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:
This would support compliance with internationally agreed best practice and promote Human Rights.

When any changes are made we believe there may be a need for clarity about what self-declaration effectively means i.e. Gender can be self-identified and self-declared and may not always indicate the biological sex of the person. There will be implications for a number of areas of Public Services in particular Armed Forces, Prisons, and hospital services whose means of operation are (on some occasions) constructed around separating people by biological sex. The proposed changes in Legislation might result in a need to organise services such as these differently and a need to consider how to overcome potential risks of any changes both to the individuals concerned and to others. During this transition, if it unable to be enacted prior to legislative change there may potentially be some need for clarity about biological sex of the individuals using the service.

Although self-declaration may help some individuals avoid unwanted health intervention we would be keen to emphasise that a change to self-declaration does not necessarily reduce the need for some citizens for counselling, psychiatric support or medical intervention in these matters and these services should continue to be available for individuals who may want/need them.

It is also thought that a common sense, sensitive approach is needed regarding issues of gender and that more work is needed to build a more inclusive Scotland where individuals can make choices about their own lives and how they express themselves without fear of prejudice.

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:
Although we are generally in agreement with this it is thought that some individuals may have concerns about agreeing to live in their acquired gender till death as the implication is that they cannot change gender again- this is not only a potential misrepresentation but possibly a source of anguish for an individual who wants to keep the "commitment" they made. In addition to this it is thought that "to live in their acquired gender" means in practice and that this could mean something different depending on culture and societal attitudes and understanding of Gender which are likely to change over time.

3 Should there be a limit on the number of times a person can get legal gender recognition?
No

If you want, you can give reasons for your answer or make comments:
Although it is recognised that there may be potential difficulties caused to individuals of frequent changes of gender we do not believe the right to change gender should be restricted.

There should be accessible support available for individuals and guidance attached to application that signposts individuals to these, especially those who are seeking changes more than once in their lifetime. It may be appropriate to consider ways of safeguarding individuals when potential repeated changes to Gender identity could be harmful.

It is thought that the application process could incorporate a six month period of reflection (along the lines of other countries like Denmark) which may mitigate against the potential risk of frivolous applications as well as supporting a period of transition for the individual.

We believe the restrictions that mean individuals can only change their forename once could limit the right to change Gender Identity and this needs to be considered by the Scottish Government as having a potential negative impact on Gender Recognition.

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?

If you want, you can give reasons for your answer or make comments:
We think Scottish legal changes in this matter should be about supporting the rights of people who reside in Scotland (as well as those whose birth/adoption records are held here). We are concerned that there may be potential risks of “Gender Recognition” Tourism that might not only overburden our system but cause additional problems for those who live elsewhere on their return to countries of residence.

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.:

This matter should be no different to other matters in Scotland where we recognize 16 as an age where young people can make decisions as an adult.

6 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 would be keen to see a specialist Court process similar to the Domestic Abuse Courts where there is a greater degree of knowledge and understanding of the complex issues involved.

In general we feel that the personal decision of the individual is the most important one but recognise the need for those under 16 to receive care, treatment and medical assistance as appropriate their needs and future. We would not consider Option One and appropriate option.

We would have concerns about Option 3, parental application as we recognise that in such matters the parental opinions will not always align with what is in the best interests of the child or young person.

Option 4, minimum age of 12 limit the opportunity for individual circumstances to be considered for young people under 12. This is seen as too restrictive and has a potential to cause difficulties for any child under 12 who may have treatment or medical assistance from receiving appropriate recognition.

Option 5, applications from capable children may involve additional assessments of capacity for children and would restrict gender recognition perhaps excluding children for whom decisions could should be made in order for them to live as the gender that is right for them.

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.:

We believe that to require spousal consent would be an infringement of the rights of the person wishing to apply.

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.

No

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

Under current Civil Partnership legislation this would not be practical and couples in Civil Partnership where one had changed Gender would experience a lack of privacy about this fact. If the law relating to Civil Partnerships was extend to include Male/Female couples then our opinion would be likely to be Yes.

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.:

It is thought that it is an infringement of rights for the partner of the person identifying their acquired gender for them to be expected to remain in their marriage if they did not want this. We are concerned that interpreting gender change as ‘behaviour of the defender that makes it unreasonable for the pursuer to live with the defender’ may be open to challenge because we know that this would not always be the case in all marriages and may be an unhelpful way of viewing gender change generally. Although it is recognised that the ground of irretrievable breakdown is available we are concerned that the waiting time of one year would be expected. If the suggestion of a six month period of reflection before full legal changes were agreed then that may give a transition and reflection period for spouses (if notified) prior to having opportunity to divorce related to legal gender recognition.

Other aspects of the 2004 Act

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

Don’t know

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

This is an area that we would need to explore further before commenting.

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.:

Non-binary people

12 Should Scotland take action to recognise non-binary people?
If you answered No, and if you want, you can give reasons for your answer.:
It is considered to be important that Scotland is as inclusive as possible. Actions which only describe Gender in 3 ways (Male, Female, and Non-binary) may not be inclusive enough and may still exclude some peoples preferred identity. We believe there is further work needed by Scottish Government on this issue and that it may be too complex to include in any changes to the 2004 Act.

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.

None of the above options

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.:
We recognise that this is a complex area and believe that further exploration is needed by Scottish Government before any proposed changes.

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.:
We think this is a complex matter which needs and merits further exploration by Scottish Government.

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.:
We recognize, and are in agreement that it is important that Scottish Government takes action in the form of Legislative change in order to promote cultural change in matters of Gender.
We look forward to a future where Gender stereotypes are less apparent and where individuals can express their gender in the way they choose.
If the Self –Declaration becomes law there are a number of areas that Dundee Health and Social Care Partnership would want to raise as areas that may need to be addressed.
These include
1. Employment of staff in roles where the person being cared for may express a gender preference that may be exempt from Equality legislation e.g. female care staff etc where there is a degree of intimate personal care might require same-sex carers
2. Same sex hospital ward and bed areas
3. Housing and households with children and the recognised need for “separate bedrooms based on age and gender rather than on need for private, personal space for all children above certain ages.

About You

What is your name?

Name: Joyce Barclay, Senior Officer

What is your email address?

Email: [Redacted]

Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation: Dundee Health and Social Care Partnership (Officer Response)
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?

Not Answered

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

Publish response with name