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:
Pathologization has also been consistently used to deny, restrict and condition trans and gender diverse people’s access to very basic rights, including legal gender recognition. Pathologization sits within the international human rights framework as a specific root for human rights violations. Self-declaration depathologizes the legal gender recognition process, thus removing the human rights violations currently perpetuated by current the UK Gender Recognition Act 2004.

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:
Legal gender is a concept that only applies to transgender and intersex persons. Individuals accessing legal gender recognition are held to standards that cisgender (non-trans) and dyadic (non-intersex) have never been asked to conform to. As such, requiring those accessing legal gender recognition to complete a statutory declaration as described above creates a two-tiered process that places more stringent requirements upon trans and intersex individuals accessing legal gender recognition than upon cisgender and dyadic individuals. This makes the process unequal, thus it should not be a requirement.

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:
As there is no such thing as ‘legal gender’ until a person wishes to change their gender marker, limiting the number of times a person can change that gender marker is, once again, placing more stringent requirements upon trans and intersex people than would ever be expected from cisgender and dyadic persons. Furthermore, such a restriction would be unenforceable in a court of law and such, should not be included in the revision of the gender recognition act.

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:

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:
16 is the age at which young people in Scotland are deemed to have full legal capacity. Thus, access to legal gender recognition must be accessible to young people aged 16 and older.

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:
As a child aged 15 or under does not have full legal capacity, the application for gender recognition should be made through a parent or guardian with the young person’s consent. To deny anyone access to legal gender recognition is a violation of their human rights, thus the UK Gender Recognitions Act must be reformed to extend this to all persons, not just to adults.

Marriage and Civil Partnership

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

Yes
A spousal veto, or requiring spousal consent, is a violation of the individual’s human rights. No person should have this level of control over another individual, especially over their identity. To do so is a violation of basic human rights principles as outlined in the UN Charter of Human Rights.

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.

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

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.

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.

A refusal to recognise an individual’s gender identity is a violation of their basic rights under the UN Charter of Human Rights. Further, cisgender and dyadic individuals are not required to “prove” their gender identity, thus to require trans and intersex individuals to do so places unfair restrictions upon those individuals, restricting their rights and creating a two-tiered system that places cisgender and dyadic individuals above trans and intersex individuals.

Non-binary people

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.

Non-binary gender recognition already exists in numerous states across the globe. Malta, Argentina, New South Wales in Australia and Oregon and California in the United States of America all allow non-binary people to have their gender fully legally recognised through self-declaration. To deny legal gender recognition to non-binary individuals is a violation of their right to privacy, amongst other rights as per the UN Charter of Human Rights.

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.

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

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

No

If you answered Yes, add your comments or evidence.

Do you have any further comments about the review of the Gender Recognition Act 2004?
If you answered Yes, add your comments:

The UK has a chance to amend the Gender Recognitions Act 2004 in line with international best practice. Trans and intersex people have existed for as long as humans have existed. All that has changed is our awareness of their existence. If the UK/Scottish government wishes to create a truly welcoming society for all individuals, then reforming the process for legal gender recognition according to the Scottish Trans Alliance’s recommendations is an essential part of that process.

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:
Global Action for Trans Equality - GATE

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.
We are an international organization working on gender identity, sex characteristics and, more broadly, on bodily diversity issues.

We work on supporting trans, gender diverse and intersex movements by producing and making available critical knowledge, promoting their access to organizational resources (funding, training, mentoring, personal and professional supporting systems), and advocating with them to make our human rights a lived reality.

Where are you resident?
Rest of the World

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

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