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:
We agree that the system of requiring medical evidence to confirm gender identity may be contrary to Article 8 of the Human Rights Act and should be amended.

Any system for self-declaration should be simple and not cost prohibitive.

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:
It should be a point of principle that third party agencies (Gender Recognition Panel) or individuals should not have a power to determine an individual’s gender identity.

Individuals will be making very serious decisions about their lives, so they need to be informed and aware of the implications of such changes. A statutory declaration by an applicant should be sufficient.

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:
In Question 2 we indicated that we agreed that those seeking legal gender recognition make a statutory declaration. The essence of this seems to be that such a declaration will be a major decision and almost final i.e. they intend to live in their acquired gender until death. There may however be exceptional circumstances that would lead to a subsequent declaration.

As such, we believe that there may need to be some flexibility so would suggest there be a limit on the number of times a person can get legal gender recognition. Perhaps a limit of two might be appropriate. It is important that changes to the Register are not made regularly with impunity.

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?

If you want, you can give reasons for your answer or make comments:
We believe that if the Scottish Government takes forward legislation to adopt the self-declaration system for legal gender recognition that this arrangement should only be open to people whose birth or adoption were registered in Scotland or who are resident in Scotland.

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:
This would complement the existing legal and democratic rights of 16-17 year olds in Scotland.

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

Option 2 – court process

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:
We agree that children under 16 must have a right to determine their gender identity but this must be balanced by protections from abuse or coercion offered by our legal system.

It should also recognise that age is not always the determining factor on the capability of a young person to make an informed decision and that 12-15 year olds may have that ability and that should be respected.
It would therefore seem appropriate that the question of capability for under 16s should be determined by a court process.

Any proposed changes must be compliant with the Children and Young People Act 2014 to ensure that the impact on their wellbeing is fully taken into account within the national practice model.

**Marriage and Civil Partnership**

7 Should it be possible to apply for and obtain legal gender recognition without any need for spousal consent?

Yes

If you want, you can give reasons for your answer or add comments.: It should not be in the power of any individual to give or deny consent to an adult’s gender identity regardless of their relationship.

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.: We can find no rational justification why the state should deny any partnership their choice in the way they want to live their lives or how it is recognised.

The logic would be to amend the Civil Partnership legislation to reflect the proposed changes.

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

Yes

If you want, you can give reasons for your answer or add comments.: We can find no rational justification why the state should deny any partnership their choice in the way they want to live their lives.

It would be more beneficial to remove all reference to a need for ‘grounds for divorce’ for every married couple.

**Other aspects of the 2004 Act**

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

Yes

If you answered Yes, describe the changes you consider are needed.: Section 22 prohibits a person who has acquired protected information in an official capacity to disclose the information to any other person. Protected information includes information about applying for gender recognition certificates and also includes information about the person’s gender before it became the acquired gender. There are a number of limited exceptions to this including where the person has consented, in connection with a court order, for prevention / investigation of crime or in connection with social security or pensions.

The difficulty is in how this section has been interpreted since 2004. It appears to be accepted that section 22 grants a transgender person the right to request that all references to former name and gender are removed to ensure that their former identity is not revealed. In order to achieve this, organisations would be expected to amend all electronic records and to replace paper records with new records. Material that needs to be kept and which contains information about the transgender person’s change of status should be sealed as confidential and kept by the HR manager and only viewed by other staff if this is deemed necessary to perform their duties. Whilst the Council has had only one or two requests of this nature, it should be noted that failure to comply with section 22 is a criminal offence.

This raises two issues for a local authority. Firstly there are documents that cannot be changed retrospectively such as summary warrants, registered leases, dispositions and ASBO proceedings to name a few. The exemptions provided by the 2004 Act do not cover these and there is no official guidance on how these matters should be dealt with.

Secondly, in practice, this might be difficult for a local authority to comply with in that their computer systems may not technically allow such changes. Replacing and / or amending paper records could be a huge task and in some cases it will be obvious that these have been amended thus defeating the purpose of amending the records in the first place.

The expectations of the transgender person in seeking to have their records amended will often be beyond what can be achieved in practice and clarification on these issues, either by amending section 22 or by providing more detailed guidance, would assist both local authorities in managing their records and the transgender person in understanding what is required by those bodies holding their information.

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
We should not discriminate against a person with protected characteristics regardless of their origins.

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:

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 5: Incremental approach, 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:

As a public authority we are aware of the practical issues associated with creating a new protected characteristic. We have learned over the past 20+ years of equality laws that an incremental approach to enhanced data gathering and reporting is possible. However we also need the public’s confidence that this information is being used to reduce barriers and promote equality and this takes time and trust.

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.

Yes

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

The Housing (Scotland) Act will almost certainly only be one of a number of areas in which there would be legal impacts of introducing a non-binary people category. For example, in the area of Building Control, Licensing and Planning, there will be issues regarding the provision of changing rooms or toilets which would be based on specific male and female gender.

Recent reports from the USA over transgender people facing discrimination over their use of toilets should provide a lesson that as a country we should proactively tackle such issues by having an agreed national guidance for local authorities based on best practice.

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:

Dundee City Council welcomes the proposed changes to the Gender Recognition Act.

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:
Dundee City Council
Local authority

Please note that, as discussed with the officers leading the consultation, this is a DRAFT response from Dundee City Council subject to confirmation at a Council meeting on 12 March. The Council's timetable of meetings has changed recently, meaning we were unable to obtain formal approval for the response by the 1 March deadline.

Where are you resident?

Scotland

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

Publish response only (without name)

Dundee City Council has confirmed that the response was agreed by Committee without any changes to the draft they sent us.

Scottish Government
16 August 2018