

# Gender recognition reform in Belgium

## Lessons for Scotland

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### Introduction

1. In June 2017 Belgium approved legislation allowing a person aged 18 years or over to apply to change their legal sex on a self-declaration basis.<sup>1</sup> For those aged 16 or 17, parental consent and a psychiatric consultation is required. The Act came into effect on 1 January 2018.
2. As part of its narrative on 'international best practice' the Ministerial Forward to the Scottish Government consultation on reforming the Gender Recognition Act (GRA) cites Belgium as one of a small group of countries that have successfully introduced such a model 'without a detrimental impact on others' (2019: 3).<sup>2</sup> The Scottish Government consultation paper provides an overview of the application process in Belgium (see Box 1 below) but provides no further information.
3. This briefing draws on data published by the Belgium Institute for the Equality of Women and Men (IGVM) to better understand how the introduction of a self-declaration model affected the number and character of applications. The key points are as follows:
  - Between 2017 and 2018, registrations increased by 575%, from 110 to 742. This can partly be read in the context of the removal of demanding requirements (notably sterilisation) placed on those wishing to change their legal sex prior to reform, although it is less relevant to the increase in younger people making applications.
  - More than half of all registered changes in legal sex since 1993 took place after the introduction of new legislation in 2018.
  - Following reform, the average age of applications fell, particularly among natal females (transmen).
  - In 2018/19 transmen aged 16 to 24 years accounted for nearly a third of all legal sex change registrations (30%).

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<sup>1</sup> [Belgian Gender Recognition Act June 25 2017](#)

<sup>2</sup> [Scottish Government \(2019\) Gender Recognition Reform \(Scotland\) Bill A consultation by the Scottish Government.](#)

- The proportion of transmen aged 16 to 24 years registering a change in legal sex was more than double that of transwomen aged 16 to 24 years, at 65% and 27% respectively.
- These findings have implications for the current debate on data collection. The Belgium data suggests that statistically significant differences in results are much more likely for transmen aged 16 to 24 years than for the population as a whole, depending on whether sex or self-declared gender identity is reported.
- Both the marked increase in applications and asymmetrical increase in applications among young transmen merit further consideration ahead of legal reform in Scotland, to understand the factors associated with these trends.
- Under the Belgian model, changing legal sex is irreversible, except in very exceptional circumstances, which is intended to act as a safeguard. Similarly, the Scottish Government propose that a person wishing to change their legal sex 'intends to continue to live in the acquired gender permanently'.
- We would suggest that this provision also requires further consideration, given the potential for an increase in applications from young transwomen, as well as an apparent increase in those now re-identifying with their birth sex in the UK.<sup>3</sup>

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<sup>3</sup> [Daily Mail Hundreds of transgender youths who had gender reassignment surgery wish they hadn't and want to transition back, says trans rights champion](#) 5 October 2019.

## 1. Background

- 1.1. On 1 January 2018 the Belgian Gender Recognition Act came into force, replacing a strict medical model with a self-declaration model. Under the previous medical model (introduced in 2007) applicants were required to have a medical diagnosis of gender dysphoria; to have undergone gender reassignment 'as far as is possible and justified from a medical point of view' and to no longer be capable of producing children. For further detail on the 2007 Act and the Judicial model that preceded it, see Mottsmans, 2009; 4.1.2.<sup>4</sup>
- 1.2. The 2017 Act removed all medical requirements, including the diagnosis of dysphoria, and allowed people aged 18 or over to apply to change legal sex based on self-determination. For those aged 16 or 17, parental consent and a psychiatric consultation is required. The change in registered sex is irreversible under the Act, which is intended as a safeguard against fraudulent or malign applications. Although in exceptional circumstances, the family court may reinstall a person's birth sex (Cannoot, 2018).<sup>5</sup>

### Box 1. Process for changing legal sex in Belgium

"Belgium adopted a new law in May 2017 which removed the requirement to undergo sterilisation. Applicants aged 18 and over must make a declaration stating that they are convinced that the sex shown in their act of birth does not correspond with their gender identity. Applicants aged 16 and 17 must be supported by their parent or legal representative and have consulted a psychiatrist.

The applicant then receives an information pack and the King's Prosecutor is advised of the application and has a period of three months during which they may refuse the application in exceptional cases. At the end of this three month period and before six months have passed in total, the applicant must reconfirm their application before the process is completed."

Scottish Government 2019 paras. 2.3, 2.4<sup>6</sup>

## 2. Trend data in acquired legal sex registrations

- 2.1. Figure 1. presents trend data on legal sex registrations between 1993 and 2017 (i.e. prior to self-declaration) disaggregated by acquired legal sex. The data shows an uneven increase in registrations over time, with an uplift in applications following legislative reform in 2007 (which allowed a person to officially change their forename and birth certificate sex marker, subject to the conditions outlined in para. 1.2). There is also a consistent increase in registrations from transmen from 2013 onwards.

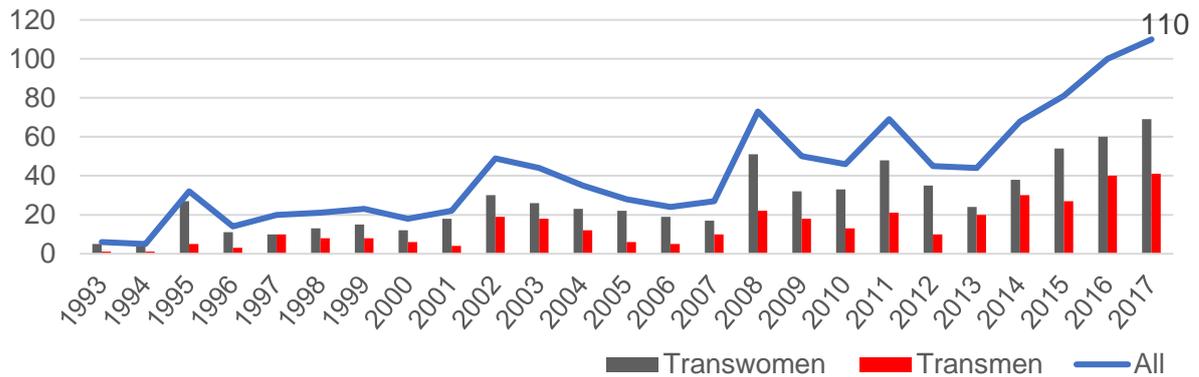
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<sup>4</sup> Mottsmans, J. (2009) [Being transgender in Belgium: Mapping the social and legal situation of transgender people](#) Institute for the equality of women and men.

<sup>5</sup> Cannoot, P. (2018) [New Belgian Gender Recognition Act: shouldn't self-determination also include non-binary people?](#) March 21, 2018 IACL-AIDC BLOG

<sup>6</sup> Note 2.

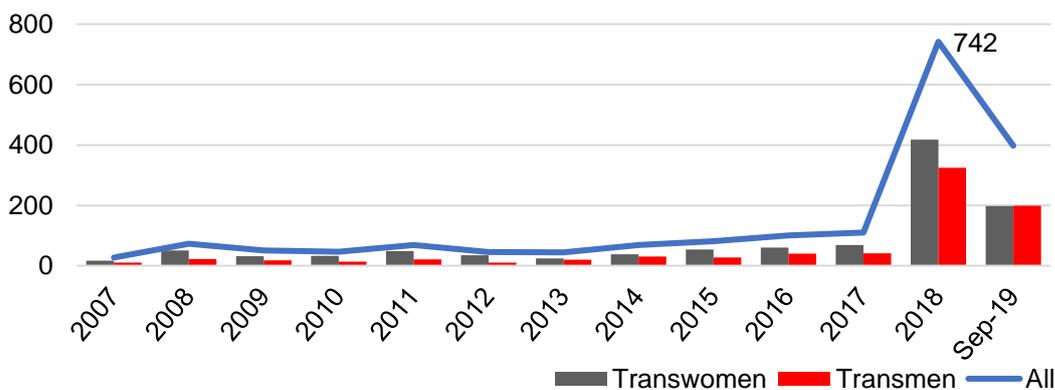
**Figure 1. Number of legal sex change registrations in Belgium, by acquired legal sex 1993 to 2017**



Source: Personnes transgenres ayant fait une demande de changement de la mention officielle de leur sexe en Belgique, 2019. Table 1.2

- 2.2. Between 1993 and 2007 1,054 people registered a change of legal sex, peaking at 110 registrations in 2017. Throughout this period (with the exception of 1997) the proportion of transwomen was higher than that of transmen.
- 2.3. Figure 2 shows trend data from 2007 to September 2019, covering the 2018 reform period. This shows that registrations increased by 575% between 2017 and 2018, from 110 to 742. In part this may be read in the context of removing the demanding requirements placed on those wishing to change their legal sex prior to reform, although it is less relevant to the increase in younger people making applications, as discussed in section 3.
- 2.4. Between January 2018 and September 2019 1,139 people registered a change of legal sex. This means that more than half of all registrations since 1993 took place after the introduction of new legislation in 2018. Extrapolating the 2019 numbers to the last quarter would suggest a total of 530 new registrations. While this estimate is lower than the number of registrations in 2018 (742) it would imply a five times higher number of registrations than in 2017 (Institute for the Equality of Women and Men, 2019: 10-11)

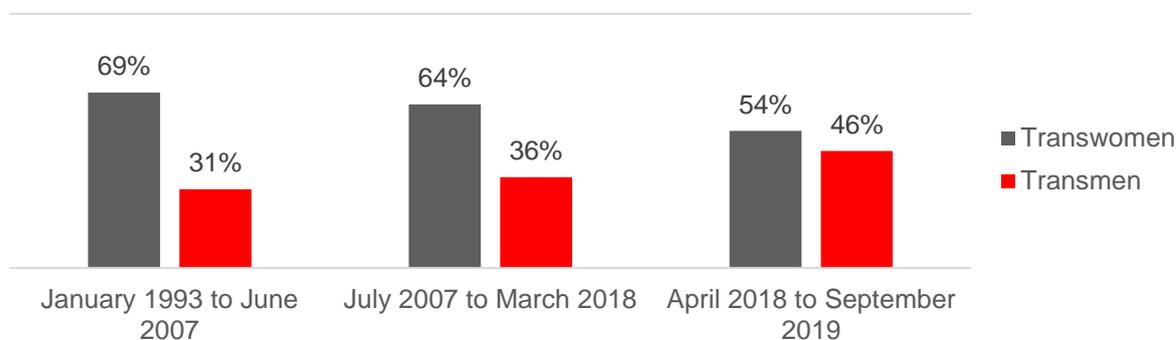
**Figure 2. Number of legal sex changes in Belgium, 2007 to September 2019**



Source: Personnes transgenres ayant fait une demande de changement de la mention officielle de leur sexe en Belgique, 2019. Table 1.2

2.5. Figure 3 shows that the ratio of transwomen to transmen fell across the three main legislative periods, with near parity by 2019, due principally to an increase in registration from young transmen.

**Figure 3. Proportion of legal sex registrations by acquired legal sex and legislative period**

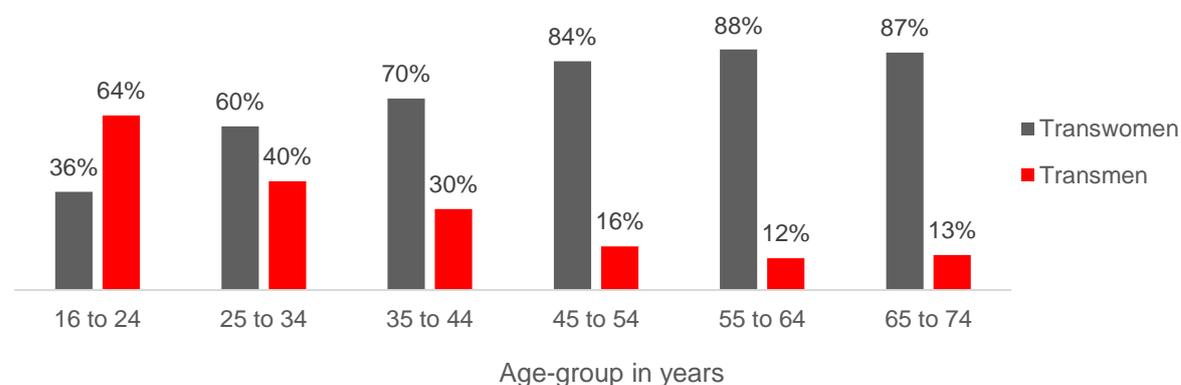


Source: Personnes transgenres ayant fait une demande de changement de la mention officielle de leur sexe en Belgique, 2019. Table 2.1

### 3. Age and acquired legal sex

- 3.1. Legal sex registrations varied significantly between age-group and birth sex. Figure 4 shows that between 1993 and September 2019, transwomen accounted for nearly two-thirds of registrations among those aged 16 to 24.
- 3.2. This proportion decreased steadily by age, to around 12% of registrations from age 55 onwards, while the proportion of registrations from transwomen increased incrementally, accounting for nearly nine out of ten registrations from age 55 onward.
- 3.3. Note that these figures will however be strongly influenced by the pattern of applications from 2018 onwards, and the increase in registrations from transmen aged twenty-four years or under, who accounted for 30% of all registrations in 2018/29 (see Figure 6).

**Figure 4. Proportion of registrations by age group and acquired legal sex, 1993 to September 2019**



Source: Personnes transgenres ayant fait une demande de changement de la mention officielle de leur sexe en Belgique, 2019. Table 1.3

- 3.4. A briefing published by Transgender Infopunt (2019) reported that the average age of applicants dropped following reform. This was most marked among transmen, whose average age was 25.5 years.<sup>7</sup> This is significantly lower than earlier reported figures. For example, a report by Mottzman (2010; 42)<sup>8</sup> notes that the average age for transmen between 1993 and 2008 was 34 years.
- 3.5. Figure 5 shows the distribution of registrations by age *within* each acquired legal sex group following the introduction of self-declaration (effectively April 2018 onwards). Of those registering as transmen, 65% were aged 16 to 24, compared to 27% of those registering as transwomen. Almost 90% of transmen registered under the age of 34, while only just over half of transwomen fell into this age group.

**Figure 5. Distribution of legal sex registrations within acquired legal sex (%) April 2018 – September 2019)**

Age group	Transwomen	Transmen	Total
16 to 24	27%	65%	495
25 to 34	26%	23%	271
35 to 44	16%	7%	135
45 to 54	17%	3%	118
55 to 64	10%	2%	72
65 to 74	2%	1%	19
75 years or over	1%	0%	5
	100% (602)	100% (513)	1115

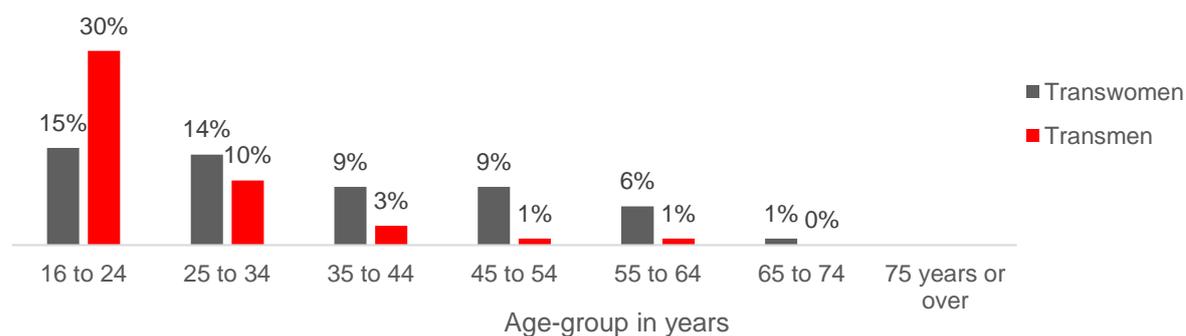
Source: Personnes transgenres ayant fait une demande de changement de la mention officielle de leur sexe en Belgique, 2019. Table 2.2

- 3.6. Using the data provided it is possible to work out the distribution of *all* cases by age and acquired legal sex since the introduction of self-declaration in 2018. This is shown in Figure 6 below. Consistent with the figures above, it shows that the distribution of applications under self-declaration differ substantially by age for each sex.
- 3.7. The single largest group (30% of total) is people aged 16 to 24 seeking to change their legal status from female to male: very few cases seeking that change (6% of total) are over 35. Among those over 35, people were four times more like to register a change of legal sex change from male to female (25% of total) than the other way.

<sup>7</sup> Transgender Infopunt (2019) [Changes in gender registrations continue to peak](#) 21 Nov 2019

<sup>8</sup> See note 4,

**Figure 6. Distribution of all cases 2018/19 by age and legally acquired sex**



Data derived from: Personnes transgenres ayant fait une demande de changement de la mention officielle de leur sexe en Belgique, 2019. Table 2.2

- 3.8. The disproportionate representation of those born female wishing to change their registered sex is consistent with the trend in the UK, where the number of girls being referred for transitioning treatment increased from 40 to 1,806 between 2009/10 and 2017/18, as well as other countries, including Canada, the United States, Finland, the Netherlands (Marchino, 2017).<sup>9</sup>

## 4. Conclusion

- 4.1. The detailed data from Belgium is not only useful to give an idea of what patterns might be expected by age and sex after the introduction of self-declaration of gender identity for legal purposes, but also what the pattern of self-declared gender identities might look like by age and sex in the population more generally.
- 4.2. The analysis is also relevant to current discussions on the use of sex and self-declared gender identity in data collection. In these discussions, it is sometimes stated that the numbers will be too small to have an effect on overall data, based on an assumption (which it is generally agreed cannot be reliably substantiated) of around 1% of individuals having a transgender identity. However, the Belgian figures suggest that the incidence of self-declared transgender identities is likely to vary greatly between population subgroups, so that significantly different results could be obtained for young people in particular, depending on whether sex or self-declared gender identity is collected. Around 5.5% of the Belgian population was born female and is aged between 15 and 24. The figures above imply that self-declared transgender identities are five to six times more common among people born female and aged between 16 and 24 than would be expected if such identities were evenly spread across the population. This is before taking into account non-binary identities. That suggests in turn that statistically significant differences in results are much more likely for this group than for the population as a whole, depending on whether sex or self-declared gender identity is reported.

<sup>9</sup> Marchino, L. (2017) *Outbreak: On Transgender Teens and Psychic Epidemics*. Psychological Perspectives. A Quarterly Journal of Jungian Thought. Volume 60, 2017 - Issue 3: Gender Diversity

## Sources

Institute for the Equality of Women and Men (2019) [Personnes transgenres ayant fait une demande de changement de la mention officielle de leur sexe en Belgique, 2019](#) (January 1993 to 30 September 2019 inclusive)

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Transgender Infopunt (2019) [Changes in gender registrations continue to peak 21 Nov 2019](#)

## MurrayBlackburnMackenzie

### About us

Established in late 2018, MurrayBlackburnMackenzie is a policy analysis collective, made up of Dr Kath Murray, Lucy Hunter Blackburn and Lisa Mackenzie.

[Dr Kath Murray](#) is a Research Fellow in Criminology at the University of Edinburgh. Her doctoral research on stop and search led to major legal and policy reform, for which she received an Economic and Social Research Council (ESRC) Outstanding Impact prize.

[Lucy Hunter Blackburn](#) is a former senior civil servant (Head of Higher Education Division, Head of Reducing Reoffending Division and Director of Policy at Historic Scotland). Lucy is near to completing a PhD at the University of Edinburgh looking at student finance.

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