



EQUALITY NETWORK

Lesbian, Gay, Bisexual and Transgender Rights In Scotland



Universal Periodic Review - Session 13

An NGO submission on transgender and intersex human rights situation in the UK

Submitted by:

**James Morton, Scottish Transgender Alliance Project Coordinator,
Equality Network on 21 November 2011**

Part A - Summary:

1. The Scottish Transgender Alliance (STA) is the only transgender equality and human rights policy and legislation project currently receiving any funding in Scotland. The Scottish Transgender Alliance is a project within the National LGBT NGO, Equality Network, which is a registered Scottish charity, SC037852. The Equality Network office is 30 Bernard Street, Edinburgh, EH6 6PR, Scotland, UK. The Equality Network's Scottish Transgender Alliance website is www.scottishtrans.org

2. We particularly welcome as good practice:

2.1 That the UK now recognises sexual orientation and gender identity persecution as grounds for seeking asylum in the UK;

2.2 That the Scottish Government is currently carrying out a consultation process with a view to the potential implementation of legislation to allow same-sex marriage and to remove the requirement for transgender people to divorce in order to receive legal gender recognition and that the UK Government is anticipated to begin a similar consultation shortly;

2.3 That the UK and Scottish Governments are both active in consulting transgender people in the development of action plans for improving gender identity equality and human rights.

3. Our recommendations for the UK are:

3.1 To implement transgender awareness training for UK Border Agency staff, especially those working in asylum detention centres;

3.2 To end the use of the "fast-track" asylum process for transgender asylum seekers;

3.3 To create new healthcare protocols for intersex people, with the active involvement of intersex human rights organisations such as Organisation Intersex International (OII) www.intersexualite.org, which fully respect the rights of children and young people in regard to bodily autonomy and consent to medical procedures;

3.4 To remove the Gender Recognition Act 2004 requirement to end an existing marriage or civil partnership before receiving a full gender recognition certificate;

3.5 To amend the Gender Recognition Act 2004 to ensure that all intersex people who wish to correct the gender recorded on their birth certificate can do so;

3.6 To provide the option of "X - unspecified gender" on all identity documents, especially passports, for those transgender and intersex people who do not identify as male or female.

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www.equality-network.org & www.scottishtrans.org**

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Part B - Details:

Asylum:

4. The Equality Network's Scottish Transgender Alliance strongly welcomes that the UK government now recognises sexual orientation and gender identity as grounds for seeking asylum in the UK.
5. However, our involvement researching and writing the LGBT asylum research report *Sanctuary, Safety and Solidarity* published March 2011 (<http://www.scottishtrans.org/Article.aspx?id=68>) has highlighted that the procedural realities of the UK asylum process do not yet fully uphold the human rights of LGBT asylum seekers, especially for transgender asylum seekers who remain at particular risk of transphobic physical and sexual assault and degrading treatment (such as refusal to recognise their gender identity, current name and pronouns) when held within UK asylum detention centres.
6. We recommend that the UK should implement transgender awareness training of UK Border Agency staff, especially those working in detention centres, to improve their ability to uphold the human rights of transgender asylum seekers.
7. We recommend that, given the particular vulnerability of transgender asylum seekers within detention centres and the complexity of identity documentation issues and terminology translation, the UK end the use of the "fast-track" asylum process for transgender asylum seekers.

Intersex Healthcare:

8. Leading intersex human rights organisation, Organisation Intersex International (OII) www.intersexualite.org, "campaigns against all non-consensual normalisation treatments of infants that are not medically necessary and favour the right of all intersexed children to determine their own sex identity once they are capable of communicating it... Once the child has communicated clearly their own sex identity, it is crucial that the child's identity be respected both by the parents, physicians and therapists who are caring for the child. All steps should be taken to respect the child's own sense of self by being given access to all health care necessary to facilitate life in the sex the child considers most appropriate." (<http://www.intersexualite.org/English-Official-Position.html>) At present in the UK there are no national human rights affirming intersex healthcare protocols so intersex people cannot yet be confident that their human rights will be adequately upheld by medical professionals.
9. In solidarity with Organisation Intersex International (OII) we recommend the the UK create new healthcare protocols for intersex people, with the active involvement of intersex human rights organisations such as Organisation Intersex International (OII) www.intersexualite.org, which fully respect the rights of children and young people in regard to bodily autonomy and consent to medical procedures.

Gender Recognition:

10. We strongly welcome that the Scottish Government is currently carrying out a consultation process with a view to the potential implementation of legislation to allow same-sex marriage and to remove the requirement for transgender people to end an existing marriage in order to receive legal gender recognition and that the UK Government is anticipated to begin a similar consultation shortly. The current UK requirement to end an existing marriage or civil partnership in order to receive legal gender recognition causes intense distress to transgender people, their spouse/partner and their children as it forces the sacrifice of the human right to marriage and respect for family life in order to access the human right to privacy and access legal gender recognition.

11. The *Human Rights and Gender Identity Issue Paper* by Thomas Hammarberg, Council of Europe Commissioner for Human Rights recommends that Council of Europe member states "remove any restrictions on the right of transgender persons to remain in an existing marriage following a recognised change of gender." (<https://wcd.coe.int/ViewDoc.jsp?id=1476365>)

12. We recommend that the UK remove the Gender Recognition Act 2004 requirement to end an existing marriage or civil partnership before receiving a full gender recognition certificate.

13. The requirement within the Gender Recognition Act 2004 to have a medical diagnosis of gender dysphoria / gender identity disorder / transsexualism prevents intersex people from accessing legal gender recognition because these medical diagnoses are not permitted to be diagnosed in people who have already been medically diagnosed as having a physical intersex condition.

14. We recommend that the UK amend the Gender Recognition Act 2004 to ensure that all intersex people who wish to correct the gender recorded on their birth certificate can do so.

15. Some intersex and transgender people do not have a binary gender identity of male or female. At present they are unable to access any identification documents in the UK which recognise that they do not have a male or female gender identity. If they wish to apply for identification documents such as a passport, they are currently forced to deny their personal identity and forced to use the legal gender recorded on their birth certificate. The lack of access to recognition of their non-binary identity is especially problematic in regard to passports as this prevents them from having freedom of movement. Other countries in the world, such as Australia, are now starting to implement non-binary identity options for those intersex and transgender people who do not identify as male or female.

16. We recommend that the UK provide the option of "X - unspecified gender" on all identity documents, especially passports, for those transgender and intersex people who do not identify as male or female.

Community consultation by Governments:

17. We strongly welcome as good practice that the UK and Scottish Governments are both active in consulting transgender people in the development of action plans for improving

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gender identity equality and human rights.