



Consultation on the Review of the Gender Recognition Act 2004

LGBT Youth Scotland, March 2018

Q1: The initial view of Scottish Government is that applicants for legal gender recognition should no longer need to produce medical evidence or evidence that they have lived in their acquired gender for a defined period. The Scottish Government proposes to bring forward legislation to introduce a self-declaratory system for legal gender recognition instead.

LGBT Youth Scotland agrees that the Scottish Government should legislate for a self-declaration system of legal gender recognition and would welcome this change. Permitting self-declaration would also bring the process in line with international best practice, which the Equality Impact Assessment notes is Aspiration 13 of the Fairer Scotland Action Plan.

As we will discuss throughout our response, changing to a system of self-declaration, recognising non-binary identities, and opening the process of legal gender recognition to children and young people are all a matter of upholding rights. As evidenced by the Equal Recognition campaign and our consultation with more than eighty trans (including non-binary) young people, removing the psychiatric diagnosis and lived experience requirements is important to trans people. Within our consultation process we found that all of the transgender (including non-binary) young people involved in our consultation were in favour of moving to a self-declaration system and felt that removing the psychiatric diagnosis and lived experience requirements would improve the wellbeing of individuals seeking gender recognition:

'Needing a diagnosis of gender dysphoria from a doctor is terrifying. It's no one's right but your own to define your gender' (young person, online survey).

'You don't even need dysphoria to be transgender so that's a ridiculous requirement...'
(young person, Trans Youth Glasgow youth group).

'I also think it's really important that we shouldn't need permission or validation from anybody. Like, the concept of telling a cis person, that in order to be recognised as their gender they have to get the approval of a random group of doctors they've never met in their lives' (young person, Trans Youth Glasgow youth group).

'It's good to try and avoid medicalising being trans. It doesn't need to be' (young person, Trans Youth Glasgow youth group).

'It would be less anxiety provoking and I would be more likely to go ahead with it' (young person, online survey).

Importantly, the current requirements for legal gender recognition undermine a trans individual's right to an identity and to privacy. On the subject of the right to recognition before the law, the *Yogyakarta Principles* state that 'No one shall be forced to undergo medical procedures...as a requirement for legal recognition of their gender identity' (2007: pp11-12). While a psychiatric

diagnosis is not a *procedure per se*, it is a medical process, which upholds a medical model of identity, stigmatises trans identities, and restricts trans individuals from their right to declare their gender identity and have that respected.

In addition, the World Professional Association for Transgender 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'¹. Similarly, in 2015, the Parliamentary Assembly of the Council of Europe passed Resolution 2048 which stated that a requirement for medical treatment or diagnosis in order to receive legal gender recognition was a breach of Article 8 of the ECHR (right to private life).

Social Self-Declaration

Although we are aware that gender recognition reform does not affect access to services, it is important to address the issues being raised in the media around social self-declaration. Single-sex organisations and other women's organisations in Scotland have been working on the basis of self-declaration for the past 10 years. Through our management of the LGBT Domestic Abuse Project over the past decade we have witnessed meaningful work within the domestic abuse and gender based violence sectors to include and support trans women. At present, there are eleven women's aids, one domestic abuse partnership, and two rape crisis centres who have an active LGBT Charter award, and another ten women's aids and two rape crisis organisations working through the process.

The support for self-declaration in Scotland within the domestic abuse and gender based violence sectors was clearly evidenced in response to the launch of this consultation, when the seven national women's organisations issued a joint statement stating that they support the proposed reforms².

This is also visible on a local level with organisations such as Dundee WRASAC publicly stating their feminist support for trans-inclusion succinctly:

¹ WPATH Identity Recognition Statement 2017 <https://tgeu.org/wpath-2017-identity-recognition-statement/>

² <http://equalrecognition.scot/supporters/joint-statement-support/>

‘We are aware that there is discourse which suggests that a system of self-declaration would be a threat to women’s safe spaces. This is not our viewpoint. We want to emphasise that we already welcome self-identifying trans women into our safe spaces, that their inclusion does not in any way determine the safety of that space and that to suggest otherwise would be a disservice not only to our trans service users, but to the trans women working within our sector creating those safe spaces every day’³.

Q2. Should applicants to the proposed gender recognition system in Scotland have to provide a statutory declaration confirming they know what they are doing and intend to live in their acquired gender until death?

LGBT Youth Scotland is content for the requirement for statutory declaration to remain. This shows that the applicant understands the legal consequences of the process. As noted in the consultation document in section 3.32, there have been no known instances of 'false or frivolous' by applicants in the countries that use a self-declaration system.

‘Self-declaration would also be unlikely to be abused as changing their legal gender is not something that cisgender people would feel necessary’ (*Young person, Online Survey*).

‘I believe having it formally and legally acknowledged is really important. However, maybe amend or change up how it works. If you falsify a declaration make it conjecture. As far as someone is concerned at the time of signing, this is their life’ (*Young Person, Trans Youth Glasgow youth group*).

Q3. Should there be a limit on the number of times a person can get legal gender recognition?

We do not believe that there should be a limit on the number of times an individual can receive gender recognition as there are no current similar restrictions under the Gender Recognition Act 2004. The statutory declaration process should be sufficient to ensure that individuals recognise the importance of the application yet provide the opportunity for future changes to be made if required.

‘The most important part is declaring it’s going to be permanent. You’re only allowed to change your gender a certain amount of times so part of that is then what should that number be. A statutory declaration is saying permanently which technically means about 3 times I think you can change it?’ (*young person, Beyond Gender youth group, Edinburgh*).

³ www.wrasac.org.uk/news/news-events/wrasac-for-equal-recognition/.

Q4. If the Scottish Government takes forward legislation to adopt a self-declaration system for legal gender recognition, should this arrangement be open to:

A) Only people whose birth or adoption was registered in Scotland, or who are resident in Scotland?

B) Everyone?

C) Don't know

LGBT Youth Scotland believes that anyone, regardless of whether or not they were born or adopted, or are resident in Scotland, should have the ability to receive the additional protections afforded with a GRC.

Those born outside of Scotland who will not be able to receive updated birth certificates, such as asylum seekers or those from outside the European Economic Area on Tier 4 student visas, will still benefit from having a GRC that increases their right to privacy and protections when interacting with services. We believe it is Scotland's duty to uphold the rights of all trans (including non-binary) people living in Scotland.

'If someone was born and living in Scotland there should be zero issue. People who aren't from Scotland but wanted to go through self-declaration...If the birth certificate can't be changed at least afford them all the other rights and privilege as others' (young person, Trans Youth Glasgow youth group).

Q5. The Scottish Government proposes that people aged 16 and 17 should be able to apply for and obtain legal recognition of their acquired gender. Do you agree or disagree?

LGBT Youth Scotland agrees with the proposal that 16 and 17-year olds should be able to apply for and obtain legal gender recognition. As noted in the consultation document, evidence shows that young 'people age 16 do live full time in their acquired gender and want this to be legally recognised' (4.05); we regularly work with trans, including non-binary, young people who are living in their acquired gender who wish to apply for gender recognition. The proposed change would bring gender recognition in line with other rights accessible at the age of 16 under Scottish law, such as the ability to enter into marriage or civil partnership; recording a name change; or, voting in Scottish elections (4.06).

'It is very hard and disappointing. If I can get married at 16, why shouldn't I be allowed to obtain a GRC?' (young person, *online survey*).

The reduction in age would also remove some of the barriers that trans including non-binary young people face as a result of inconsistent documentation when entering into employment or further education. We know that trans including non-binary young people sometimes avoid applying for opportunities because they do not want to be outed by showing a birth certificate that does not reflect their identity, or that when applying the process has a negative impact on their self-esteem and mental health when their documentation is questioned.

'16 and 17-year olds can be employed and [may have to] out themselves to their employer constantly for those 2 years. Especially at that point in your life, you don't need that extra anxiety' (Young Person, Trans Youth Glasgow youth group).

'I'm nearly at the 2 year mark now since I changed my name legally and since I first told my doctor I was trans ...But it would have been quite useful when I was looking for a job' (Young person, Trans Youth Glasgow youth group).

Overall, opening legal gender recognition to 16 and 17 year olds would bring gender recognition in line with other legal rights available to this age group, and remove barriers created by inconsistent documentation at an age when many young people are entering the workforce or continuing education.

Q6. Which of the identified options for children under 16 do you most favour?

LGBT Youth Scotland welcomes the consideration of extending legal gender recognition to children under the age of 16. Professionals and organisations working with children, including very young children, have shown that the development and awareness of one's gender identity occurs at an early age. We favour Option 3, Parental Application, as the most appropriate identified option. Our preference is for the requirement of one adult with parental rights and responsibilities (PRRs) to complete the application.

We also believe, however, that there should be the opportunity for applications by a capable child where said child lacks support from an adult or authority with PRRs, and that there should be access to free advocacy to support them to submit the application.

Article 5 of the UNCRC focuses on the evolving capacities of the child, and respects the parental responsibility to provide appropriate guidance in line with those evolving capacities:

‘..Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.’

This means that parents are responsible for helping children to understand their rights, articulate their views, and exercise their rights. We believe that this principle must be central to the parental application process, particularly where there is disagreement between parents (see point 2 below for more information). The Scottish Government should consult with the children and young people’s sector in developing the documentation to ensure that the views of the child are central to the application and the basis on which the applications are considered.

Within our consultation young people told us that their trans identities were often not respected, they felt that the wait to go through a GRC process was too long and this was detrimental to their health and wellbeing. They also made it clear that lowering the age of gender recognition would be particularly beneficial for trans children and young people who have been out for a number of years.

‘Obtaining a GRC feels like an impossibility and there’s no point even trying. I feel like I’ll never get to a point where I can live legally because of my age’ (*young person, Youth Commission on Gender Recognition*).

‘It’s damaging as it feels like they’re saying “Oh you can’t really be trans” just because I’m young’ (*young person, online survey*).

‘It was stressful because I knew I would have to wait three years until I could be legally recognised in my gender so I had to put my life on hold’ (*young person, Edinburgh youth services*).

We expect that most trans including non-binary children and young people who are in a position to want legal recognition will have at least one supportive adult in their lives. For this reason, the parental application is the most appropriate solution for the majority of those under 16.

We do foresee some circumstances in which complications will arise as a result of the parental application route. LGBT Youth proposes the solutions below:

1. Where a child or young person does not have a supportive adult with PRRs, we suggest a mechanism to test their capacity and move forward with the application on that basis. The

capacity test must be undertaken by a professional skilled at working with children and young people and focus on the child's ability to understand the legal implications of their actions without 'verifying' the validity of their trans identity. This could be carried out by a designated professional already working with the young person, to reduce the stress of having to meet with an unknown professional.

2. Where parents disagree. As noted in the consultation, disagreements would trigger a court order, taking into account the child's welfare and views. Young people who took part in our consultation were clear that where possible this process should avoid the court system. Court processes are adversarial and not the most appropriate way to recognise and respect a young person's right to have their views heard, and privacy and identity respected.
3. We suggest an alternative approach which focuses on mediation and the verification of the child's views and capacity to understand the decision. In general parental disagreement should not serve as a barrier to a child's ability to assert their right to declare their gender identity, as per Article 5 of the UNCRC. If the decision is made to require more than one adult or all adults with PRRs to take part in the application, this would particularly disadvantage looked after children and young people. A straightforward way to deal with this would be to notify all parties with PRRs required to consent that an application has been made and allow them to express a view within a certain time frame. This means that everyone has clearly been consulted yet removes the burden on children and young people to contact all adults with PRRs if they do not have regular interaction.

As noted in response to questions one and twelve, improving social and legal gender recognition for trans (including non-binary) children, young people, and adults, will greatly improve their mental health, well-being, and potentially social inclusion.

Q7. Should it be possible to apply for and obtain legal gender recognition without any need for spousal consent?

Yes, individuals should be able to apply for and obtain legal recognition without the requirement for their spouse to consent. The process is one of legal and not social recognition and should therefore not affect the relationship. In instances where it does have a negative impact on the relationship, other processes are in place to respond. Our response to Question 9 further details our views.

Q8. Civil partnership is only available to same sex couples. This means that the civil partners cannot remain in their civil partnership if one of them wishes to obtain a full Gender Recognition Certificate. Should they instead be allowed to remain in their civil partnership? This would mean that a woman and a man would be in a civil partnership.

We firmly believe that if an individual in a civil partnership receives a full GRC, that the couple should be allowed to remain in their civil partnership.

Since the original 2011 consultation on the Marriage and Civil Partnership Scotland Act (2014), LGBT Youth Scotland has called for the Scottish Government to open up civil partnerships to mixed-sex couples. We would strongly support changes which would allow two consenting adults, regardless of gender identity, to enter into or remain in a civil partnership.

As noted in previous consultation responses to marriage and civil partnership:

- 2015: We consulted with 73 LGBT young people on the future of civil partnerships. All participants preferred the option of retaining civil partnerships and extending them to mixed-sex couples.
- 2009: the LGBT National Youth Council identified equal marriage and civil partnership as a manifesto priority for the General Election and reaffirmed this ahead of the Scottish Election in 2011: *'We want the Scottish Parliament to legislate to open up marriage to same-sex couples and open up civil partnership to mixed-sex couples'*. Their two-year campaign clearly called for both equal marriage and civil partnership, and garnered over 700 photo petition sign-ups. Pledges include support from MSPs, ministers and party leaders.

Young people taking part in the 2015 consultation noted the following benefits:

'Allows people already in a civil partnership to remain within them while applying for legal gender recognition'.

'This option gives the same freedom to transition that the transgender community have within a marriage'.

It is also important to note that mixed-sex couples are already in civil partnerships, only they are not officially recognised as mixed-sex couples because the sex recorded on their birth certificates matches. In this regard, negative consequences of permitting mixed-sex civil partnerships, or civil partnerships regardless of gender, are expected to be minimal while the benefits are great for couples and individuals affected by the current restriction.

Broadening access to civil partnerships regardless of gender would remove barriers for trans men and trans women seeking full gender recognition and enable non-binary people to enter into civil partnerships in a way that reflects their gender identities.

Q9. Should legal gender recognition stop being a ground of divorce or dissolution?

LGBT Youth Scotland believes that legal gender recognition should no longer be grounds for divorce or dissolution. Retaining it among the few grounds for divorce or dissolution stigmatises trans people and implies that legal gender recognition is a threat to relationships.

As noted in the consultation, between 2010 and 2016, there were no dissolutions (see section 5.14) and seven divorces (see Annex N) on the basis of an interim GRC being issued. The form of gender recognition under discussion is legal recognition, which generally takes place after social recognition. This means that individuals seeking legal gender recognition will have likely already socially transitioned prior to or within their marriage or civil partnerships, and receiving legal documentation does not imply that the relationship or individual have changed in any way.

In a small number of instances where legal recognition would affect the relationship, there are other ways to end that relationship, such as 'irretrievable breakdown'.

Q10. Are any changes to section 22 (prohibition on disclosure of information) necessary?

We would urge the Scottish Government to not seek any changes to Section 22. The exemptions currently encompass everything required to balance both trans people's rights and official or legal practices.

What is needed, however, is more extensive guidance on the exemptions. In both our training delivery and policy support for other organisations, questions commonly arise around disclosing protected information. At times, professionals can find it difficult to recognise the emotional and mental impact on individuals of having this information shared when it is not required.

Q11. Should a person who has been recognised in their acquired gender under the law of another jurisdiction be automatically recognised in Scotland without having to make an application?

LGBT Youth Scotland believes that individuals who have acquired legal gender recognition in their home jurisdiction should be automatically recognised in Scotland. Other foreign legal documents are automatically accepted in Scotland and we see no reason why gender recognition should be different.

Q12. Should Scotland take action to recognise non-binary people?

LGBT Youth Scotland believes that Scotland should take action to recognise non-binary people's gender identities. Non-binary people are currently not afforded their right to dignity, privacy, recognition before the law, or protection from discrimination and, as a result, experience both legal and social exclusion.

Within our services, we are aware that the number of young people who identify as non-binary has grown over the past few years. Our research published in February 2018 confirms this: more young people identified as non-binary or described their gender 'in another way' (19.5%) in our 2017 survey⁴ than did in our 2012 survey (6.35%)⁵. Scottish Trans Alliance undertook a 2015 survey with nearly 900 non-binary people across the UK and estimates that a few thousand people in Scotland identify as non-binary⁶.

Recognising non-binary people is a matter of validating identities and experiences. As noted in section 7.04 of the consultation document, 'taking action to ensure that non-binary people are not excluded could increase their acceptance and reduce the levels of discrimination experienced'. We agree that this would reduce social and legal exclusion.

Many non-binary young people tell us that they have to continuously work to get others to recognise their identity and tell us that a lack of recognition has negative consequences for their wellbeing. Within our consultation young people also emphasised the distress they experience in

⁴ Lough Dennell, B.L., Anderson, G. and McDonnell, D. (2018) *Life in Scotland for LGBT Young People*. LGBT Youth Scotland. www.lgbtyouth.org.uk/files/documents/Life_in_Scotland_for_LGBT_Young_People.pdf

⁵ Lough Dennell, B.L. and Logan, Caitlin. (2012) *Life in Scotland for LGBT Young People: Education Report*. LGBT Youth Scotland. www.lgbtyouth.org.uk/files/documents/Life_in_Scotland_-_Education.pdf

⁶ <http://equalrecognition.scot/wp-content/uploads/Non-Binary-Myth-Busting.pdf>

response to pressure to identify as a binary gender identity, when others do not recognise their gender identity, or when they are misgendered.

‘...My dysphoria is on fire right now. So I made myself comfortable with He/him because it was easier to bear. I’m also lying to myself when I ask people to use it and I don’t know what to do’ (*young person, Beyond Gender youth group*).

Further, non-binary young people face the dilemma of misrepresenting their gender identity on forms, or not engaging in services. Some chose to not apply for documentation that most people take for granted such as a passport, driver's licence, registering for public services, or setting up a bank account.

Our report on Life in Scotland for LGBT Young People, published in February 2018 found:

- 51% of non-binary young people (compared to 41% of trans young people overall and 35% LGBT overall) said that they had experienced a hate crime or hate incident in the previous year.
- Non-binary young people were less likely than LGBT young people overall to feel safe (54% compared with 67%) on public transportation.
- Non-binary young people were the least likely to feel comfortable speaking to their GP about sexual health (39%).
- Only 29% of non-binary young people thought there were enough places where they could safely socialise and be open about their identity.

Non-binary young people involved in our consultation also told us that social and legal recognition of non-binary identities would:

- Remove barriers created by forms and systems and allow non-binary people to complete forms in a way that truly reflects their identities

‘Anywhere that holds a database holds that information and it can also cause problems as the way in which computer systems try and make it easier if there is an M in that box it will use male pronouns throughout the entire thing. Automatic things it prints off will have that. There is no third option’ (*young person, Beyond Gender youth group*).

‘The lives of non-binary people would be so much better as they would be recognised for their actual selves other than what the government forces them to state themselves as’ (*young person, Online Survey*).

- Allow non-binary people to have accurate identification documents

‘It would make all identification activities less condescending’ (*young person, East Dunbartonshire youth group*).

- Improve legal protections

‘I could exist in legal terms. It’s horrible basically to not be real in the eyes of the law. I have to fight to prove that I even exist and I can’t do that in law’ (*young person, Youth Commission on Gender Recognition*).

- Increase visibility and social acceptance

‘A positive social influence, if being non-binary was legally recognised, people would begin to see and identify non-binary people more’ (*young person, online survey*).

- More accurately capture monitoring information, such as equality monitoring of employees or service users

‘I wouldn’t have to live a lie. I want to be recognised and not questioned about who I am’ (*young person, Youth Commission on Gender Recognition*).

Q13. If you answered Yes to Question 12, which of the identified options to give recognition to non-binary people do you support? You can select more than one option.

LGBT Youth Scotland supports options 1, 3, 4, and 6: changes to administrative forms; document changes; full recognition using self-declaration system; and amendment of the Equality Act 2010. The combination of changes would increase non-binary people's dignity, privacy, right to recognition before the law, right to protection from discrimination, and improve social inclusion and recognition.

Option 2, the book of non-binary identity, would not provide legal gender recognition and is therefore an unsuitable option. Option 5, an incremental approach to legal recognition relies too heavily upon future action to redress issues that are already problems. It is an unsuitable solution.

We welcome proposed changes to administrative forms and document changes (Options 1 and 3). Including non-binary gender identities in these processes would ensure that non-binary people have identification that reflects their gender identity and enable them to complete forms in a manner that is true to their identity. These changes would increase non-binary people's dignity and likely impact positively on social inclusion. See question 12 for more information regarding forms.

We also strongly welcome opening the proposed self-declaration system to non-binary people as discussed in Option 4. Just as trans men and trans women have the right to legal gender recognition, so too do non-binary people. Failure to recognise non-binary people in the self-declaration system would continue to deny the legitimacy of their gender identities, place Scotland firmly behind nations progressing equality and human rights in this area, and render Scottish Government unable to meet its aspiration to reform gender recognition in line with international best practice.

Seeking and securing amendments to the Equality Act 2010 (Option 6) would improve protections for non-binary people and all trans people by broadening coverage beyond 'gender reassignment'.

Q14. At paragraph 7.26. and in Annex J we have identified the consequential legal impacts if non-binary people could obtain legal gender recognition using the proposed self-declaration system. Are you aware of other impacts we have not identified?

We are not aware of any additional legal impacts that have not already been identified, although we do have comment on the areas discussed in Annex J.

Point 5 notes that the Civil Partnership Act 2004 requires a civil partnership must be between two people of the same sex and 'provision might be required to ensure that this could be interpreted correctly where a civil partnership would involve two recognised non-binary people'. Rather than focusing on trying to update reserved legislation in a way that would only affect some non-binary people (i.e. those in a legal relationship with another non-binary person), we suggest updating the Marriage and Civil Partnership Scotland Act (2014) to allow civil partnerships between two individuals regardless of their legal sex.

15. Do you have any comments about, or evidence relevant to Impact Assessments?

(b) the partial Equality Impact Assessment

We agree with the potentially positive effects identified, particularly around:

- Age: the benefit to 16 and 17 year olds, and older adults who may not be able to easily gather evidence of their transition. We also urge the Scottish Government to recognise that 'Reducing the age at which applications can be made would benefit younger people

who wish to apply for legal gender recognition' also represents a positive impact for children and young people under the age of 16.

- Disability: that streamlining the legal gender recognition process would reduce stigma within the process and improve mental health. We would also like to see recognition that legal and social recognition for non-binary people would improve social inclusion and thus have a similar potential to improve mental health.
- Sex: improved social acceptance of non-binary people

We also recognise the following negative impacts identified:

- Age: The impact assessment simply states that under 16s would be 'unable' to apply if the new system does not extend to them. This fails to recognise that it would be detrimental to the wellbeing of under 16s if they are unable to obtain legal recognition in order to have consistent documentation and additional protections currently afforded by a GRC.
- Disability: Potential barriers for those with learning disabilities or additional support needs. While we understand that some individuals with learning disabilities or other additional support needs may not have the capacity to understand the implications of the legal process, but all individuals able to understand the implications must be afforded opportunities to have their views considered and be supported to access legal recognition.
- Disability: we question the statement regarding those who might 'want to transition back to their previous legal gender' as a result of not understanding legal gender recognition. Although an individual may not have fully understood the implications of legal gender recognition, obtaining the official paperwork does not imply that social transition is in any way affected.
- Marriage and Civil Partnership: in regards to removing the spousal consent requirement, the impact assessment notes: 'There may be a positive impact for transgender people if this requirement is dropped, but a negative impact for their spouse if it is dropped, in that the nature of their legal relationship can be altered by the action of their transgender spouse alone'. We view it as problematic to imply that the relationship, rather than the label, has changed. Legal gender recognition is an administrative process to bring documents and records in line with an individual's gender identity. Trans people transition in other ways prior to applying for legal gender recognition. We therefore disagree that removing the spousal consent would negatively affect the relationship.
- Religion and belief: the impact assessment states that 'People of some religions believe quite strongly that there are only two genders, man and woman. Recognising non-binary people would be in conflict with this'. There are many examples of individuals or groups who do not accept other individuals or groups and this does not stop the latter's recognition or social and legal inclusion.

- Religion and belief: although we recognise that ‘some religious bodies may have doctrinal or societal concerns about recognising mixed-sex civil partnerships’, this should not be interpreted as a barrier as we expect that this would be dealt with on an opt-in basis for celebrants in line with how the introduction of same-sex marriage was treated.
- Sex: the impact assessment notes that ‘Some women’s groups may have concerns on equality or societal grounds to a self-declaration system for obtaining legal gender recognition’. We do not see this as problematic for several reasons: 1) legal gender recognition does not affect access to services or social spaces so would neither affect women’s social clubs nor single-sex services; 2) legal gender recognition only affects the individual holding the legal gender recognition and professionals acting in an official capacity where they unnecessarily violate an individual’s right to privacy.

For instance, when professionals disclose information about a trans person, they do not know whether that individual is subject to the additional legal protections provided by a GRC. In effect, this only impacts negatively upon professionals who violate an individual’s right to privacy where they have obtained information in a legal capacity and share it inappropriately. Such unprofessional behaviour is problematic and harmful regardless of whether the individual outed has legal gender recognition or not; 3) Although gender recognition does not affect access to services, single-sex services in Scotland already function on a social self-declaration basis and support trans women who may or may not have legal gender recognition.

(c) the partial Child Rights and Wellbeing Impact Assessment

LGBT Youth Scotland acknowledges that the CRWIA is a partial one and welcomes the discussions identified in relation to the UNCRC articles. We would, however, like to see the complete CRWIA:

- Recognise the *positive* impacts that the proposed changes would have to children and young people
- Include discussion of the barriers faced by specific groups of trans children and young people in light of the proposals, such as how the proposals will affect looked after children or asylum-seekers.
- Changing the wording 'The children primarily affected by the review are children who experience issues around their gender identity' as it falsely poses trans identities as problematic. We suggest that this is changed to '...children who experience issues gaining recognition of their gender identities' or '...transgender children'.

We also have some additional comments on the CRWIA Stage 2 Scoping:

- Comments on Article 31 note that leisure and socialisation opportunities 'may be split by gender'. While it is true that many social opportunities are gendered, this wouldn't

necessarily be affected as a result of legal gender recognition available to children and young people nor through administrative changes recognising non-binary identities.

- Question 3 notes that research suggests that the majority of trans people don't come out to others until the age of 18; our 2018 Life in Scotland for LGBT Young People report found that for young people currently aged 13-25, the average age to come out as trans was 16. Filtering the results for trans young people under the age of 16, the average age to come out was 13, with responses commonly ranging from 11-15, but as young as 6.

Overall, we believe that legal gender recognition for children young people under 16, in addition to legal gender recognition for non-binary children and young people will positively affect their health and wellbeing outcomes.

The CRIA notes that all of the wellbeing indicators are relevant to the proposals, and we know that transgender (including non-binary) young people often do not feel Safe, Healthy, Achieving, Nurtured, Active, Responsible, Respected, or Included. Our recent (2018) Life in Scotland for LGBT Young People report illustrates this.

Safe

- 96% of transgender young people experienced homophobic, biphobic, or transphobic bullying during their time in education.
- 41% of trans young people overall, and 51% of non-binary young people in particular, said that they had experienced a hate crime or hate incident in the past year.

Healthy

- 96% of trans young people indicated that they experienced at least one mental health problem or associated behaviour. This is a result of bullying, discrimination, and exclusion.

Achieving

- 29% of transgender young people who had experienced bullying left education.
- 56% of trans young people said that bullying had affected their educational attainment.

Nurtured

- 22% of transgender young people left home under negative circumstances. 'Ever since I came out as transgender, my mother found it hard to accept and was very emotionally abusive. I told her that if she didn't stop treating me badly then I didn't feel safe at home anymore, so she told me never to come back.'

Active

- 31% of transgender young people and 29% of non-binary young people felt that there were enough places where they could safely socialise and be open about their gender identity.

Respected

- 68% of trans young people and 57% of non-binary young people felt supported and respected by their GPs.
- 26% of LGBT young people had experienced verbal abuse at work, 22% had experienced rumours, and 21% had been ignored. Transgender young people experienced the same rates.

Responsible

- 42% of LGBT young people were involved in social action to help others or create change.

Included

- 35% of transgender young people felt included in the wider community.
- 57% felt included in their families.

Q16. Do you have any further comments about the review of the Gender Recognition Act 2004?

We are aware that the negative media coverage of transgender identities over the consultation period is likely to continue after the consultation closes.

LGBT Youth Scotland firmly believes that the proposed improvements to the legal gender recognition system, as well as legal and social recognition for non-binary people, would increase the rights afforded to trans including non-binary individuals of all ages and would not have any negative impacts on others. Our perspective on each issue is as follows:

Potential concern raised in the media: These proposals would increase children's access to medical procedures to re-align their gender.

Response: this consultation will have no impact on the medical treatment for those diagnosed with gender dysphoria of any age. Regardless, in Scotland, children and young people under the age of 16 do not have access to hormones and would not be permitted to have surgery. The current protocol is to provide hormone blockers in order to limit the distress of gender dysphoria⁷.

Potential concern raised: That these proposals would limit safe spaces for women (with particular reference to single sex services).

Response: A Gender Recognition Certificate is not what permits an individual to access spaces. Many services for women already work on self-declaration basis and the proposals set out in this consultation will not change this. More information on this is available in our response to Question 1.

⁷ http://www.sehd.scot.nhs.uk/mels/CEL2012_26.pdf

Potential concern raised: These proposals would result in ‘inappropriate’ use of gender recognition (including the rights of those who raise harassment as an issue).

Response: If someone is harassing another individual, this would be dealt with regardless of their trans identity. Self-declaration will simply allow a trans individual to be able to update their paperwork and does not affect access to services.

Potential concern raised: These proposals will have a detrimental impact on the accurate gathering of statistics related to gender.

Response: Trans men and trans women already identify themselves within surveys and forms on a self-declaration basis and this will not change as a result of these proposals. Moving to a system which recognises non-binary identities would, to a small degree, make statistics more accurate as non-binary people would be able to choose an option that reflects their identity.

For more information contact:

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