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.

Disagree

If you want, you can give reasons for your answer, or make comments:
Such an extraordinarily high degree of self determination of a person's gender regardless of or even contrary to the biological sex is incommensurable with state of the art psychological findings. The respective diagnostic criteria for gender dysphoria or similar presentations are set forth in standard classification systems such as APA's DSM-5 and the UN's ICD-10 (currently under revision). ADF International welcomes efforts to reduce stigmatization and opposes unlawful discrimination of concerned persons and/or groups. However, gender dysphoria is a serious, but extremely rare condition. This means that individuals with such presentations must receive access to the best possible standard of care. Diagnosing and helping those in need requires a skilled specialist and should not be left to the individual in order to avoid poor treatment and danger of worsening the condition if left without proper therapy options.

2 Should applicants to the proposed gender recognition system in Scotland have to provide a statutory declaration confirming they know what they are doing and intend to live in their acquired gender until death?

Yes

If you want, you can give reasons for your answer or make comments:
Applicants should seek professional advise prior to considering potential further options. However, making an application for gender recognition itself gives testimony of the importance of the decision to those concerned. The decision will have great impact on their lives and their social environment. Such decision should not be taken lightly or under undue influence from others. This makes it necessary to put in place certain standards ensuring that applicants a) have received the necessary professional advise and b) are certain of their choice and its consequences.

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:
Gender dysphoria is as rare as it is serious. Persons with such presentations have testified that they felt nothing less than their sanity to be at stake. To ensure the best possible treatment and resolution of the dysphoria and in the light of the significant impact of registering any changes, this is a choice not to be taken lightly. This should be reflected by limiting the number of repeated applications.

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

A. only to people whose birth or adoption was registered in Scotland, or who are resident in Scotland?

Yes

If you want, you can give reasons for your answer or make comments:
This is a matter of concern not only to the individual, but also to the applicant's community. Values in society may vary and legal recognition should be reserved for people within a particular state's jurisdiction in order to avoid undue interference with other democratic states' domestic affairs. As, among others, para. 5.03 of the consultation materials suggests, other domestic affairs could be concerned and foreign governments will not appreciate potential legal uncertainty or even illegality as measured by applicable to their citizens law.

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?

Disagree

If you want, you can give reasons for your answer or add comments:
Gender dysphoria in childhood is a special category by state of the art psychological classification. This is to account for an increased vulnerability of persons of young age. Research also shows that in many cases, Gender dysphoria decreases after adolescence as young adults gain a better and more stable understanding of themselves, their role in society and possible solutions. Thus, a certain maturity is required to make such decisions and one should be careful to recommend likely irreversible decisions before such maturity is reached.

6 Which of the identified options for children under 16 do you most favour?
Option 1 – do nothing for children under 16

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.:
see Q. 5 above.

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.:
The Scottish Government's position to seek a balance between spouses, avoiding an undue exercise of power by one over the other is appreciated. Full recognition shall therefore continue to require spousal consent.

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.

Don't know

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

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.:
The existing system should not be changed in this aspect. Consequently, legal gender recognition shall continue to be a ground of divorce.

Other aspects of the 2004 Act

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

No

If you answered Yes, describe the changes you consider are needed.:

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?

No

If you want, you can give reasons for your answer or add comments.:
As explained above, legal gender recognition may affect domestic issues of another state. The same may be true for Scotland and therefore, the democratically legitimized government of Scotland should retain the authority to make relevant decisions.

Non-binary people

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

No

If you answered No, and if you want, you can give reasons for your answer.:

ADF International strictly opposes any form of unlawful discrimination. "Non-binary" people must be treated equal in all regards which do not pertain to their particular condition, as diagnosed by qualified medical personnel. This principle is already found in domestic equality law and an additional enactment would unduly complicate legislation, contrary to the principle of good governance.

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.

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.

No
If you answered Yes, describe the impacts you have identified.:

Conclusion

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

No

If you answered Yes, add your comments or evidence.:

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

Yes

If you answered Yes, add your comments.:

“Gender” as a political concept is characterized by a certain degree of vagueness. This is due to the theoretical foundations of the concept which are constituted by constructivist, performative and subjective elements. As a result, the concept lacks definition and can thus quite easily be used to achieve undesirable ends. ADF International advocates for in-depth check of any arguments set forth by proponents of self-determination of gender. In particular, the increasing notion of subjectivity in antidiscrimination discourse should be carefully balanced against the greater common good. While any member of society is well advised to not discriminate on the basis of unlawful grounds, not all discernment is discrimination in the legal sense. Equality before the law must not be mistaken with “sameness”. By law, discrimination means treating people in analogous situations differently, or people in different situations alike, without objective and reasonable justification. This principal applies to each and every member of society.

About You

What is your name?

Name: [ ]

What is your email address?

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Organisation

What is your organisation?

Organisation:

ADF International

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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.:

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