

## **Scottish Women's Aid response to the Scottish Government consultation on the Review of the Gender Recognition Act 2004**

**Response from Scottish Women's Aid  
February 2018**

### **ABOUT**

Scottish Women's Aid (SWA) is the lead organisation in Scotland working towards the prevention of domestic abuse and plays a vital role in campaigning and lobbying for effective responses to domestic abuse. SWA is the umbrella organisation for 36 local Women's Aid organisations across Scotland; they provide practical and emotional support to women, children and young people who experience domestic abuse.

The services offered by our members include crisis intervention, advocacy, counselling, outreach and follow-on support and temporary refuge accommodation. Women's Aid are specialist services that work with a gender analysis of domestic abuse, viewing women's inequality as cause and consequence of violence against women. This is embedded in Equally Safe<sup>1</sup>, the Scottish Government's strategy on violence against women and girls which makes an explicit commitment to addressing gender inequality as a significant route towards preventing and eradicating violence against women and girls.

We have responded to areas of the consultation that reflect on our services or policy advocacy.

### **Background**

Scottish Women's Aid has a history of deliberating on the relationship between trans rights and women's equality. SWA worked with the Scottish Trans Alliance and LGBT Youth Scotland to develop training, guidance and support for WA groups in delivering trans inclusive services. In 2010, we developed our Guidance for Supporting Trans Women for Women's Aid Groups in Scotland, which was updated

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<sup>1</sup> Scottish Government (2014) Equally Safe, Scotland's strategy for preventing and eradicating violence against women and girls

in 2015. We will update this document to reflect changes in legislation and language in 2018.

As feminist organisations providing specialist services to women, children and young people with experience of domestic abuse, Scottish Women's Aid groups are strongly committed to women-only services and spaces, and SWA has always been watchful that work to improve the inclusivity of our services support the principle of women-only work. We continue to be so, and our evidence gathering and analysis must be viewed in that frame.

Women's Aid's gendered analysis of domestic abuse recognises gender as identity and separate to biologically assigned sex, and Women's Aid services are women-only organisations open to self-identifying women. Existing practice reflects this, and Women's Aid groups do not require sight of a birth certificate in order to grant access to services.

Transgender inclusion has also been present in Equality Unit funding for VAWG services for some 8 years now, and the policies of Women's Aid groups that receive this funding reflect this. Some groups have already met or is working to achieve their LGBT Chartermark, which includes adopting trans inclusive policies.

## **Evidence gathering**

Scottish Women's Aid has previously developed guidance on trans inclusion for Women's Aid services in Scotland. Our existing position is that we provide services based on a gendered analysis of domestic abuse, and services are open to self-identified women only, as well as children and young people.

To inform this consultation, we sought input from our network of services on their current practice, on any issues that had emerged as a result of trans-inclusion operations, and on local considerations for proposals in the wider consultation on the Gender Recognition Act. We gathered data in two ways:

- A survey was distributed to all 36 Women's Aid groups throughout Scotland
- A focus group with attendees at a regular meeting of SWA's Supporting Women Forum.

Our survey focused on

- options for children and young people under the age of 18
- questions with regards to spousal consent
- areas of challenge to services in relation to the other questions, including self-identification
- A specific question requested information about any problems that had arisen as a result of implementing trans-inclusion in their services.

In total 21 responses were received to the questions.

Although most groups have limited experience in providing services to transgender women, children and young people, the overwhelming feedback confirmed that WA services want to be accessible and inclusive, and support a self-identification model. Challenges identified were concerns regarding lacking experience in supporting transgender women, staff members' limited knowledge and training on appropriate language and lack of confidence in ensuring non-discriminatory practices as well as considerations around whether refuge or outreach services would be most appropriate.

The Supporting Women Forum focus group was facilitated as a safe space for raising any issues or concerns about the Act or about trans-inclusion policy and practice. The participants echoed the survey findings and identified further supports required (these included further spaces for discussion and updated, core training and guidance on providing accessible services to transgender women, children and young people).

We have organised our response to the areas that are of particular relevance to Women's Aid, and the answers below reflect evidence gathered from SWA's consultation as well as SWA's policy expertise. The main themes arising were 1) Support for self-identification 2) a need to place children's voices and rights at the centre for any considerations for CYP, 3) removing spousal consent as a criterion.

## **Question 5 and 6**

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?

6. Which of the identified options for children under 16 do you most favour? Please select only one answer.

- Option 1 – do nothing for children under 16
- Option 2 – court process
- Option 3 – parental application
- Option 4 – minimum age of 12
- Option 5 – applications by capable children
- None of these options

These questions are of key concern to Women's Aid as children's rights organisations. Under UNCRC Article 8, all children have the right to a gender identity. Scottish Women's Aid agree with the proposal that people aged 16 and 17 should be able to apply for and obtain legal recognition for their acquired gender. In addition, we think a children's rights approach would dictate that children's views be sought; we would suggest that the counsel of the Scottish Commissioner for Children and Young People be considered in progressing this decision.

## Question 7 and 9

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

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

Scottish Women's Aid supports the proposal to remove the need for spousal consent to apply for a Gender Recognition Certificate. No one person should have the right to determine another's gender. The current legislation grants unnecessary power to spouses, which we as domestic abuse organisations fear can be used in furthering any abuse against a transgender partner.

Responses we gathered from Women's Aid groups were diverse with regards to whether GRC should become grounds for divorce, and we therefore take no position on this question. However, Scottish Women's Aid supports the right of any person to leave a marriage when they wish to do so.

## Questions 1, 4 and 11

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/Disagree)
  
4. If the Scottish Government takes forward legislation to adopt a self declaration system for legal gender recognition, should this arrangement be open:
  - only to people whose birth or adoption was registered in Scotland, or who are resident in Scotland?
  - to everyone?
  - Don't know
  
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?

Women's Aid already works on the basis of self-identification in service provision. Women's Aid groups do not require sight of women, children and young people's birth certificates to provide services. Hence the proposals from the Scottish Government relate to the process for changing an individual's sex on their birth certificate, are unlikely to impact current practice.

Women's Aid groups offered no evidence of issues arising or potential unintended consequences, given the lack of likely impact on current practice, and SWA therefore

supports self-declaration with the critical proviso that women-only services continue to be legally protected.

### Questions 2 and 3

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/No)
3. Should there be a limit on the number of times a person can get legal gender recognition? (Yes/No)

Our consultation responses suggest that Women's Aid groups have mixed opinions on this matter, and we therefore take no position on these questions.

### Question 8

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/ No/ Don't know

Scottish Women's Aid supports the proposal for couples to remain in civil partnerships, even if one of them obtains a full Gender Recognition Certificate.

### Questions 12 and 13

12. Should Scotland take action to recognise non-binary people?
  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: Changes to administrative forms
  - Option 2: Book of Non-binary Identity
  - Option 3: Limited document changes
  - Option 4: Full recognition using proposed self-declaration system
  - Option 5: Incremental approach
  - Option 6: Amendment of the Equality Act 2010
  - None of the above options

Scottish Women's Aid supports the proposal for Scotland to take action to recognise non-binary people. Initial responses from WA groups indicate they would like more training on domestic abuse and non-binary people, as well as considering appropriate service delivery in line with our preservation of women-only spaces.

## **Protecting Women's Rights**

### *Women-only Services and Spaces*

Women's Aid already provides services from a gendered analysis of domestic abuse and on the basis of self-identification. We support changes to the Gender Recognition Act 2004 that makes the process on the basis of self-identification, and are not aware of any adverse impact this may have on our existing practice. Furthermore, we encourage changes that will enable children's right to have a say in decisions that affect their lives.

Our chief concern remains that improving trans-inclusion and access to human rights for all does not come at the cost of reduced legal protection for women-only services. The Equality Act 2010 provides an exemption for single-sex services that allows them to treat a trans person differently from other service users providing this is a proportionate response to achieve a legitimate aim. Our understanding is that the reform of the Gender Recognition Act will not change the single-sex service exemption within the Equality Act 2010. Therefore, women-only services (such as women's refuges) will continue to be able to use the Equality Act 2010 exemption to make sensible risk-assessment based decisions on trans-inclusion that uphold privacy, dignity and safety for all service users.

Our services currently offer services to trans women on a self-declaration basis. However, domestic abuse services vary widely in their residential refuge facilities, with some having only communal facilities with minimal privacy. Additionally, the personal circumstances of transgender people vary widely, as can the trauma levels of other current service users. We consider it vital that domestic abuse services continue to have the lawful flexibility to adapt or refuse particular services to transgender individuals where the service finds this to be proportionate and necessary. Therefore, our support for reform of the Gender Recognition Act to a self-declaration process is on the condition that the Equality Act 2010 exemption remains unchanged.

There are existing robust risk-management and safeguarding policies in place within our services. These ensure that before any potential service user is accepted, her needs and risk factors are individually assessed. Thus various potential service users may be refused inclusion in group work and/or shared refuge accommodation for a variety of reasons. Where any individual is deemed unsuitable for group work or shared accommodation, but the service considers the individual to have a genuine need of assistance, then individual counselling can be provided and support given to access local council homeless accommodation. This individualised service provision decision-making can be safely carried out regardless of whether or not the person is a trans woman. Our support for reform of the Gender Recognition Act to a self-declaration process is on the condition that possession of a gender recognition certificate does not circumvent in any way these existing risk management procedures.

## *Recruitment*

The Equality Act 2010 allows employers to choose to apply a genuine occupation requirement that a trans person cannot hold a particular job role, even if they possess a gender recognition certificate, providing this is a proportionate response to achieve a legitimate aim. This lawful option must not be affected by reform of the Gender Recognition Act. Should a service decide to permit a trans person to apply for a particular women-only job role, the trans woman would need to be able to demonstrate, through her work experience and interview performance, that she is the best applicant for the post.

## *Gender-disaggregated data*

We share other women's organisations' concerns with regards to gender-disaggregated data, and potential changes to the Equalities Act.

We advocate for gender-disaggregated data because they enable us to track indicators of women's inequality over time, which is crucial in planning how we can address it. We are committed to working with LGBTI organisations to find solutions for appropriate practice about data collection that disaggregate gender, but we call on the Scottish Government to include this consideration in any further deliberations. Similarly, we recommend that the Scottish Government works with Scottish Women's Aid and other women's organisations when considering any changes to the Equality Act 2010, to ensure this does not adversely impact our ability to deliver specialist services to women, children and young people.

## **Conclusion**

Scottish Women's Aid and local Women's Aid groups have collaborated with a range of organisations over the years to ensure that our services responses continue to be LGBT inclusive. We do not foresee that the proposed changes to adopt a self-identification model would significantly impact Women's Aid's existing practice, and we therefore can support proposals to move to that model, with the caveats above.