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.:

HIV Scotland believes that the process of legal gender recognition must be made as easy as possible for all trans people who wish to formally change their gender. Moving to a self-declaration process will mean this process is less time consuming and intrusive that the current system.

The current system supports outdated understandings, requiring medical evidence and a certain level of medical transition. Requiring proof that an individual has lived in their gender for a defined period rests on the opinions of a panel who must arbitrarily decide if that person exhibits sufficiently genuine trans practices and behaviours. Quite apart from the demeaning nature of this process, a panel's decision can only ever be a rough proxy for a person's understanding of their own gender identity.

Self-declaration will make life slightly easier for trans people, and will have no impact whatsoever on cisgender people.

In April 2017, HIV Scotland welcomed research conducted by the National AIDS Trust (NAT) which identified how we could work to improve HIV prevention, treatment and care for trans people in the UK.

Among the findings, they established that disproportionately high levels of depression, anxiety, suicidal ideation, experience of violence and drug use can lead to a lack of concern among some trans people for their general health, sexual health and, where relevant, poor HIV treatment outcomes. They also found that the risk of acquiring HIV could be increased by certain gender affirming behaviours such as unregulated use of hormones or sex within an unequal power relationship.

Making legal gender recognition easier for trans people is not an immediate solution for either of these sets of problems. However, the absence of legal equality for trans people is part of the institutional marginalisation that legitimises transphobias, both inter-personal (e.g. rejection or partner violence) and structural (e.g. stigmatising media representations or barriers to appropriate healthcare). These intersecting scales of transphobia establish the context for trans peoples' daily lives, limiting their socio-cultural choices and opportunities and affecting their psychological wellbeing and, potentially, their commitment to their own sexual health.

Conversely, making gender recognition feasible by reducing the financial, logistical and emotional burdens to a minimum is a positive institutional measure. As such it can play a part in supporting positive gender affirmation among trans individuals; publicly legitimising trans people and their requests for access to appropriate education, healthcare, employment and so forth; and supporting the empowerment of trans communities with consequent benefits across a range of factors related to health and wellbeing and beyond.

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.:

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.:

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.:

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.:
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.: 

**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.: 

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.: 

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?

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?

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?

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.


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

No

About You

What is your name?
Name: Nathan Sparling

What is your email address?
Email: [REDACTED]

Are you responding as an individual or an organisation?
Organisation

What is your organisation?
Organisation: HIV Scotland

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.: HIV Scotland is the national HIV policy organisation for Scotland. We exist on behalf of all those living with and at risk of HIV to ensure that Scotland has responsive policies, quality services and a supportive environment that enable people living with or at risk of HIV in Scotland to live healthy and fulfilling lives.

Where are you resident?
Scotland

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

Publish response with name