates an extra complexity for the friends and family of the individual when they do pass, and may mean that it is easier for family members who are unsupportive of their transition to have them buried under a name or gender that does not match how they lived at the end of their life.



REASON THREE

Respecting human rights

Many human rights institutions, organisations and experts across the world (and here in Scotland) have made the case that to truly respect trans people's human rights, laws that provide legal gender recognition to us must have far fewer barriers than those we see in Scotland today.

These claims aren't new, and instead reflect growing consensus in the international human rights sphere over a number of years.

The Gender Recognition Reform (Scotland) Bill would take us much closer to a law that protects and upholds trans people's human rights.

COUNCIL OF EUROPE: RESOLUTION 2048 (2015)

This called on member states to have processes for recognising trans people that are:

- Quick
- Accessible
- Transparent

And to abolish the requirement for a mental health diagnosis.

UN INDEPENDENT EXPERT ON PROTECTION AGAINST VIOLENCE AND DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY (2018)

Recommends that states have processes that:

- Are based on self-determination
- Are simple and administrative
- Do not have “abusive requirements”, such as medical certification

ARTICLE 6

Article 6 of the Universal Declaration of Human Rights guarantees the right to equal recognition before the law.

The barriers that exist in the current process prevent trans people from accessing this right equally to others.

“The existing body of international human rights law allows for six basic standards to be identified in relation to a legal recognition process. First, it should be based on self-determination by the applicant. Secondly, the process should be a simple administrative one. Thirdly, it should be confidential. Fourthly, it should be based solely on the applicant’s free and informed consent without requiring medical and/or psychological or other certification that could be unreasonable or pathologising. Fifthly, it should acknowledge and recognise non-binary identities including gender identities that are neither man nor woman, and it should offer a multiplicity of gender-marker options. Finally, it should be accessible and, to the extent that it is possible, cost free.”

Victor Madrigal-Borloz, UN Independent Expert on protection against violence and discrimination on the basis of sexual orientation and gender identity to the Scottish Parliament’s Equalities, Human Rights, and Civil Justice Committee, June 2022

EUROPEAN COMMISSION: 2020

In 2020, the European Commission published a report looking at trans people's access to legal gender recognition across the EU.

They sorted EU member states (which the UK was at the time of gathering the information) into five 'clusters' based on how accessible their legal gender recognition processes were. "Cluster 1" was the least accessible, "Cluster 5" the most accessible. The UK is in Cluster 2.

The Commission said member states should "Ensure access to *clear, transparent, swift and respectful* legal gender recognition (LGR) procedures in law", and that key actions to do so included:

- *"Remove requirements to satisfy medical (including psychiatric), civil status, age preconditions or 'real-life experience' (RLE) requirements."*
- *"Ensure the option of a neutral gender marker in identity documents for those who may desire them."*

The Gender Recognition Reform (Scotland) Bill would not result in a process that fulfils all of the EU Commission's recommendations, and would not give us the most progressive legislation in this area in Europe.

However, it would move Scotland from "Cluster 2" – one of the least accessible processes, to "Cluster 5" – the most accessible.



In 2019, the World Health Organisation stopped classifying being a trans person as suffering from a mental illness.

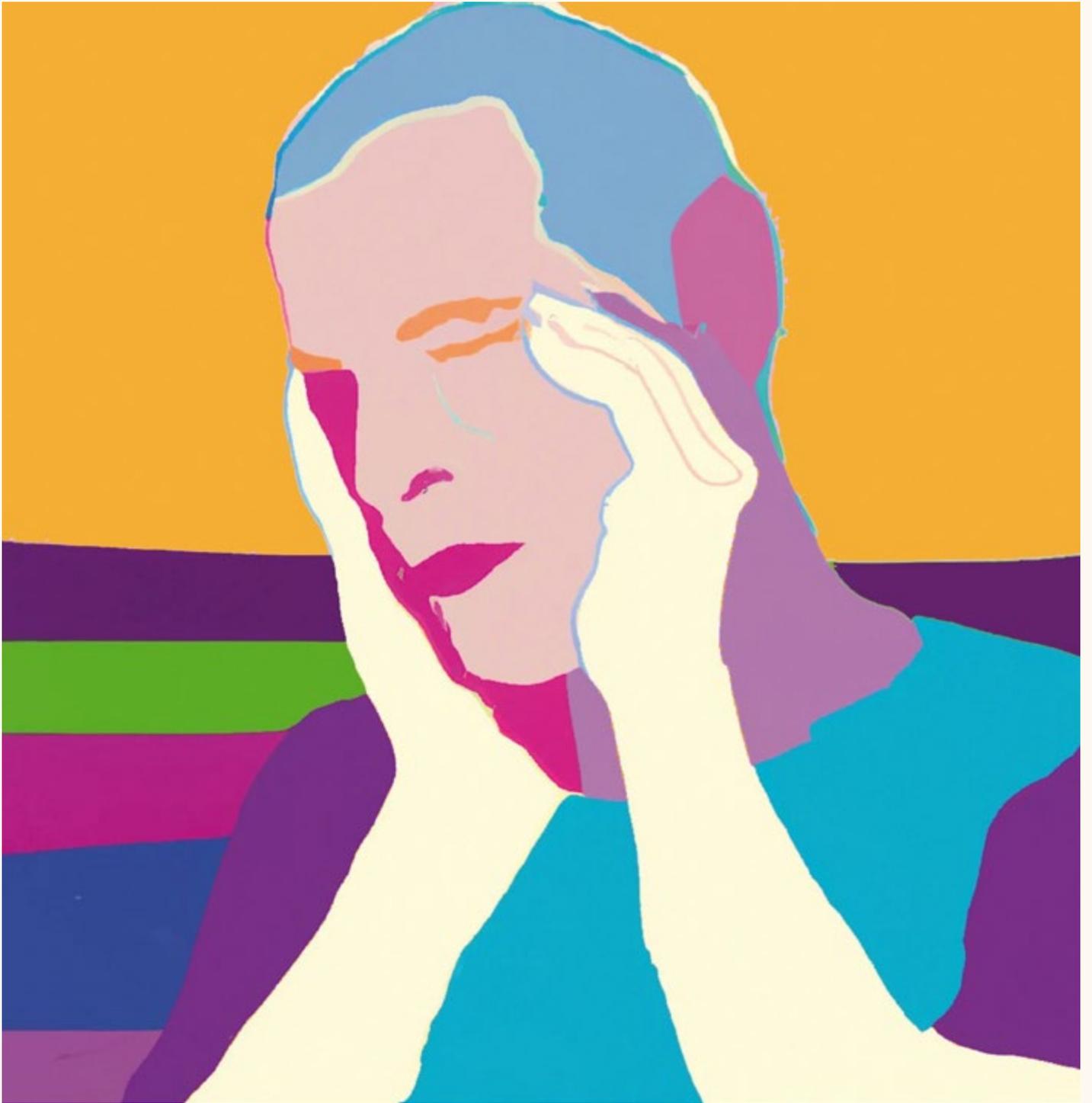
They said at the time that this “reflects evidence that trans-related and gender diverse identities are not conditions of mental ill health, and classifying them as such can cause enormous stigma.”

The Gender Recognition Act 2004 requires a diagnosis of gender dysphoria and defines this as a ‘disorder’. The classification of something as a mental health disorder is not inherently bad, but many trans people, psychologists, and other health professionals feel that this is an incorrect way to consider trans identity.

Trans people do disproportionately seek support for mental health conditions, often due negative responses from society and others to being trans. But evidence shows this is greatly reduced when trans people are accepted and supported by those around them.

Just as being gay was once considered a mental illness, and that was wrong, so too is it wrong to consider being trans a mental illness.

The current process continues to wrongly classify trans people in this way – by making a psychiatrist’s report a central part of the evidence required to be legally recognised.



REASON FOUR

Scotland is trailing behind other countries

The UK waited until a European Court of Human Rights ruling in 2002 which meant it had no choice but to provide legal recognition for trans people – making it one of the very last countries in Europe to do so.

In the 18 years since our law was passed, other countries, states and territories have reformed or passed laws that have many fewer barriers than the one still in place in Scotland today. That better uphold and respect trans people's human rights.

The Gender Recognition Reform (Scotland) Bill is a chance for Scotland to make a positive choice to keep up with progressive changes around the world – both close to home and further afield.



Right now, Parliaments in Spain, Cyprus and Germany are also considering passing gender recognition laws based on self-determination.



IN FOCUS: LEGAL GENDER RECOGNITION IN IRELAND

“We felt that it was such a small thing in law to allow people in the 21st century to live their lives in the gender that they feel that they are and which they know to be true for themselves.”

Senator Regina Doherty, Leader of the Irish Seanad, to the Scottish Parliament’s Equalities, Human Rights and Civil Justice Committee, June 2022

Ireland introduced legal gender recognition based on self-determination in 2015. When giving evidence to the Scottish Parliament in June, Senator Regina Doherty described Ireland’s legal gender recognition process as “working seamlessly”.

She also said that a key driver for the law was listening to those with lived experience, and the way a lack of legal recognition complicated their lives, such as when they needed to travel.

Self-declaration refers to a process of legal gender recognition that is demedicalised and administrative.

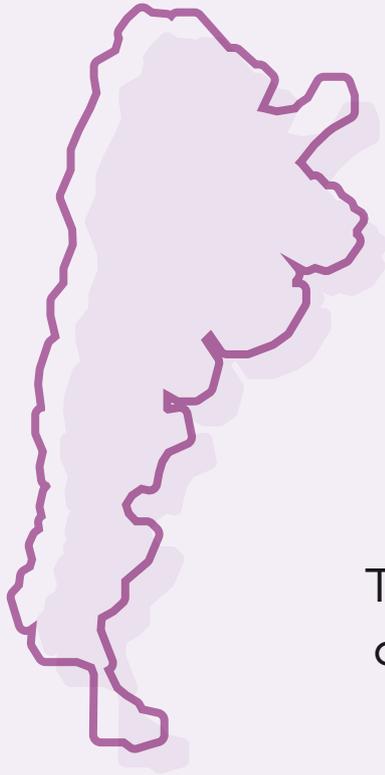
Rather than requiring evidence such as of medical treatments or diagnoses, instead it is based on a statutory declaration by the individual

applying. The provisions in this Bill would see Scotland move to this model.

Over 30 regions and states around the world already have gender recognition laws based on self-declaration.



Argentina, Belgium, Canada (Alberta, British Columbia, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Yukon), Colombia, Denmark, Iceland, Ireland, Luxembourg, Malta, Mexico (Mexico City, Michoacan, Nayarit), New Zealand, Norway, Portugal, Spain (Andalucia, Community of Madrid), Switzerland, Australia (Tasmania), United States (California, Montana, Nevada, New Jersey, New York, New York City, Oregon, Washington State), Uruguay



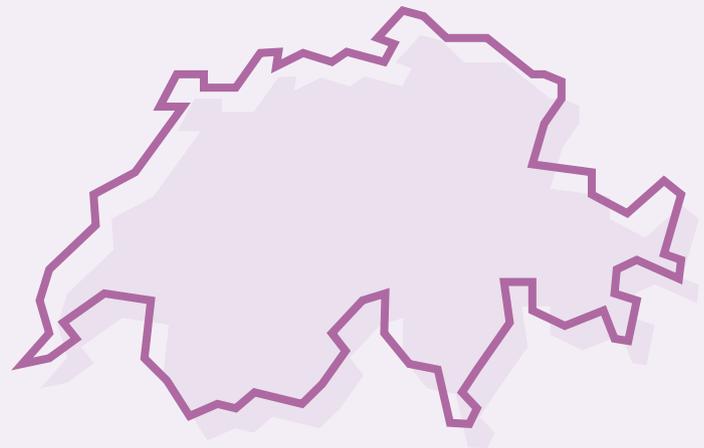
ARGENTINA

Argentina was the first country to move to a system of self-declaration, in 2012.

These 30+ regions have a total population of over **275,000,000**. This 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.

SWITZERLAND

Switzerland was the most recent country to move to a system of self-declaration, in December 2020.



REASON FIVE

When people know how it works,
they think it should change

57%

of all Scots think the process for getting a
GRC should be easier.

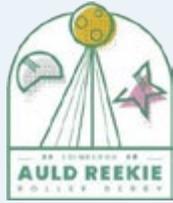
(Savanta: ComRes for BBC Scotland, February 2022)

Support is even higher amongst people who have followed the topic closely, with **72% thinking it should be easier**, and higher still with those who have family member or close friend who is trans – **79% of them agree**.

We know that lots of people aren't experts on trans people's lives, and don't know much about gender recognition, or the problems with it.

But when they do, they support these changes.

A majority of those with a family member or close friend who is trans support all of the main changes proposed in the GRR Bill – as well as legally recognising non-binary people.



ORGANISATIONS AND GROUPS FROM ACROSS SCOTLAND SUPPORT THESE REFORMS







WHAT'S IN THE GENDER RECOGNITION REFORM (SCOTLAND) BILL?

The core requirement to obtain a GRC will continue to be a statutory declaration that you are living in the other gender and intend to do so for the rest of your life. It will continue to be the case that no medical treatment is needed to qualify for a GRC.

The GRR Bill would make changes in the following areas...

- There will no longer be a requirement to provide evidence of a **psychiatric diagnosis** of gender dysphoria
- There will no longer be a requirement to provide **medical reports**
- There will no longer be a requirement to submit **detailed evidence** of living in the other gender
- The **minimum age** for applicants would be lowered from 18 to 16 in line with the general age of legal capacity in Scotland
- There will no longer be a requirement to apply to the Gender Recognition Panel, but instead to National Records of Scotland
- The minimum length of time you need to have lived in the other gender would be reduced from two years to three months, with a new requirement of a “waiting period” of three months after applying, when you must reconfirm you wish to receive the GRC
- The Registrar General will **report yearly** on the number of applications made, and GRCs issued

It will continue to be a criminal offence to knowingly make a false application for a GRC.

WE URGE MSPS TO VOTE FOR THE GENDER RECOGNITION REFORM (SCOTLAND) BILL

These changes would significantly improve the existing process for being legally recognised in Scotland. They would...

- Remove many of the barriers trans people face to accessing our legal right to gender recognition
- Ensure that in life's important moments, trans people are recognised as who we truly are
- Bring Scotland's law in line with international human rights standards, and recommendations for best practice, developed over many years
- Make a choice to keep up with countries around the world that have already made these changes – because they want laws that work for trans people
- Reflect the support that exists for these changes from people who understand trans people's lives



Scottish Trans Alliance is the Equality Network project to improve gender identity and gender reassignment equality, rights and inclusion in Scotland.

www.scottishtrans.org info@scottishtrans.org

 ScottishTrans  [scottishtrans.org](https://www.facebook.com/scottishtrans.org)  [scottishtrans](https://www.youtube.com/scottishtrans)



The Equality Network is a national lesbian, gay, bisexual, trans and intersex (LGBTI) equality and human rights charity in Scotland.

30 Bernard Street, Edinburgh, EH6 6PR
Telephone: +44 (0) 131 467 6039

Registered Scottish Charity: SC037852
Company limited by guarantee: SC220213

Published: October 2022