The Gender Recognition Act 2004

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

If you want, you can give reasons for your answer, or make comments.:
From an Equalities perspective, a self-defined gender identity process would meet the non-discriminatory element of an accessible procedure, whereby the power of self-definition will be delegated back to the person concerned. Furthermore, the change would be related to the human rights of the individual to be able to maintain the privacy of their life under Article 8 of the European Court of Human Rights (ECHR), by removing some “third persons” from the process.

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?

No

If you want, you can give reasons for your answer or make comments.:
From a legal standpoint, we would disagree with the term “until death”. It may be appropriate to review the language of the statutory declaration. For example, the intention to live in an acquired gender might be termed “indefinite” rather than “until death”, if the aim is to recognise a person's lived-in gender rather than an agreement to be entered into, such as marriage. A statement to retain the acquired gender “until death” would also be in conflict with potentially offering individuals the option of getting legal gender recognition more than once in their life.

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

Yes

If you want, you can give reasons for your answer or make comments.:

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

B. to everyone?

If you want, you can give reasons for your answer or make comments.:
In addition to considerations of inclusiveness, this move might be a welcome change for those who suffer discrimination in their homeland and wish to live their lives in accordance with their gender self-declaration while they are in Scotland.

However, if this proposed new format of gender recognition is undertaken, it will be important to inform applicants that this process under Scottish jurisdiction might not be sufficient to provide them with automatic gender recognition in other countries.

5 The Scottish Government proposes that people aged 16 and 17 should be able to apply for and obtain legal recognition of their acquired gender. Do you agree or disagree?

Agree

If you want, you can give reasons for your answer or add comments.:
The council would agree, based on the principle that Age is one of the Protected Characteristics specified in the Equality Act 2010 and should be given due consideration when executing legislative powers in respect of equal opportunities.

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

Not Answered

If you want, you can give reasons for your answer, add comments, or describe your preferred option if none of the options given reflects your views.:
Aberdeenshire Council is not in a position to identify the most suitable option. We propose to leave this question unanswered, which is allowed by the consultation.

Marriage and Civil Partnership

7 Should it be possible to apply for and obtain legal gender recognition without any need for spousal consent?
No

If you want, you can give reasons for your answer or add comments:
As noted by the consultation paper, in Scotland it is not currently absolutely necessary for an individual to get their spouse’s written consent in order to achieve gender recognition, although doing so simplifies the procedures.

In addition, there have been no known applications for a full GRC after an interim GRC has been issued. This indicates that, so far, the requirement for spousal consent has not proved to be a significant barrier in the process.

Marriage is one of the protected characteristics specified in the Equality Act 2010, hence due consideration needs to be given to the rights of both parties.

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.

Yes

If you want, you can give reasons for your answer or add comments:
Following the introduction of the Marriage and Civil Partnership (Scotland) Act 2014, it is now possible for a person who is married or in a civil partnership to get gender recognition without having to divorce first. A person in a marriage can get gender recognition while remaining in that marriage, therefore similar rights should apply to mixed-gender couples in a civil partnership.

This change would align with the obligation to protect against discrimination of civil partnership under the Equality Act 2010. It would also bring Scottish legislation even closer to compliance with a statement made by 12 United Nations technical agencies in 2015, calling on governments to legally recognise gender identity without certain requirements, which included automatic divorce.

However, changing this aspect of civil partnerships may have wider legal implications. Therefore, Aberdeenshire Council recognises that the final decision may be influenced by the outcome of the current review of the Civil Partnership Act 2004.

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

No

If you want, you can give reasons for your answer or add comments:
Legal gender recognition should remain as a ground for divorce or dissolution. Marriage is one of the protected characteristics specified in the Equality Act 2010, hence due consideration needs to be given to the rights of both parties, including the spouse of the individual who attained gender recognition.

As noted in the consultation paper, there have been seven divorces in Scotland between 2010 and 2016 on this basis. This indicates that the option to request a divorce or dissolution should remain available to the spouse of the transgender person, to respect their freedom of choice, especially if spousal consent is potentially removed as one of the requirements for obtaining a full GRC.

Other aspects of the 2004 Act

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

Not Answered

If you answered Yes, describe the changes you consider are needed:
We propose to leave this question unanswered.

11 Should a person who has been recognised in their acquired gender under the law of another jurisdiction be automatically recognised in Scotland without having to make an application?

Yes

If you want, you can give reasons for your answer or add comments:
Aberdeenshire Council would welcome reassurance that the Scottish Government guarantees proper processes are in place and data is held appropriately.

Non-binary people

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

Yes

If you answered No, and if you want, you can give reasons for your answer:
This change would align Scottish legislation more closely with emerging international human rights law.

If this change is enacted, local authorities will welcome further guidance in order to support any systems and process change to allow compliance with regulations.
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 4: Full recognition using proposed self-declaration system, Option 6: Amendment of the Equality Act 2010

If you want, you can give reasons for your answer, add comments or, if you think none of Options 1 to 6 is suitable, describe your preferred option.

14 At paragraph 7.26. and in Annex J we have identified the consequential legal impacts if non-binary people could obtain legal gender recognition using the proposed self-declaration system.

Not Answered

If you answered Yes, describe the impacts you have identified:

Conclusion

15 Do you have any comments about, or evidence relevant to:

Not Answered

If you answered Yes, add your comments or evidence:

There was insufficient supporting data and evidence in these documents. Further guidance is welcomed if a Bill is introduced.

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

Not Answered

If you answered Yes, add your comments:

Aberdeenshire Council requests that this Review consider the changes that would be required from local authorities and the public sector, particularly in relation to service provision.

It would be positive if practical considerations were taken, supported by an additional EIA applied to different case studies. For example, how can the safety, dignity and freedom of expression of non-binary people be best ensured when arranging placings in residential establishments such as prison, care homes, refuges and NHS?

About You

What is your name?

Name:

What is your email address?

Email:

Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Aberdeenshire Council

If you are responding as an organisation and want to tell us more about your organisation’s purpose and its aims and objectives, you can do so here.

If you are responding to this consultation as an organisation and want to tell us more about your organisation’s purpose and its aims and objectives, please do that here.

Where are you resident?

Scotland

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

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