**Gender Recognition Act Reform Briefing Paper**

The Gender Recognition Act 2004 enables transgender people to change the sex on their birth certificate. It does not require trans people to undergo any hormonal or surgical treatment in order to change their legal sex. It established that, when determining a trans person’s legal sex, the sex/gender in which they live is more important than their birth biological sex characteristics.

**Why does the Gender Recognition Act need reformed?**

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

* **Expensive** for individual applicants and **inefficient** for the public purse
	+ Fee of £140 to apply plus 2 x £80 for medical reports. Even higher costs if people transitioned abroad as they often need to pay to be reassessed by UK medics and to translate evidence.
	+ Existing process requires wages for judicial tribunal members rather than just administrators.
	+ Exemptions to fees apply for those on low income but does not include medical reports
* **Outdated compared to international human rights best practice** as implemented by several other countries and as described by the Council of Europe, World Professional Association of Transgender Health, International Commission of Jurists and other bodies.
* **Stigmatising** of trans people because it requires a diagnostic psychiatric report which reinforces the outdated assumption that being trans is a mental illness.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 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.
* **Needlessly slow** because trans people are not allowed to apply until two years after they transitioned.
* **Exclusionary of many trans people** who have transitioned, including **under 18s** and **non-binary people**. All trans people should have equal access to legal recognition of the sex/gender in which they live.

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

* Less protection of their human right to **privacy** about their gender reassignment history
* Increased risk of experiencing **harassment and discrimination** from employers and service providers
* Their **death certificate** mirroring their birth certificate will erase their lived identity
* Problems proving **right to work in UK** and applying for **university/college courses** and **student loans**
* Problems entering a **marriage or civil partnership** correctly and use of ‘husband’ or ‘wife’ in ceremony
* Problems joining **pension schemes** and mistakes calculating their pension entitlement
* Accidental invalidation of **insurance policies** (especially car, travel or life insurance)
1. **Remove the psychiatric diagnosis requirement from legal gender recognition to instead provide a self-declaration procedure (as already used for changing other identity documents)**
2. **Reduce the age at which people can get legal recogniti**
3. **identify as men or women**

The **Scottish Governmen**t pledged to bring the Gender Recognition Act into line with international human rights best practice and ran a 4-month public consultation from 9th Nov 2017 to 1st March 2018 with significant media coverage. Independent analysis of 15,697 consultation responses: [https://www.gov.scot/
publications/review-gender-recognition-act-2004-analysis-responses-public-consultation-exercise-report/](https://www.gov.scot/publications/review-gender-recognition-act-2004-analysis-responses-public-consultation-exercise-report/)

**Widespread support for reform of the Gender Recognition Act:**

65% of the Scottish respondents to the consultation supported self-declaration.

66% of Scottish respondents supported 16 & 17 year olds applying in their own right, and 59% supported creating a mechanism to enable under 16s to apply for legal gender recognition.

The **World Professional Association for Transgender Health** (which represents the medical professionals working within Gender Identity Clinics) has called for reform of gender recognition laws:

*“barriers to gender recognition for transgender individuals may harm physical and mental health. WPATH opposes all medical requirements that act as barriers to those wishing to change legal sex or gender markers on documents. These include requirements for diagnosis,…or any other requirements for any form of clinical treatment or letters from doctors. WPATH…opposes requirements for persons to undergo periods living in their affirmed gender, or for enforced waiting or 'cooling off' periods after applying for a change in documents. Further, court and judicial hearings can produce psychological, as well as financial and logistical barriers to legal gender change, and may also violate personal privacy rights or needs…WPATH urges governments to eliminate barriers to gender recognition, and to institute transparent, affordable and otherwise accessible administrative procedures affirming self-determination”*

**Parliamentary Assembly of the Council of Europe** Resolution 2048 called on Member States to *"develop quick, transparent and accessible [gender recognition] procedures, based on self-determination"*

**Women’s feminist equality organisations** **Close the Gap, Engender, Equate Scotland, Rape Crisis Scotland, Scottish Women’s Aid, Women 50:50 and Zero Tolerance** support self-declaration process:

*“We do not regard trans equality and women’s equality to be in competition or contradiction with each other. We support the Equal Recognition campaign and welcome the reform of the Gender Recognition Act. Rape Crisis and Women’s Aid in Scotland provide trans inclusive services on the basis of self identification.”*

**What does ‘self-declaration’ mean?**

The proposed ‘**self-declaration**’ procedure to update a trans person’s legal sex:

* Would be administrative in nature and would **not** involve a court or tribunal decision
* Would require a trans person to officially confirm they are **living permanently in their gender identity**
* Would **not** require a trans person to submit a psychiatric report or any other medical evidence
* Would **not** require a trans person to prove they have already lived a long time in their gender identity

**It would not permit anyone to flip-flop legal sex across different situations or days.**

**Deliberately making a false statutory declaration is a serious crime punishable by imprisonment.**

**Current procedures for changing sex on identity documents:**

The name, title and sex marker on all UK identity documents, with the exception of birth certificates, can already be changed on a self-declaration basis (without any requirement for a psychiatric report or any medical interventions) when a person starts living permanently in their gender identity. These include:

* Passports
* Driving licences
* Medical records
* Bank accounts
* Employment records
* Education records and qualification certificates
* Voter registration cards
* Disclosure and barring service certificate

If they have parental consent, young trans people under 16 can change their name, title and sex marker on all UK identity documents except their birth certificate.

In the 1990s, the UK government argued against changing birth certificates because they are not intended to prove a person’s current circumstances but instead are purely a historical record of the circumstances at the time of birth. However, in 2002,the European Court of Human Rights determined that **preventing trans people from changing their sex on their birth certificates violates Article 8 (Right to respect for private and family life) and Article 12 (Right to marry) of the European Convention on Human Rights**.

Currently, to receive a gender recognition certificate and thus change their birth certificate, a person:

* Must be over 18
* Must submit an application to the tribunal Gender Recognition Panel (standard fee of £140) including:
	+ Evidence they have **lived in their gender identity for over 2 years** (such as pay slips, passport)
	+ A **detailed psychiatric report** by one of just 96 approved UK gender specialists (only seven currently working in Scotland) justifying their diagnosis of gender dysphoria (NHS fee of £80)
	+ A **detailed second medical report** listing any hormonal or surgical interventions undergone and giving a reason if no such interventions have taken place (NHS fee of £80)
	+ A **statutory declaration** that the trans person is living permanently in their gender identity and intends to continue to do so for the rest of their life
	+ If married, a statutory declaration from their **spouse giving consent** to gender recognition. (If their spouse withholds consent then an interim certificate is awarded. If resident in Scotland, a Sheriff Court can convert the interim certificate to a full gender recognition certificate)

Existing self-declaration procedures for day-to-day ID have been working smoothly for over 40 years.

**To date, there is no evidence of misuse of self-declaration processes for changing sex markers.** Reforming the Gender Recognition Act will bring the process for birth certificates closer into line with all other ID.

**There are 23 governments already providing legal gender recognition through statutory declaration:**

Argentina (population 44 million, self-declaration system since 2012), Belgium (11 million), 5 provinces in Canada (5.5 million), Colombia (49 million), Denmark (5.7 million), Ireland (4.7 million), Malta (0.5 million), Norway (5.2 million), Portugal (10 million), 2 regions in Spain (14 million), Uruguay (3.4 million) and 7 states in the USA (71 million).

There is no evidence of misuse of these systems and the single-sex service providers and criminal justice sectors in these countries have not reported negative impacts.

**GRA reform does not affect Equality Act 2010 gender reassignment protections and exemptions**.

The EA2010 already protects trans people against gender reassignment discrimination from the moment they first propose to start any aspect of social or medical transition away from their birth sex. The existing EA2010 single sex services and genuine occupational requirement exemptions allow a trans person, even if they have received legal gender recognition, to be treated differently if that is a proportionate means of achieving a legitimate aim. Trans people, regardless of stage of transition, have always been lawfully able to use whichever toilet they wish in the UK without showing ID. Where there are cubicles, it is not proportionate to ban trans people.

**GRA reform does not affect Equality Act 2010 sex discrimination coverage.** The EA2010 protected characteristic of sex already covers not only discrimination based upon an individual’s actual biological sex characteristics but also discrimination based upon perception and wider aspects of sex and gender. Trans women who have not undergone any hormonal or surgical treatments can already become legally female.

**GRA reform does not affect sports competitions**. Where necessary to ensure safe and fair competition in gender-affected sports, sports governing bodies can set their own restrictions on participation by trans people regardless of legal gender recognition status.

**GRA reform does not affect any NHS clinical decision-making** about minimum ages and other criteria for approving a trans person to receive hormone blockers (must be at least at Tanner stage 2 of puberty), cross-sex hormones (16+) or any surgeries (18+).

**GRA reform does not affect NHS funding of Gender Identity services.** De-medicalising access to the legal right of changing the sex on a person’s birth certificate is irrelevant to NHS evidence based decisions about trans healthcare.

**GRA reform does not affect ability to receive NHS cancer screening.** Trans people change their sex marker on their medical records before their birth certificates. Methods already exist in Scotland to enable appropriate screening to continue.

**GRA reform does not affect hate crime law**. Whether or not a trans person has received legal gender recognition is irrelevant to prosecution of a hate crime. Polite disagreement about gender is not a hate crime but harassment and threatening behaviour can be aggravated by anti-trans hate.

**GRA reform does not affect criminal justice sector.** Careful risk-assessed decision-making about placement and management of trans people in custody will remain the key to upholding safety. Provision will continue to exist for prisoners who are legally female, whether trans or not, to be held in the male estate if necessary due to offending history and individual risk level. Receiving legal gender recognition does not affect criminal charges, prosecutions, sentences or parole decisions. A person cannot hide their criminal history by receiving gender recognition - the GRA contains an exception that allows the criminal justice sector to retain and share the previous identity of a trans person where necessary to investigate or prevent crime.

We wish to thank the Scottish Transgender Alliance for their help in producing this briefing

**More information: Scottish Tran www.equalrecognition.scot www.scottishtrans.org**