



**UNISON Scotland Response to the Scottish Government
Consultation on:
The Review of the Gender Recognition Act 2004**

INTRODUCTION

UNISON is Scotland's largest trade union and UNISON is the UK's largest public service union with more than 1.3 million members across the public, private and third sectors. Our members are people working in the public services, for private contractors providing public services and in the essential utilities. They include frontline staff and managers, working full or part time in local authorities, the NHS, the police service, colleges and schools, the electricity, gas and water industries, transport and the voluntary sector. Over 78% of our members are women; many are low paid or work part time.

UNISON is a public service trade union built on a deep commitment to equality and human rights and an understanding of how inequality and lack of respect impact on workers. UNISON has a proud history of work for transgender equality. We have a very active network of transgender members who are represented in policy making at national level. All our members deliver public services to transgender people. It is our general observation that Trans workers face high levels of ignorance and discrimination at work which many employers and managers are ill-equipped to address. This experience informs our response to the consultation.

RESPONSE

1. 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.

Agree

We frequently come across misunderstandings by employers and managers about the current Gender Recognition process. It is quite common for employers to seek to make possession of a GRC a condition of change of name and records at work. This is of course not only wrong in law but also impossible for the worker concerned, given the requirement to prove that they have lived and worked in line with their gender identity for at least two years before applying for a GRC.

While not wishing to excuse this, it does perhaps reveal the commonsense view that legal gender recognition should be in line with permanent gender transition.

The issue of paperwork not matching up can lead to unnecessary and distressing problems at work, particularly where managers are not fully supportive, including heightened risk of breaches of privacy.

Our trans members have also repeatedly raised concerns about the humiliating, bureaucratic and expensive nature of the current process, including the requirement to submit intrusive psychiatric evidence. They have also expressed concerns about the faceless nature of the gender recognition panel and the fact that its decisions are not open to appeal.

UNISON is fundamentally opposed to the idea that a panel of 'experts' can sit in judgement of a person's gender identity.

UNISON very much welcomes the Scottish Government's initial view that applicants should no longer need to produce medical evidence or evidence that they have lived in their 'acquired' gender for a defined period and that it should bring forward legislation to introduce a self-declaration system for legal gender recognition. This has proven to work well in other countries and we would urge the Scottish Government to act on its views.

2. 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?

Yes

UNISON believes that providing such a statutory declaration is an appropriate way to recognise the seriousness of the intention. We note that the Scottish Government's research into the experience in countries using self-declaration for legal gender recognition has not identified false or frivolous statements being made by applicants. However, the fact that a false declaration would be an offence should allay any concerns of this nature.

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

No

As noted in the consultation, the 2004 Act does not restrict the number of times a person can currently apply for legal gender recognition. Given this and the fact that there is no evidence of repeat applications from countries that already have a self-declaratory system, it would be arbitrary and unjustified to introduce a limit in a reformed process.

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

To everyone

5. 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?

Agree

UNISON has long raised concerns over the lack of consistency in relation to the legal rights for young people when they reach the age of 16 and called for full adult rights and responsibilities. We welcome steps taken to date by the Scottish Government to address this, including the right to vote in Scottish elections at 16.

We urge the Scottish Government to apply this to legal gender recognition.

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

Option 5 – application by capable children

UNISON members include many who work with children, in a range of professions and settings. ‘Capable children’ is a well-established principle in Scotland. We do not agree with the suggestion in paragraph 4.38 that a registered medical practitioner or a practicing solicitor should ‘test’ the child’s capacity. Children without parental support should have the support of a multi-disciplinary team including but not exclusive to education, social work, medical and named person.

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

Yes

UNISON has repeatedly raised concerns about the 2004 Act requirement for spousal consent in order to obtain a full Gender Recognition Certificate. Our trans members have strongly expressed their views about the injustice of this. We note that these concerns are clearly laid out in the evidence given to the Westminster government Women and Equalities Committee Inquiry into Transgender equality.

8. 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 the civil partnership.

Yes

UNISON believes both civil partnership and marriage should be available to all couples, irrespective of gender identity. Same sex couples are currently able to choose between the two. It is unreasonable to require a couple that has chosen a civil partnership to dissolve or convert this simply because one of them has transitioned and is seeking legal gender

recognition. We would very much welcome a change in the Scottish legislation extending the option of civil partnership to all couples.

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

Yes

For legal gender recognition to be grounds for divorce or dissolution is highly stigmatising of trans identities. It is also completely unnecessary. If the marriage or civil partnership has broken down irretrievably, there are other grounds for divorce or dissolution available.

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

No

Section 22 prohibitions can apply to UNISON representatives supporting trans members. We have found no issues with the current framing of this.

11. 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?

Yes

UNISON shares the Scottish Government’s belief in the need to reform and simplify the 2004 Gender Recognition Act as the requirements laid down by that Act are too intrusive and onerous. Given that premise, it seems clear to us that gender recognised under the law of another jurisdiction should be automatically recognised in Scotland.

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

Yes

13. 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.

- Option 1
- Option 3
- Option 4
- Option 6

UNISON is acutely aware of the need to acknowledge non-binary gender identities. This is being raised by increasing numbers of our members. Non-binary UNISON members are slowly gaining the confidence to speak about how the failure to recognise their identities impacts on their work, their well-being and their lives. We very much welcome the ground breaking research conducted by Scottish Trans ‘Non-binary people’s experiences in the UK’ (2015), which included a section on people’s experiences at work. We conducted a smaller

scale survey of UNISON non-binary members in the autumn of 2017, which very much reinforced the findings of the Scottish Trans survey.

First and foremost, UNISON is strongly in favour of option 4 – full legal recognition of non-binary identity, using the same system of self-declaration as for binary gender identities proposed for a reformed Gender Recognition Act.

It will be essential to accompany this with a range of other actions so that non-binary people are able to fully participate in all aspects of society in line with their gender identity.

UNISON is part the way through the extensive process of checking our own internal administrative forms and processes to ensure they are inclusive of non-binary identities and we seek to negotiate this good practice with employers. This is in line with the three bullet points set out under option 1 of the Scottish Government consultation, identifying:

- which requests for information about sex or gender are unnecessary and should be removed
- which are justifiable
- which should include options that are inclusive of non-binary people.

We would urge the Scottish government to commence this process without delay.

UNISON also recognises the need for option 3 alongside option 4, so that that people's identity documents line up.

It will also be necessary to review the Equality Act 2010 as part of this, as set out in Option 6. In our evidence to the 2015 Westminster Women and Equalities Committee Transgender equality inquiry, UNISON affirmed:

UNISON believes that the terminology of the protected characteristic 'gender reassignment' has proved to be insufficiently comprehensive in its coverage of trans people. Further, it has added to the myths and stereotypes about the diverse trans community referred to in 3.4 above [this paragraph set out our concerns about lack of recognition of the diversity of trans identities]. It should be replaced by the term 'gender identity' as set out in the Yogyakarta Principles <http://www.yogyakartaprinciples.org/> .

We have found the framing of the Equality Act protection around 'gender reassignment' unhelpful when seeking to negotiate inclusive workplace trans equality policies. This is particularly so in the context of 'explanations' that refer to gender reassignment from male to female or vice versa.

14. 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?

Don't know

15. Do you have any comment on the Impact Assessments?

No

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

UNISON very much welcomes the steps being taken by the Scottish Government to reform gender recognition law, in line with international best practice. The steps proposed could make a real and much needed difference to the experiences and chances of our trans members at work and in many aspects of their lives.