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 would agree except in respect of retaining wording of the statutory declaration specified by the 2004 act, which has been a barrier for some. “Acquired Gender” was deliberately chosen in line with the UK government’s stance up to and including at their defeat in the European Court of Human Rights Goodwin-v-UK case that sex was determined by chromosomes and could not change; but the court ruled that sex was more than simply chromosomes and gave protection under the convention’s grounds of “discrimination by birth” by ruling that, in the light of medical evidence it was no longer safe to assume transsexualism was not inborn. The requirement to agree with the phrase “acquired gender” is an aggression that denies that our gender can be inborn, which is the undeniable experience of some, especially those aware of our gender as infants.

The 2004 act statutory declaration also requires agreement that the “acquired gender” is “new”, which has the same problem, and is additionally a requirement to lie by those who have been transitioned for years.

We see no reason why a new text cannot be adopted that, in this respect, simply states the sex to be legally recognised, that the belief and intention is that this is a permanent status for all purposes, that all identification documents will be changed, where possible to match, and no criminal purposes are intended.

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.

If the idea of a delay for reflection is adopted, despite it not having been needed in the Republic of Ireland, there must be exception when the applicant has been socially transitioned for a considerable time (say 6 months or more) already, whether adult or minor, or has undergone irreversible surgery affirming their gender.

If there is any thought that the correction of everyday working identity documents should require there to be a GRC then such delay would have the potential to cause danger to applicants.

We repeat our comments above regarding the wording “newly acquired gender”:

We would agree except in respect of retaining wording of the statutory declaration specified by the 2004 act, which has been a barrier for some. “Acquired Gender” was deliberately chosen in line with the UK government’s stance up to and including at their defeat in the European Court of Human Rights Goodwin-v-UK case that sex was determined by chromosomes and could not change; but the court ruled that sex was more than simply chromosomes and gave protection under the convention’s grounds of “discrimination by birth” by ruling that, in the light of medical evidence it was no longer safe to assume transsexualism was not inborn. The requirement to agree with the phrase “acquired gender” is an aggression that denies that our gender can be inborn, which is the undeniable experience of some, especially those aware of our gender as infants.

The 2004 act statutory declaration also requires agreement that the “acquired gender” is “new”, which has the same problem, and is additionally a requirement to lie by those who have been transitioned for years.

We see no reason why a new text cannot be adopted that, in this respect, simply states the sex to be legally recognised, that the belief and intention is that this is a permanent status for all purposes, that all identification documents will be changed, where possible to match, and no criminal purposes are intended.

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.

Whilst concerned that gender recognition not be seen as frivolous we do not see a stated limit to the number or spacing or applications allowed as helpful. If someone were thought to be doing it for publicity, or to bring the process into disrepute then the remedy of a prosecution for false statutory declaration is an available remedy.

Such a limit would also be inappropriate where recognition as non-binary, or non-gendered is not available.

The limit in Scotland on name changes must be considered alongside this question. It might seem to have the same effect as limiting the number of gender recognition applications. Name change associated with gender recognition should be exceptions to those limits, whether at the time of application, or, more likely in advance.
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.: Recognition should also be available in Scotland, in advance, for those intending to visit/study/work in Scotland where they have not already recognition from their country of birth.

This is unlikely to be abused as a country of birth that has no recognition system & so ignores their citizen's human rights will pay no heed to the Scottish recognition either.

The intention that “automatic recognition should be granted in Scotland where a person has been recognised in their acquired gender in another country or elsewhere in the UK” is however deeply worrying, as is the present system. Perhaps what is meant is that such persons' legal gender shall automatically be deemed that recognised by a gender recognition process elsewhere, but the statement implies a a Scottish recognition would need to be issued, albeit automatically. This would seem to create quite unnecessary uncertainty, & perhaps discriminatory extra bureaucracy for travellers/visitors/workers from elsewhere, including from elsewhere in the UK.

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. Doyou agree or disagree?

Agree

If you want, you can give reasons for your answer or add comments.: We strongly agree that Scotland must recognise the legal gender of 16 and 17 year-olds (and those younger).

There was never any justification for the exclusion of under-18s from the 2004 act. The only relevant evidence presented was a totally false assertion that no one could be sure of gender identity until 18. There is no reason why a child/minor cannot be certain of their gender identity at the same age whether it matches that assumed from their genitalia at birth, or not.

Denial of viable identity, and the safety of identity documentation is in contravention of the the UN Convention on Rights of the Child, which applies in the UK, and with which otherwise Scotland proudly seeks to abide.

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

Option 3 – parental application

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 are unhappy that only one choice of answer is allowed here, as we strongly favour both Option 3 and, where necessary, Option 5.

There was never any justification for the exclusion of under-18s from the 2004 act. The only relevant evidence presented was a totally false assertion that no one could be sure of gender identity until 18. There is no reason why a child/minor cannot be certain of their gender identity at the same age whether it matches that assumed from their genitalia at birth, or not.

Denial of viable identity, and the safety of identity documentation is in contravention of the the UN Convention on Rights of the Child, which applies in the UK, and with which otherwise Scotland proudly seeks to abide.

The parental application option may be fine in most cases, but the potential for frustrating complications, enumerated in the notes, require that a child should also be able to apply without those complications. This is about the rights of the child, & the best interests of the child, and requiring a child to find someone to accept PRRs, or a court to sort out conflicting wishes from people with PRRs, when simply dealing with the child's own application should suffice, would be inexcusable.

We therefore call for applications to be accepted either from parents (or others with PRRs), or capable children.

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.: Although Scottish marriage law is better than that in England and Wales it is still segregated by the gender mix of the marriage partners, and the rights, responsibilities, and legal provisions differ too. As long as that is significantly true a spouse must consent to a change between the two forms of marriage, or from civil partnership.

As soon as there is a single, equal marriage law, allowing a competent and consenting person of any gender to marry another person of any gender - as has been legalised in most countries where mentions of the sex or gender of partners was simply deleted from existing laws - then any such “veto” should be swept away.

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.
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.

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:

The failings of the 2004 act in respect of privacy have been a major deterrent to some qualified to be recognised under the act. People living "stealth" (without the generality of the public being aware of their medical history of transsexualism) are particularly affected by the Gender Recognition Register (a national register of trans people open to a long list of agencies, that should be illegal under human rights law, and has not been emulated anywhere else), and the need to disclose that one has applied for, or been granted a GRC before Section 22 can apply.

It needs to be recalled that trans people, along with other LGBT people are often amongst the first to be persecuted, as we were in the 1930s - the circumstances that led to current international law on privacy and other human rights.

Section 22 has diluted the understanding that data on gender transition - including when no application has been made for legal recognition - which combines both sexual and medical information, be treated as of the highest protected status, unless the data subject has freely given specific, and fully informed consent.

We understand there has been not a single case where Section 22 of the act has been used, and we believe this is both because there is no requirement that the data subject be informed of an breach of their privacy, and because it falls to data subject to raise legal action.

Section 22 and the general data protection & privacy of trans people is now held in such contempt that forms, surveys, questionnaires, and databases now routinely seek to "capture" transgender people, ignoring any question of Section 22 protection, any provision of detail upon the use of the data, the data controller, or how it may be amended or removed. This includes within the NHS.

This has huge potential for bringing danger. As Section 22 was supposed to recognise, not everyone around can be trusted with this information, or would use it benevolently. There is still considerable misunderstanding, and some hatred too.

We strongly believe that Section 22 provides false promise of privacy & fails in too many cases to send its intended message of respect for privacy. At the least amendment is needed so that a breach must be notified, where possible, and without delay, to the data subject; a breach should also be a criminal offence.

We an see no justification for what has become in some organisations routine checking of the register. Those changing name, or seeking legal recognition of gender, are aware that they must not commit fraud as a result, and that should be sufficient. People are aware of the needs of their doctors and will provide what information is needed, where their safety is ensured.

The registration system needs amendment so that the excuse for a Gender Recognition Register (supposedly to enable tracing of the link between the original birth registration and the new registration) is removed, and the register should be ended, and existing data upon it securely deleted. One way to do that would be to amend the original registration, allowing outdated data to only be disclosed on copy certificates issued to the data subject, or upon court order. Such privacy or better, is normal in most countries.

Where children will be able to receive legal gender recognition it is even more vital privacy shortcomings be corrected.

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.

The intention that "automatic recognition should be granted in Scotland where a person has been recognised in their acquired gender in another country or elsewhere in the UK" is deeply worrying, as is the present system. Perhaps what is meant is that such persons' legal gender shall automatically be deemed that recognised by a gender recognition process elsewhere, but the statement implies a a Scottish recognition would need to be issued, albeit automatically. This would seem to create quite unnecessary uncertainty, & perhaps discriminatory extra bureaucracy for travellers/visitors/workers from elsewhere, including from elsewhere in the UK.

We can foresee no circumstances where recognition elsewhere would be to a lesser standard than in Scotland and therefore need scrutiny, or rejection.

Although we recognise that international conventions apply to recognition of marriages and birth certificates, we can see no reason why recognition of gender elsewhere should be any less automatic in Scotland than those other vital documents.
**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 3: Limited document changes, Option 4: Full recognition using proposed self-declaration system

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:

Yes

If you answered Yes, add your comments or evidence:

In respect of (c) The age at which children are aware of their gender is not necessarily any different whether or not it matches that assumed at birth. Increasingly families tend towards acceptance of children's statement of their identity as soon as they have the words, whereas, over history that has usually been cause for abuse and punishment. Privacy concerns in the UK have mostly prevented such cases being public, but there are increasing numbers of well documented cases overseas. These are intense cases that are very unlikely to "desist".

The UK survey that found an average age of 8 for a trans adult having first realised 'something was not right" was conducted amongst late-transitioning people and not representative of diversities that are certain as infants.

We understand Colombia has no minimum age to recognition.

Several US states and Canadian provinces now have recognition law that allows gender recognition of younger minors, by application of their parents. Typically simply a therapist's letter is required as evidence, but a court process can be involved. Ages of 6 onwards are common. We know of no problem after such recognition, and families report that having recognition provides reassurance for their child during otherwise stressful times when faced with potential denial of medical intervention at puberty, or attempts to exclude them from participation in school as their real gender, or attempts to exclude them from washrooms, changing rooms, sports, etc.. Research, led by Olson, K., that is ongoing on the wellbeing of children who are transitioning with family support seems to clearly indicate that all ways a child can feel affirmed are beneficial.

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

Yes

If you answered Yes, add your comments:

The failings of the 2004 act in respect of privacy have been a major deterrent to some qualified to be recognised under the act. People living "stealth" (without the generality of the public being aware of their medical history of transsexualism) are particularly affected by the Gender Recognition Register (a national register of trans people open to a long list of agencies, that should be illegal under human rights law, and has not been emulated anywhere else), and the need to disclose that one has applied for, or been granted a GRC before Section 22 can apply.

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We an see no justification for what has become in some organisations routine checking of the register. Those changing name, or seeking legal recognition of gender, are aware that they must not commit fraud as a result, and that should be sufficient. People are aware of the needs of their doctors and will provide what information is needed, where their safety is ensured.

The registration system needs amendment so that the excuse for a Gender Recognition Register (supposedly to enable tracing of the link between the original birth registration and the new registration) is removed, and the register should be ended, and existing data upon it securely deleted. One way to do that would be to amend the original registration, allowing outdated data to only be disclosed on copy certificates issued to the data subject, or upon court order. Such privacy or better, is normal in most countries.

Where children will be able to receive legal gender recognition it is even more vital privacy shortcomings be corrected.
About You

What is your name?

Name: [Redacted]

What is your email address?

Email: [Redacted]

Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation: Enfranchise

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.

Enfranchise is a private, global, human rights and peer support group of women who had transsexual childhoods. We have since the 1990s researched and worked to improve the medical care and access to rights of such children, and of the adults they become. Our perspective is cross-cultural, and places the best interests of the child above anything else.

Where are you resident?

Rest of the UK

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

Publish response only (without name)