

Research Briefing

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Non-binary gender recognition: law and policy



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Summary

The Government defines a non-binary person as “[someone who identifies as in some way outside of the man-woman gender binary](#)” (PDF). For consistency, this briefing paper uses the term “non-binary” in the same way.

At present, the Government has no reliable estimate of the size of the non-binary population in the UK. In 2018, it referred to evidence suggesting the number of non-binary people was “[increasing](#)” (PDF).

Current law

No legal recognition

Non-binary genders are not recognised in UK law. The [Gender Recognition Act 2004](#) (GRA) enables a person to change the sex recorded on their birth certificate, either from male to female or vice versa. It makes no provision for the recognition of any other gender.

Legal protection

In general terms, legal protection from discrimination is based upon having – or being perceived as having – a “protected characteristic”, as defined in the Equality Act 2010. In 2020, the Birmingham Employment Tribunal held that [people who are gender fluid, non-binary or transitioning can have the protected characteristic of gender reassignment](#) (PDF).

Hate crime

[Section 66 of the Sentencing Act 2020](#) provides that where a crime has been motivated by hostility based on transgender identity (among other things), the court must treat this as an aggravating factor when sentencing the offender.

The [Law Commission](#) has recently conducted a detailed review of existing hate crime laws, including section 66. In December 2021, it recommended the term “transgender” be replaced with “transgender or gender diverse”, as this would “more clearly include people who experience criminal hostility on the basis of non-conformity with gender roles and expectations”.

Government's LGBT Action Plan

In July 2018, the Government Equalities Office published an [LGBT Action Plan](#) (PDF). The Government said it would issue a call for evidence on the issues faced by non-binary people. At the time of publication of this briefing paper, this had not been published.

Government position: no change to current law

The Government considers non-binary recognition to be a [complex issue](#) (PDF) with many potential knock-on implications for the law and public service provision.

The Government's 2018 [consultation on reform of the GRA](#) (PDF) did not include proposals to extend the GRA to provide legal recognition to a third, or non-binary, gender. However, it did ask for respondents' initial views on non-binary recognition as it relates to the GRA specifically. The Government referred to this as a supplement to its proposed call for evidence exercise.

The Government set out [its position](#) (PDF):

The Government wants individuals who identify as non-binary to be able to live discrimination-free lives in accordance with who they believe their true selves to be. We are working to determine what action it may be necessary for Government to take in order to achieve this. However, we are also mindful of the practical consequences for other areas of law and public-service provision referring to the gender binary, if non-binary genders were to be recognised in the GRA.

The Government has since said it [does not intend to change the criteria in the GRA for legal recognition](#).

Petition

Parliament will consider for debate a [petition](#) on the UK Government and Parliament petitions website which calls for non-binary to be a legally recognised gender identity. The petition closed on 26 October 2021 with 140,782 signatures.

Women and Equalities Committee inquiry

On 28 October 2020, the House of Commons Women and Equalities Committee launched an inquiry, [Reform of the Gender Recognition Act](#). The Committee said it would consider [whether legal reforms are needed to better support the rights of gender-fluid and non-binary people](#).

In its report published in December 2021, [Reform of the Gender Recognition Act](#) (PDF), the Committee said it had received a large volume of written evidence calling for the legal recognition of non-binary people through the GRA. The Committee called on the Government to clarify the reasons preventing the legal recognition of non-binary people and on the Equality and Human Rights Commission (EHRC) to undertake research in this area.

In response to the Committee's report, the [EHRC agreed](#) with the need for research but said the Commission could not commit to doing this alone.

The Government published its [response](#) to the Committee's report on 24 March 2022, and reiterated its position that [no changes to the GRA are needed](#).

The position in Scotland

The GRA extends across the UK. However, gender recognition is a devolved matter, meaning legislation in this area may be made by the Scottish Parliament.

The Scottish Government's consultation, [Review of the Gender Recognition Act 2004](#) (PDF), ran from 9 November 2017 to 1 March 2018. It sought views on (among other things) whether Scotland should take action to recognise non-binary people and, if so, on a range of options.

In June 2019, Shirley-Anne Somerville, who was then Cabinet Secretary for Social Security and Older People [said she did not intend, at that time, to extend legal gender recognition to non-binary people](#). However, she recognised the need to address issues that non-binary people face and said a working group would be established "to consider possible changes to procedures and practice and what we can learn from best practice internationally as well as from within Scotland and the rest of the UK".

The Scottish Government website has information about its [Non-Binary Working Group](#).

In its Programme for Government 2021-22 published in September 2021, the [Scottish Government said](#), following receipt of the recommendations of the Working Group on Non-Binary Equality, it would "develop an action plan by spring 2023 to improve non-binary equality and wellbeing".

1 Non-binary people in the UK

1.1 Definition used by the Government

The Government defines a non-binary person as “someone who identifies as in some way outside of the man-woman gender binary”, saying:

They may regard themselves as neither exclusively a man nor a woman, or as both, or take another approach to gender entirely. The word non-binary is used here as an umbrella term. Different people may use different words to describe their individual gender identity, such as genderfluid, agender or genderqueer.¹

For consistency, this briefing paper uses the term “non-binary” in the same way.

1.2 How many people identify as non-binary in the UK?

Existing estimates

The Government has no reliable estimate of the size of the non-binary population in the UK. Its 2018 consultation document on reform of the Gender Recognition Act 2004 (the consultation paper) set out some of the problems with measuring the non-binary population:

It can be difficult to survey subsets of the population if, like non-binary people, they are thought to be small (and often hidden). Added to this, the fact that the term is used to cover a broad range of experiences, expressions and identities – and that some non-binary people may not be “out” in anything other than the most private of settings – means that reaching a reliable estimate of the size of the non-binary population is not possible at present.²

The consultation paper discusses findings from the [Government’s National LGBT Survey](#).³ The survey was conducted online in 2018 and its respondents were self-selecting. This means the survey results cannot necessarily be generalised to the whole LGBT population in the UK. The survey sample was limited to LGBT respondents (including non-binary people).

¹ [Reform of the Gender Recognition Act – Government Consultation](#) (PDF), July 2018, para 130

² Ibid, para 137

³ Government Equalities Office, [National LGBT Survey: Research report](#), 3 July 2018

7% of LGBT respondents identified as non-binary. Younger respondents were more likely to be non-binary, with 12% of 16–17 year old respondents and 9% of 18–24 year old respondents identifying as such, compared with 6% of respondents aged 25 or over.⁴

The consultation paper referred to evidence suggesting the number of non-binary people was “increasing”. While there are no data on the number of non-binary people over time, the document states:

Many LGBT organisations, such as Stonewall and Gendered Intelligence, now include non-binary issues within their trans advocacy work; stakeholders regularly tell us that more and more people (especially young people) are identifying in this way.⁵

Will statistics on non-binary people be available in future?

The Government Statistical Service (GSS) has published a [harmonised standard for collecting data on gender identity](#) for government researchers collecting data in the UK.⁶ The standard is currently described as “under development” and feedback is encouraged.

The standard proposes asking about gender identity as a separate concept from sex, although both concepts may be asked about in the same survey. The proposed wording for asking about gender identity is as follows:

Question:

Is the gender you identify with the same as your sex registered at birth?

Response options:

- Yes
- No, enter gender identity: ___
- Prefer not to say ⁷

The 2021 Census in England and Wales asked about gender identity using a question with this structure.⁸ It asked about sex in a separate question, with the response options “female” and “male”.⁹ For more on gender identity in the census, see the Commons Library briefing [Preparing for the 2021 Census \(England and Wales\)](#).¹⁰

⁴ [Reform of the Gender Recognition Act – Government Consultation](#) (PDF), July 2018, para 138

⁵ Ibid, para 138

⁶ Government Statistical Service, [Gender identity data harmonised standard](#), 16 July 2020

⁷ Ibid

⁸ Rather than giving a ‘prefer not to say’ option, the census form specified that the entire question was voluntary to answer.

⁹ ONS, [Census 2021 Household Questionnaire, England](#)

¹⁰ [Preparing for the 2021 Census \(England and Wales\)](#), Commons Library briefing CBP-8531

The Census is devolved in Scotland and Northern Ireland. Northern Ireland's 2021 Census did not ask about gender identity.

Scotland's Census was delayed from its original 2021 date because of the Covid-19 pandemic, with census day moved to 20 March 2022. Scotland's Census asks a differently-worded question on gender identity: "Do you consider yourself to be trans, or to have a trans history?" The form defines trans people as those "whose gender is not the same as the sex they were registered at birth". Respondents answering "yes" are asked to describe their trans status, with the prompt "for example, non-binary, trans man, trans woman".¹¹

Non-binary people, by definition, identify with a gender that is different from the sex they are registered with at birth. This is because birth certificates can only describe people as male or female.

It is not yet clear whether these new census questions will result in statistics on non-binary people. The GSS standard recommends presenting results in four broad categories:

- Gender identity the same as sex registered at birth
- Gender identity different from sex registered at birth
- Prefer not to say
- Refusal or did not answer.¹²

Non-binary people would fall into the second category, but so would transgender people who don't identify as non-binary – ie, transgender men and transgender women.

In July 2021, the Office for National Statistics (ONS) opened a consultation on outputs from the 2021 Census for England and Wales. The consultation proposed providing statistics using similar categories to those above: showing whether respondents had a gender identity that was the same as or different from their sex registered at birth, or if they did not respond.¹³

Part one of the ONS' response to this consultation noted that some users required more detail. For example, the Cabinet Office Equality Hub said more data on the non-binary population would help develop evidence used in policy-making:

We also had a large number of respondents to the National LGBT Survey 2017 who identified as non-binary [...] The findings indicated that their experiences were different to other groups. There is currently considerable policy (and other) interest in separating out data on the non-binary population [...] and their related outcomes and experiences. Specifically, recent interest relates to

¹¹ Scotland's Census, [Scotland's Census 2022 question set](#), 9 September 2021

¹² Ibid

¹³ ONS, [Census 2021 outputs: content design and release phase proposals](#) (PDF), 13 July 2021

the legal case on X-markers on passports, which is a particularly salient issue for many people in the non-binary population. This is an emerging and complex area of social policy, and one in which we're still developing the evidence base.¹⁴

In response, the ONS said it would “investigate the feasibility” of producing additional data with a non-binary category included. It said this data might only be available for larger geographical areas.¹⁵ In a later response, it added that it planned to “produce analysis discussing detailed classifications of sexual orientation and gender identity”.¹⁶

Information about the ONS' plans for census releases is published on its webpages on [census consultations](#) and [census release plans](#).

¹⁴ ONS, [Response to the 'Census 2021 outputs: content design and release phase proposals' consultation – Part one](#) (PDF), 16 December 2021, p28

¹⁵ ONS, [Response to the 'Census 2021 outputs: content design and release phase proposals' consultation – Part one](#) (PDF), 16 December 2021, p29

¹⁶ ONS, [Response to the 'Census 2021 outputs: content design and release phase proposals' consultation – Part two](#) (PDF), 31 March 2022, p56

2 Current law

2.1 No legal recognition of non-binary genders

Non-binary genders are not recognised in UK law. In 2018, the Government set out the legal position:

Under the law of the United Kingdom, individuals are considered by the state to be of the sex that is registered on their birth certificate, either male or female. There exists no piece of UK-wide legislation that contemplates the existence of another gender. Furthermore, there is a raft of laws that are explicitly gendered or provide differently depending on a person's sex/gender. Some examples of this include: legislation relating to marriage and civil partnerships; legislation relating to pregnancy; and legislation relating to maternity rights and benefits.¹⁷

The [Gender Recognition Act 2004](#) (GRA) enables a person to change the sex recorded on their birth certificate, either from male to female or vice versa. There is no provision for the recognition of any other gender.¹⁸

While acknowledging “there seems to be an increasing number of people who identify as neither exclusively male nor female”,¹⁹ the Government considers non-binary recognition to be a “complex issue” with many potential knock-on implications for the law and public service provision:

For example, some laws provide for different legal entitlements depending on a person's gender (e.g. the State Pension age). Public-service provision can also be different depending on a person's gender (e.g. single-sex hospital wards). Public sector administrative and IT systems generally assume only two genders. If the Government were to recognise a gender other than male or female, it would require consideration as to how this would affect, and be affected by, those gendered laws and services. Substantial changes to legislation may be required to ensure legal and administrative coherence.²⁰

¹⁷ [Reform of the Gender Recognition Act – Government Consultation](#) (PDF), July 2018, para 139

¹⁸ *Ibid*, para 131

¹⁹ *Ibid*, para 132

²⁰ *Ibid*, para 133

2.2

Legal protection for non-binary people

Protection from discrimination

For the most part, legal protection from discrimination is based upon having – or being perceived as having – a “protected characteristic”, as defined in Part 2, [Chapter 1](#) of the Equality Act 2010 (EqA 2010).²¹ In the context of protection for non-binary people, the most relevant protected characteristics are “sex” and “gender reassignment”, both of which are discussed below.

Sex

[Section 11](#), EqA 2010 defines the protected characteristic of sex in binary terms: a man or a woman. A person who does not have a Gender Recognition Certificate (GRC) will have the protected characteristic of sex on the basis of the sex recorded on their birth certificate. A person with a GRC will have changed their legal sex, and therefore will have the protected characteristic of sex based on their acquired gender.

Gender reassignment

[Section 7](#), EqA 2010 defines the protected characteristic of gender reassignment as follows:

(1) A person has the protected characteristic of gender reassignment **if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process)** for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.

(2) A reference to a transsexual person is a reference to a person who has the protected characteristic of gender reassignment.

A notable feature of this definition is, unlike earlier equality legislation, there is no need to be undergoing a medical process of transition. That's because the phrase “proposing to undergo” has a broad meaning. The Equality and Human Rights Commission's Statutory Code of Practice on [Services, Public Functions and Associations](#) (PDF) provides this explanation:

The reassignment of a person's sex may be proposed but never gone through; the person may be in the process of reassigning their sex; or the process may have happened previously. It may include undergoing the medical gender reassignment treatments, but it does not require someone to undergo medical treatment in order to be protected.

Example: A person who was born physically female decides to spend the rest of his life as a man. He starts and continues to live as a man. He decides not to seek medical advice as he successfully passes as a man without the need for

²¹ The exception to this is ‘associative discrimination’, where a person is treated less favourably because of their association with someone who has a protected characteristic

any medical intervention. He would be protected as someone who has the protected characteristic of gender reassignment.²²

In its 2016 report, [Transgender Equality](#) (PDF), the Women and Equalities Committee called on the Government to “look into the need to create a legal category for those people with a gender identity outside that which is binary and the full implications of this”.²³

In its 2016 response, the Government said it would keep a number of issues, including the needs of non-binary people, under consideration.²⁴

The Women and Equalities Committee also considered the extent of the gender reassignment protected characteristic and said:

Our evidence also called into question the extent to which the Act protects people with broader kinds of trans identities, who may not be seeking, or may not have sought, gender reassignment, medical or otherwise. [footnote: Such as non-binary people, people who do not live full time in their preferred gender and gender-variant young people with a less well-developed or self-understood gender identity than that of an adult]. We obtained a legal opinion on this point from expert barrister Claire McCann, who told us that people falling within such a broader definition of trans identity could have “no certainty” of being protected from discrimination [footnote: Claire McCann ([TRA 273](#)) para 49].²⁵

The Committee recommended:

The protected characteristic in respect of trans people under the Equality Act should be amended to that of “gender identity”. This would improve the law by bringing the language in the Act up to date, making it compliant with Council of Europe Resolution 2048; and make it significantly clearer that protection is afforded to anyone who might experience discrimination because of their gender identity.²⁶

In its response to the Committee, the Government said people with non-binary gender identities were protected on the basis of being perceived to be male or female, or perceived as having the protected characteristic of gender reassignment, rather than having it in fact:

Discrimination, as defined in the Equality Act 2010, means treating someone less favourably because of a protected characteristic; it is not necessary for the person actually to have that protected characteristic themselves. Wider categories of transgender people, such as cross-dressers, non-binary and gender fluid people are protected if they experience less favourable treatment because of gender reassignment - for example, if they are incorrectly

²² Equality and Human Rights Commission, [Equality Act 2010 Code of Practice Services, public functions and associations Statutory Code of Practice \(PDF\)](#), 2011, p30

²³ Woman and Equalities Committee, [Transgender Equality](#) (PDF) 14 January 2016, HC 390 2015-2016, para 31

²⁴ Government Equalities Office, [Government Response to the Women and Equalities Committee Report on Transgender Equality](#) (PDF), July 2016, pp10-11

²⁵ Women and Equalities Committee, [Transgender Equality](#) (PDF), 14 January 2016, HC 390 2015-2016, para 95

²⁶ *Ibid*, para 108

perceived as undergoing gender reassignment when in fact they are not, or incorrectly perceived to be male or female, perhaps because they do not comply with what society normally expects of men or of women.²⁷

There is recent case law indicating that non-binary people may have the protected characteristic of gender reassignment.

Taylor v Jaguar Land Rover

In 2020, the Birmingham Employment Tribunal held that people who are gender fluid, non-binary or transitioning can have the protected characteristic of gender reassignment.²⁸

The rationale was explained by reference to parliamentary debate on the gender reassignment provisions in the Equality Bill (which went on to become the EqA 2010). The tribunal cited several passages of the [Public Bill Committee debate](#)²⁹ of 11 June 2009, and concluded:

We thought it was very clear that Parliament intended gender reassignment to be a spectrum moving away from birth sex, and that a person could be at any point on that spectrum. That would be so, whether they described themselves as “non-binary” i.e. not at point A or point Z, “gender fluid” i.e. at different places between point A and point Z at different times, or “transitioning” i.e. moving from point A, but not necessarily ending at point Z, where A and Z are biological sex. We concluded that it was beyond any doubt that somebody in the situation of the Claimant was (and is) protected by the legislation because they are on that spectrum and they are on a journey which will not be the same in any two cases. It will end up where it does. The wording of section 7(1) accommodates that interpretation without any violence to the statutory language.³⁰

It has been argued that the Employment Tribunal’s decision in *Taylor v Jaguar Land Rover*

significantly changed the landscape of gender reassignment and widened significantly what had previously been thought to have been a narrower definition of gender reassignment.³¹

Employment Tribunals do not set a binding legal precedent (ie, another court would be free to come to a different conclusion on the law). However, the decision has not been appealed and the Equality and Human Rights Commission has [signed a legal agreement](#) with Jaguar Land Rover, under which “Jaguar Land Rover agreed to develop an action plan to prevent future breaches of equality law.”³²

²⁷ Government Equalities Office, [Government Response to the Women and Equalities Committee Report on Transgender Equality](#) (PDF), July 2016, p12

²⁸ [Ms R Taylor v Jaguar Land Rover Ltd: 1304471/2018](#) (PDF)

²⁹ [PBC Deb 11 June 2009 cc168-204](#)

³⁰ [Ms R Taylor v Jaguar Land Rover Ltd: 1304471/2018](#) (PDF), para 178

³¹ White, R & Newbegin, N, *A Practical Guide to Transgender Law*, 2021, p11

³² [Jaguar Land Rover Ltd signs a legal agreement with EHRC](#), EHRC website, 14 October 2021 [accessed 31 March 2022]

Hate crime

The police and the Crown Prosecution Service (CPS) have adopted the following [central definition of hate crime](#):

Any criminal offence which is perceived by the victim or any other person, to be motivated by hostility or prejudice, based on a person's disability or perceived disability; race or perceived race; or religion or perceived religion; or sexual orientation or perceived sexual orientation or transgender identity or perceived transgender identity.³³

[Section 66 of the Sentencing Act 2020](#) provides that where a crime has been motivated by hostility based on transgender identity (or race, religion, sexual orientation or disability), the court must treat this as an aggravating factor when sentencing the offender. The sentencing judge must state in open court that the offence was aggravated on this basis.

The [Law Commission](#) has conducted a detailed review of existing hate crime laws, including section 66.³⁴ It published its final report in December 2021, in which it recommended the term “transgender” be replaced with “transgender or gender diverse”, to “more clearly include people who experience criminal hostility on the basis of non-conformity with gender roles and expectations”.³⁵

The Law Commission considered the term “gender diverse” would include people who are non-binary and people “who otherwise do not conform with male or female gender expectations; for example, people who cross-dress”.³⁶

Equalities Minister Mike Freer has indicated the Home Office will respond to the Law Commission’s recommendations “in due course”.³⁷

The Crown Prosecution Service (CPS) has published a [public statement on prosecuting homophobic, biphobic and transphobic hate crime](#).³⁸ This includes a reference to non-binary in the section on “Those affected by homophobic, biphobic and transphobic crime”:

Trans or transgender are terms for people whose gender identity does not correspond with their birth gender. The terms ‘transgender’ and ‘transgender identity’ are used in the hate crime legislation and include references to being transsexual, or undergoing, proposing to undergo, or having undergone a process or part of a process of gender reassignment.

Gender identity is one of the most commonly used terms to acknowledge the gender spectrum. It includes those who identify as male and female and incorporates intersex, gender nonconforming or gender variance, for example

³³ CPS, [Hate crime](#) [accessed 31 March 2022]

³⁴ Law Commission, [Hate crime](#) [accessed 31 March 2022]

³⁵ Law Commission, [Hate crime laws: Final report \(PDF\)](#), Law Com No 402, December 2021, para 4.229

³⁶ *Ibid*, para 4.231

³⁷ [PQ 114700 \[on Hate Crime: LGBT+ People\]](#), 3 February 2022

³⁸ Crown Prosecution Service, [Hate crime Public statement on prosecuting homophobic, biphobic and transphobic hate crime](#), March 2022

those who might identify as non-gender, non-binary or gender fluid as well as those within the gender reassignment definition in the Equality Act 2010.³⁹

The CPS has also published legal guidance on the use of section 66 when prosecuting transphobic hate crime: [Homophobic, Biphobic and Transphobic Hate Crime - Prosecution Guidance](#).⁴⁰

2.3

Legal challenge to HM Passport Office policy

The policy

HM Passport Office (HMPO) requires an applicant for a passport to declare their gender as either male or female, and issues passports bearing an "M" (male) or "F" (female) indicator in the sex field, rather than an "X", indicating an unspecified sex.

Judicial review proceedings

In judicial review proceedings, Christie Elan-Cane, who identifies as non-gendered, challenged the lawfulness of this HMPO policy. In June 2018, the High Court dismissed the claim,⁴¹ and in March 2020, the Court of Appeal upheld the High Court's decision.⁴² In December 2021, the Supreme Court unanimously dismissed an appeal against the Court of Appeal's decision.⁴³

Facts of the case

A Supreme Court press summary set out the background to the case:

... In 1995, the appellant contacted the UK Passport Authority, a predecessor of HMPO, to inquire whether it was possible for a passport to be issued without making a declaration of being male or female. The appellant was informed that it was not. The appellant accordingly applied for, and was issued with, a passport in which the gender was recorded as female. The appellant made similar inquiries in 2005 and in correspondence between 2010 and 2016, with similar results.

In 2014, HMPO completed an internal review of gender marking in passports. It noted that there had been very few requests for a non-gendered ("X") marking, other than from the appellant, and that UK legislation, including discrimination and equality legislation, is based on the categorisation of all individuals as either male or female. It stated that recognising a third gender would put HMPO "in isolation from the rest of government and society" and

³⁹ Ibid, section 4

⁴⁰ Last updated 3 March 2022

⁴¹ [R \(on the application of Elan-Cane\) v Secretary of State for the Home Department & Anor \[2018\] EWHC 1530 \(Admin\)](#)

⁴² [R \(on the application of Elan-Cane\) v Secretary of State for the Home Department \[2020\] EWCA Civ 363](#)

⁴³ [R \(on the application of Elan-Cane\) v Secretary of State for the Home Department \[2021\] UKSC 56](#)

would result in administrative costs of about £2m being incurred. The Government repeated these points when it considered the issue in 2016.

The appellant argues that the policy operated by HMPO contravenes the right to respect for private life which is guaranteed by article 8 of the European Convention on Human Rights ("the Convention"), either taken on its own or read together with the prohibition on discrimination in article 14. The High Court and the Court of Appeal rejected that argument. The appellant now appeals to the Supreme Court.⁴⁴

Reasons for the Supreme Court judgment

The Supreme Court noted there was no judgment of the European Court of Human Rights ("the European Court") establishing an obligation to recognise a gender category other than male or female, and none which would require the Secretary of State to issue passports without any indication of gender.⁴⁵

Applying the principles established in the case law of the European Court, the Supreme Court found there had been no violation of the appellant's Convention rights:

The appellant's interest in being issued with an "X" passport is outweighed by considerations relating to the public interest put forward by the Secretary of State, including the importance of maintaining a coherent approach across government to the question of whether, and if so in what circumstances, any gender categories beyond male and female should be recognised. It is clear that this is a matter in which states would be afforded a high degree of latitude by the European Court, having regard to the absence of any consensus amongst the states which are parties to the Convention, the complexity and sensitivity of the issue, and the need for a balance to be struck between competing private and public interests.⁴⁶

⁴⁴ Supreme Court press summary, [R \(on the application of Elan-Cane\) \(Appellant\) v Secretary of State for the Home Department \(Respondent\) \[2021\] UKSC 56 On appeal from: \[2020\] EWCA Civ 363](#) [accessed 31 March 2022]

⁴⁵ Ibid

⁴⁶ Ibid

3 Government's LGBT Action Plan 2018

3.1 National survey of LGBT people

In July 2017, the Government Equalities Office launched a national LGBT survey. The stated purpose was:

to develop a better understanding of the lived experiences of lesbian, gay, bisexual and transgender people, and people who identify as having any other minority sexual orientation or gender identity, or as intersex.⁴⁷

The survey was open for 12 weeks and received 108,100 valid responses.⁴⁸ 7,400 responses were from non-binary people.⁴⁹

3.2 Government's LGBT Action Plan

In July 2018, the Government Equalities Office published [results from the survey](#)⁵⁰ and an [LGBT Action Plan](#) (PDF). The Government said it would issue a call for evidence on the issues faced by non-binary people:

We will improve our understanding of the issues faced by people who identify as non-binary and people who are intersex. Our survey gave us new insight into the experiences of these groups, but we have more to learn. We will launch separate Calls for Evidence on the issues faced by non-binary and intersex people.⁵¹

In a Supreme Court judgment delivered in December 2021, Lord Reed spoke of how matters had progressed at that time:

In 2019 the Government appointed the National Institute of Economic and Social Research ("NIESR") to undertake a review with the aim of improving understanding of individuals who identify as non-binary, and also began a review of gender markers by the GEO. The NIESR project was paused in December 2019 following the formation of a new Government, and subsequently cancelled when the Government decided to focus specifically on gender markers. The GEO review was suspended in 2020 as the officials engaged on it were re-deployed to work on matters arising from the Covid pandemic. In March 2021 the Government decided that work should resume,

⁴⁷ Government Equalities Office, [National LGBT Survey Research Report](#) (PDF), July 2018, p4

⁴⁸ Ibid

⁴⁹ [Reform of the Gender Recognition Act – Government Consultation](#) (PDF), July 2018, para 12

⁵⁰ GOV.UK, [National LGBT Survey: Research report](#), 3 July 2018

⁵¹ Government Equalities Office, [LGBT Action Plan](#) (PDF) July 2018, p4

focusing on the issue of introducing gender-neutral markers in identity documents (including passports), and the potential impact of such a change on the provision of public services and on systems across government.⁵²

⁵² *R (on the application of Elan-Cane) v Secretary of State for the Home Department* [2021] UKSC 56, para 15

4

The UK Government's consultation on reform of the Gender Recognition Act

The Government's 2018 [consultation on reform of the GRA](#) (PDF) included a section on non-binary gender identities.⁵³ It did not include proposals to extend the GRA to provide legal recognition to a third, or non-binary, gender. However, it did ask for respondents' initial views on non-binary recognition as it relates to the GRA specifically.⁵⁴ The Government referred to this as a supplement to its proposed call for evidence exercise.⁵⁵

The Government stated its position:

The Government wants individuals who identify as non-binary to be able to live discrimination-free lives in accordance with who they believe their true selves to be. We are working to determine what action it may be necessary for Government to take in order to achieve this. However, we are also mindful of the practical consequences for other areas of law and public-service provision referring to the gender binary, if non-binary genders were to be recognised in the GRA.⁵⁶

The Government said it intended to use the consultation and its anticipated call for evidence "as first steps towards developing our understanding of this complex issue":

Through our call for evidence, we want to: better understand the experiences of, and difficulties faced by, non-binary people in the UK; seek people's views on how they think society could be more inclusive of people who identify as non-binary; and examine more closely the potential knock-on implications in other areas of law and society of recognising a gender that is neither male nor female.⁵⁷

The consultation paper included the question (question 20): "Do you think that there need to be changes to the Gender Recognition Act to accommodate individuals who identify as non-binary?"⁵⁸

⁵³ [Reform of the Gender Recognition Act – Government Consultation](#) (PDF), July 2018, paras 130-143

⁵⁴ *Ibid*, paras 134 and 136

⁵⁵ See section 3.2 of this briefing paper

⁵⁶ [Reform of the Gender Recognition Act – Government Consultation](#) (PDF), July 2018, para 142

⁵⁷ *Ibid*, para 143

⁵⁸ *Ibid*, question 20, p54

5 Government position: no change to current law

5.1 Government's response to consultation

On 22 September 2020, in response to the consultation on reform of the GRA, Elizabeth Truss, Minister for Women and Equalities, made a [written ministerial statement](#),⁵⁹ and the Government Equalities Office published an [Analysis Report of Consultation Responses by researchers at Nottingham Trent University](#) (PDF) (the analysis document).⁶⁰ Another Commons Library briefing paper provides further information, [Gender recognition reform: consultation and outcome](#).⁶¹

The Minister set out the Government's decision not to change the criteria in the GRA for legal recognition:

It is the Government's view that the balance struck in [the GRA] is correct, in that there are proper checks and balances in the system and also support for people who want to change their legal sex.⁶²

The written Ministerial statement did not deal with non-binary gender identity.

The Executive Summary of the analysis document summarised the response to the question on non-binary gender recognition (question 20):

A majority (64.7%) thought that changes needed to be made to the GRA to accommodate individuals who identified as non-binary. Respondents highlighted in their responses the relatively large size of the non-binary population, legitimacy of non-binary identities, and the negative impacts of the lack of legal recognition. Other respondents, however, did not see the need for legal gender recognition, with some suggesting that the conflation of sex and gender was detrimental to women's rights.⁶³

⁵⁹ [HCWS462, \[Government Equalities Office Update\], 22 September 2020](#)

⁶⁰ Professor Daniel King, Professor Carrie Paechter, Dr Maranda Ridgway, and researchers at Nottingham Trent University, [Gender Recognition Act Analysis of consultation responses](#) (PDF), CP 294, September 2020, commissioned by the Government Equalities Office

⁶¹ [Gender recognition reform: consultation and outcome](#), Commons Library briefing CBP-09079

⁶² [HCWS462, \[Government Equalities Office Update\], 22 September 2020](#)

⁶³ Professor Daniel King, Professor Carrie Paechter, Dr Maranda Ridgway, and researchers at Nottingham Trent University, [Gender Recognition Act Analysis of consultation responses](#) (PDF), CP 294, September 2020, para 26

The full analysis of consultation responses to question 20 begins on [p130 of the analysis document](#) (PDF).

5.2 Parliamentary questions

In answers to parliamentary questions, the Government has confirmed it does not intend to change the GRA.

- In May 2021, Zarah Sultana (Labour) asked:

To ask the Minister for Women and Equalities, if her Department will make an assessment of the potential merits of (a) making non-binary a legally recognised gender identity and (b) including non-binary as an option under the Gender Recognition Panel (GRP)/ Gender Recognition Certificate (GRC).

Kemi Badenoch, Minister for Equalities, replied on 21 May 2021:

The Government acknowledges that some citizens identify as non-binary. However, as set out in the response to the Gender Recognition Act consultation, there are no plans to make changes to the 2004 Act.

Following a considerable amount of consultation with the public and representative organisations, the Government decided that the current provisions within the GRA allow for those that wish to legally change their sex to do so. The GRA provides a means for transgender people to change the sex on their birth certificate, but there is currently no provision for those who do not identify solely as male or as female.⁶⁴

- In June 2021, Dawn Butler (Labour) asked:

To ask the Minister for Women and Equalities, what steps the Government is taking to give full recognition to people in the UK who identify as non-binary.

Kemi Badenoch replied on 24 June 2021:

This Government is committed to supporting all LGBT people, tackling discrimination and improving the lives of all citizens.

We have been clear in the response to the Gender Recognition Act consultation in September 2020 that there are no plans to make changes to the 2004 Act.

Following a considerable amount of consultation with the public, the Government decided that the current provisions within the GRA allow for those that wish to legally change their sex to do so safely and fairly. The consultation did not bring forward any proposals to extend the GRA to provide legal recognition to a third, or non-binary, gender.⁶⁵

⁶⁴ [HC 890 \[on Gender Recognition\], 21 May 2021](#)

⁶⁵ [PQ 18501 \[on Gender recognition\], 24 June 2021](#)

5.3

Westminster Hall debate

In February 2022, there was a [Westminster Hall debate on a petition relating to reform of the GRA](#).⁶⁶ The [petition](#) called for reform of the GRA “to allow transgender people to self-identify without the need for a medical diagnosis, to streamline the administrative process, and to allow non-binary identities to be legally recognised”. The petition closed on 24 January 2021 with 137,271 signatures.⁶⁷

Dame Angela Eagle (Labour) pointed out that the GRA makes no mention of non-binary people:

if someone wants a gender recognition certificate, they have to pick a gender. However, as we are increasingly coming to realise, many people regard themselves as non-binary and do not want to make that binary choice. They do not regard themselves as either a man or a woman in the binary sense that we all grew up with. We need to ensure that we can facilitate their ability to navigate through bureaucracies and to have a presence, dignity and respect in our state that accords with their feelings and views of themselves.⁶⁸

Layla Moran (Liberal Democrat) said, “we cannot ignore non-binary people simply because they don’t fit into our current structures”.⁶⁹

Kirsty Blackman (SNP) spoke of “the growing number of individuals identifying as non-binary” and called for them to be able to identify as such:

Like most feminists, I have always been bothered by gender stereotypes and gendered expectations. I can entirely understand how and why people come to the conclusion that they do not comfortably fit in either a male or a female box. None of the Government proposals I have seen go far enough, or sometimes even acknowledge the existence of non-binary people. That has to change. If we want the legislation to be fit for the future, we need to consider the needs of future generations. Many more young people are uncomfortable with established gender stereotypes and moulds. We must therefore allow non-binary people to identify as non-binary.⁷⁰

Luke Pollard (Labour/Co-op) intervened when the Minister for Equalities, Mike Freer was making his closing remarks and asked if he would briefly mention non-binary people, adding, “often non-binary people are erased in debates by virtue of being forgotten”.⁷¹ Mike Freer replied:

I am aware of the issue and it is something I am working on with officials, but I cannot give any specific commitments today. I can, however, tell the House that the team and I are committed to ensuring that LGBT people can live their

⁶⁶ [HC Deb 21 February 2022 cc1-48WH](#)

⁶⁷ UK Government and Parliament Petitions, [Reform the Gender Recognition Act](#) [accessed 31 March 2022]

⁶⁸ [HC Deb 21 February 2022 c13WH](#)

⁶⁹ [HC Deb 21 February 2022 c34WH](#)

⁷⁰ [HC Deb 21 February 2022 c36WH](#)

⁷¹ [HC Deb 21 February 2022 c47WH](#)

lives as safely and freely as they wish, with respect and dignity. I intend to do all I can to address the issues that are making the process and their lives difficult, cumbersome or bureaucratic.⁷²

⁷² Ibid

6 Women and Equalities Committee inquiry

6.1 The inquiry

On 28 October 2020, the House of Commons Women and Equalities Committee launched an inquiry, [Reform of the Gender Recognition Act](#). The Committee said the inquiry would consider, among other things, whether legal reforms are needed to better support the rights of gender-fluid and non-binary people.⁷³

Information about the inquiry, with links to transcripts of oral evidence and written evidence submitted to the Committee, is available on the [inquiry pages on the Parliament website](#).

6.2 The Committee's report

The Committee published its report, [Reform of the Gender Recognition Act](#) (PDF), on 21 December 2021.⁷⁴ Chapter 6 deals with non-binary gender recognition.⁷⁵

The Committee said it received a large volume of written evidence calling for the legal recognition of non-binary people through the GRA and expressing disappointment that the Government did not bring forward changes to this in its proposals to reform the process.⁷⁶

The Committee called on the Government to clarify the reasons preventing the legal recognition of non-binary people and on the Equality and Human Rights Commission to undertake research in this area:

When the previous Government launched its consultation into the reform of the Gender Recognition Act, it explicitly stated that one of its aims was to gather evidence to further advance equality for non-binary and intersex people. The LGBT Action Plan also made a commitment to improve the Government's understanding of the issues faced by non-binary people. The Government

⁷³ [Women and Equalities Committee launches new inquiry into Gender Recognition Act reform and more](#), UK Parliament website, 28 October 2020 [accessed 31 March 2022]

⁷⁴ Women and Equalities Committee, [Reform of the Gender Recognition Act](#) (PDF), 21 December 2021, HC 977 2021-22

⁷⁵ Ibid, paras 222-226

⁷⁶ Ibid, para 222

should clarify what the barriers are that prevent it from allowing non-binary people to be legally recognised. The Government should lay out reasons in writing to this Committee at the earliest possible opportunity, within a maximum of 12 weeks. The Equality and Human Rights Commission should undertake research in this area so that proposals to allow for legal recognition of non-binary people can be brought forward during this parliament.⁷⁷

6.3 Equality and Human Rights Commission response

On 28 January 2022, Baroness Kishwer Falkner, Chairwoman of the Equality and Human Rights Commission (EHRC) wrote to Caroline Nokes, Chair of the Women and Equalities Committee.⁷⁸

Baroness Kishwer Falkner agreed with the need for research but said the EHRC could not commit to doing this alone:

Your Committee's report refers at paragraph 226 to previous commitments made by the UK Government to gather evidence to advance equality for non-binary and intersex people, recommending that we "undertake research ... so that proposals to allow for legal recognition of non-binary people can be brought forward". We continue to believe, as we have stated since 2018, that detailed research is necessary to better understand the nature of the equality and human rights issues faced by non-binary people. But building a robust evidence base in this area would be a significant undertaking, which we cannot currently commit to alone, particularly in an uncertain funding climate.

We will nonetheless continue to support others' work to better understand this important set of issues, and to use our litigation and enforcement powers to protect trans people's rights and clarify areas of uncertainty where necessary.⁷⁹

6.4 Government response

The Government published its [response](#) to the Committee's report on 24 March 2022,⁸⁰ and reiterated its position that no changes are needed to the GRA:

⁷⁷ Ibid, para 226

⁷⁸ Women and Equalities Committee, [Correspondence to the Chair from the Chair of the Equality and Human Rights Commission relating to our inquiry into the Reform of the Gender Recognition Act](#), 28 January 2022

⁷⁹ Ibid

⁸⁰ Women and Equalities Committee, [Reform of the Gender Recognition Act: Government response to the Committee's Third Report](#), 24 March 2022, HC 129 2021-22

In UK law, individuals are considered to be the sex that is registered on their birth certificate – either male or female, with the GRA providing for individuals to be able to change their legal sex.⁸¹

The Government said GEO officials had considered the experiences of people who identify as non-binary (among others):

... GEO has considered this issue, as part of the Government’s successful case against a legal challenge, to inform policy work on the issue of so-called X-markers on passports (that is, the option, introduced by some countries, for passports to provide for a third category beyond male and female). We reviewed published evidence on the value and purpose of sex and gender identifiers on official documentation, and how the gender identity of non-binary people affected their interactions with key public services, in order improve our understanding of issues relating to non-binary identities and X-markers. We also conducted a short scoping exercise, involving interviews with policy officials in a number of departments about how sex and gender markers are used and the possible impacts that could arise from a hypothetical X-marker.⁸²

The Government said its work “aimed to further explore this emerging and complicated area of policy” adding:

However, as was also highlighted in R (on the application of Elan-Cane) (Appellant) v Secretary of State for the Home Department (Respondent) 12 July 2021,⁸³ many other countries are also developing their understanding of this area.

⁸¹ Ibid, [para 63](#)

⁸² Ibid, [para 62](#)

⁸³ Footnote: “<https://www.supremecourt.uk/cases/uksc-2020-0081.html>”. See section 2.3 of this briefing paper for further information about this case

7 Government petition

7.1 The UK Government and Parliament petitions website

The UK Government and Parliament petitions website has petitions which are created by, and can be signed by, British citizens and UK residents. Petitions run for six months.

The Government will respond to petitions which gain 10,000 signatures. Petitions which gain 100,000 signatures are considered for a debate in Parliament.⁸⁴

7.2 Petition: Make non-binary a legally recognised gender identity in the UK

A [petition](#), “Make non-binary a legally recognised gender identity in the UK”, is in the following terms:

Have non binary be included as an option under the GRP (Gender Recognition Panel)/ GRC (Gender Recognition Certificate), in order to allow those identifying as non binary to be legally seen as their true gender identity. As well as having ‘Non-binary’ be seen as a valid transgender identity.

There is no option of ‘Non-binary’ on legal forms, ignoring members of the population. This requires the government to pass a law that publicly recognises ‘Non-binary’ as a part of the GRP under the Gender Recognition Act, a.k.a a legal and valid gender identity option. By recognising Non-binary as a valid gender identity, it would aid in the protection of Non-binary individuals against transphobic hate crimes, and would ease Gender Dysphoria experienced by Non-binary people.⁸⁵

The petition closed on 26 October 2021 with 140,782 signatures.

The Cabinet Office responded on 20 May 2021, confirming that the law makes no provision for non-binary gender recognition:

⁸⁴ UK Government and Parliament Petitions, [How petitions work](#) [accessed 31 March 2022]

⁸⁵ UK Government and Parliament Petitions, [Make non-binary a legally recognised gender identity in the UK](#) [accessed 31 March 2022]

Following a considerable amount of consultation with the public and representative organisations, the Government decided that the current provisions within the GRA allow for those that wish to legally change their sex to do so fairly.

The 2018 GRA consultation did not bring forward any proposals to extend the GRA to provide legal recognition to a third, or non-binary, gender. The Government noted that there were complex practical consequences for other areas of the law, service provision and public life if provision were to be made for non-binary gender recognition in the GRA.

In UK law individuals are considered to be the sex that is registered on their birth certificate – either male or female. The GRA provides a means for transgender people to change the sex on their birth certificate, but there is currently no provision for those who do not identify as male or female.

The Government said it wanted everybody in the UK “to feel safe and confident to be themselves” and set out what it was doing in relation to hate crime:

We are committed to tackling all forms of homophobic, biphobic and transphobic hate crime, and are working with the Home Office on the cross-Government Hate Crime Action Plan. The Government has asked the Law Commission to review the current hate crime legislation, which includes exploring whether homophobic, biphobic and transphobic hate crime should be considered an aggravated offence. We will also take an assessment of local support for hate crime victims and improve reporting and recording of LGBT hate crimes through supporting additional police training.

The Government indicated when data from the 2021 Census would be available:

Following Parliamentary approval on 8th October 2020, voluntary questions on sexual orientation and gender identity were included in the 2021 Census for England and Wales which took place on Sunday 21 March 2021. Final data on sexual orientation and gender identity from the 2021 Census for England and Wales will likely be available from 2023, with initial Census findings planned for publication in March 2022 (timelines subject to change as work progresses). This will help to provide more robust population size estimates for England and Wales than are currently available.

The Government concluded by stating its commitment “to supporting all LGBT people, tackling discrimination and improving the lives of all citizens”.⁸⁶

Parliament will consider this petition for a debate.

⁸⁶ Ibid

8 The position in Scotland

The GRA extends across the UK. However, gender recognition is a devolved matter, meaning legislation in this area may be made by the Scottish Parliament.

8.1 Scottish Government consultation on GRA

The Scottish Government's separate consultation on proposals to reform the GRA, [Review of the Gender Recognition Act 2004](#), ran from 9 November 2017 to 1 March 2018.⁸⁷ [Part 7](#) of the consultation dealt with non-binary people.

The Scottish Government had identified six broad options to advance the recognition of non-binary people and said:

It may be possible to pursue more than one of these options. Provisions to recognise non-binary people are radical and require careful thought.⁸⁸

Views were sought on (among other things) whether Scotland should take action to recognise non-binary people (question 12) and, if so, on a range of options (question 13).

Information about each option is set out in the consultation paper.

8.2 Response to consultation

Consultation analysis

In November 2018, the Scottish Government published a consultation analysis report.⁸⁹ The Executive Summary summarises responses to the questions on non-binary people:

A majority of respondents, 62% of those answering the question, thought that Scotland should take action to recognise non-binary people. Of the remaining

⁸⁷ Scottish Government, [Review of the Gender Recognition Act 2004: consultation](#), 9 November 2017

⁸⁸ Scottish Government, [Review of the Gender Recognition Act 2004: consultation](#), 9 November 2017, para 7.07

⁸⁹ Scottish Government, [Review of the Gender Recognition Act 2004 Analysis of responses to the public consultation exercise](#), 23 November 2018

respondents, 33% did not think Scotland should take action and 4% did not know.

Those who agreed

The most frequently made comment was that the non-binary gender exists and that being non-binary is just as valid as being one of the binary genders or being a trans woman or man. Those raising this issue sometimes noted that they themselves are non-binary. Others noted that they have non-binary partners, family members or friends. Respondents commented on difficulties they themselves or those known to them experience in their day-to-day lives. Respondents also noted the negative impact this can have on their feeling of self-worth and their mental health.

Respondents felt that it was important for Scotland to take an inclusive approach in which non-binary people had the same rights as everyone else. Further comments included that non-binary people deserve respect and recognition and that enshrining this approach in law could help wider society take a more accepting and inclusive approach. Many also highlighted the importance of allowing people self-determination and to make their own choice as to their gender identity.

Those who disagreed

The most frequently made comment was that humans are sexually dimorphic and that, apart from a small number of people who are intersex, everyone is born male (with XY sex chromosomes) or female (with XX sex chromosomes). Some went on to comment that, irrespective of how someone identifies or any other action they take, people will always remain male or female because of their chromosomal makeup.

Commenting on gender rather than sex, it was suggested that most, if not all, people are non-binary in that they do not conform fully to gender-based stereotypes. It was also suggested that gender is a social construct.

Other comments focused on the practical implications of recognising non-binary people. The most frequently made of these points centred around the use of sex-specific services – and there were queries as to whether a third set of non-binary services would be required, or whether a non-binary person would be able to choose which sex-specific service they wished to use.⁹⁰

The Executive Summary also summarises responses on the various options for giving recognition to non-binary people. More detailed analysis is set out in [section 6](#) of the consultation analysis.⁹¹

⁹⁰ Scottish Government, [Review of the Gender Recognition Act 2004: Analysis of responses to the public consultation exercise](#), 23 November 2018, Executive Summary, paras 66-71

⁹¹ Scottish Government, [Review of the Gender Recognition Act 2004: consultation analysis, 23 November 2018, Executive Summary](#), paragraphs 72-81 and [section 6](#)

Scottish Government statement

In June 2019, Shirley-Anne Somerville, who was then Cabinet Secretary for Social Security and Older People, made a [statement](#) on gender recognition.⁹² In relation to non-binary recognition she said:

I do not intend at this time to extend legal gender recognition to non-binary people but we recognise the need to address the issues that non-binary people face.

I intend to establish a working group to consider possible changes to procedures and practice and what we can learn from best practice internationally as well as from within Scotland and the rest of the UK.⁹³

8.3 Consultation on draft Bill

The Scottish Government subsequently consulted on a [draft Gender Recognition Reform \(Scotland\) Bill](#).⁹⁴ The consultation ran from 17 December 2019 to 17 March 2020. The draft Bill did not include provisions relating to non-binary gender recognition. The consultation asked for views on specific matters and also included a more general question (Question 4), “Do you have any other comments on the provisions of the draft Bill?”⁹⁵

In September 2021, the Scottish Government published an [analysis of responses](#) to the consultation.⁹⁶ The analysis document carries this statement:

The views expressed in this report are those of the researcher and do not necessarily represent those of the Scottish Government or Scottish Ministers.⁹⁷

The analysis indicated “a key theme of many of the comments at Question 4 was that the provisions should be extended to non-binary people”:

This was frequently connected to a view that the reforms cannot be considered a success, inclusive of the whole trans community or a victory for equality, unless they cover non-binary people. There were also calls for the draft Bill to be inclusive of people who are gender fluid, genderqueer, agender or with other gender identities.⁹⁸

⁹² Scottish Government, [Statement on gender recognition](#), 20 June 2019

⁹³ Ibid.

⁹⁴ Scottish Government, [Gender Recognition Reform \(Scotland\) Bill: consultation](#), 17 December 2019

⁹⁵ Ibid, [para 4.21](#)

⁹⁶ Scottish Government, [Gender Recognition Reform \(Scotland\) Bill: Analysis of responses to the public consultation exercise](#) (PDF), 2 September 2021

⁹⁷ Ibid, back cover

⁹⁸ Scottish Government, [Gender Recognition Reform \(Scotland\) Bill: Analysis of responses to the public consultation exercise](#) (PDF), September 2021, p viii

The Executive Summary commented at the beginning of the section dealing with question 4:

Given this question's focus on other provisions of the draft Bill, the issues covered were most likely to have been raised by respondents who were broadly in support of a statutory declaration-based system. These respondents were more likely to comment on the detail of how any new system should work than those who opposed the changes.⁹⁹

More detailed analysis of comments in response to question 4 on non-binary and other gender identities is set out in [paragraphs 6.4 to 6.8](#) (PDF) of the analysis document.

8.4 Non-binary working group

The Scottish Government website has information about its [Non-Binary Working Group](#):

The Scottish Government recognises the need to do more to achieve equality for non-binary people. To look carefully at these issues, we have established a Working Group on Non-Binary Equality in line with commitments made in the 2019-2020 and 2020-2021 Programmes for Government.

A Working Group on Non-Binary Equality has been convened to consider and inform the Scottish Government's approach to these issues. The Group, which will consist of people with lived experience, academics, and other expert advisers, alongside Scottish Government officials, will work to contribute to the Scottish Government's emerging approach, and advise on proposed actions to improve, protect and promote equality for non-binary people. Membership, minutes and papers will be published on this page in due course.¹⁰⁰

A factsheet on the Scottish Government website, [Non-Binary Working Group: context and framing](#) (7 July 2021) provides further information.

8.5 Confirmation of Scottish Government position

In its Programme for Government 2021-22 published in September 2021, the Scottish Government said:

Following receipt of the recommendations of the Working Group on Non-Binary Equality, we will develop an action plan by spring 2023 to improve non-binary equality and wellbeing".¹⁰¹

⁹⁹ Ibid

¹⁰⁰ Scottish Government, [Non-Binary Working Group](#) [accessed 31 March 2022]

¹⁰¹ Scottish Government, [A fairer, greener Scotland Programme for Government 2021-22](#), September 2021, Chapter 2

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