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:
This proposal would bring Scotland in line with international best practice. It will promote the human rights of transgender people - self-determination, privacy and dignity - within the process by which they may obtain legal gender recognition.

The current system of requiring medical evidence rather than simply the testimony of the individual suggests that trans people themselves are not the best placed to make decisions about their gender and lives.

The current evidence requirements are intrusive and humiliating, violate trans people's right to privacy, and further stigmatise trans identities.

As a Council we already include and work with trans people on the basis of their self-declared gender identity, and so welcome gender recognition law being brought in line with this practice.

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:
Requiring that a person provide a statutory declaration will allow people to give due consideration to the consequences of their decision, and will ensure that it would be a criminal offence to deliberately make a false application.

3 Should there be a limit on the number of times a person can get legal gender recognition?

Don't know

If you want, you can give reasons for your answer or make comments:
It is already the case that changing your legal gender is not an irreversible decision. However changes to birth certificates are limited.
The SG say there may be concerns that applications might be submitted frivolously.
Suggestion that a period of time could elapse before being able to legally change again.
Does having limitless number of times to change counteract with the statutory declaration mentioned in 2 where someone must confirm they know what they are doing and intend to live in their acquired gender until death?

4 If the Scottish Government takes forward legislation to adopt a self-declaration system for legal gender recognition, should this arrangement be open:

C. Don't know

If you want, you can give reasons for your answer or make comments:
In (A) for people who are resident in Scotland is there a minimum time period in which they have to be resident? Does this include people seeking asylum?

What would be the benefit to people who aren't registered by birth or adoption / or resident here having their gender recognised here?

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:
As a Local Authority we are seeing younger and younger people declaring they wish to transition. There is clear evidence that people aged 16 do live full time in their acquired gender and want this to be legally recognised. For example, the Women and Equalities Select Committee heard evidence from LGBT Youth Scotland to this effect.

This age is particularly relevant as it allows exam certificates to be issued in the correct name reducing anguish and preventing the administration burden of having them reissued later.

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.

A small but increasing number of trans young people under 16 in Scotland are able to be open about their gender identity and live happy, healthy lives with the support of their parents, families and peers. At the moment, even those young people who have been living for many years as themselves, who are accepted by their families, and who go to school as the gender they identify, are unable to have their gender identity legally recognised.

With their parent’s consent they can already change their gender on their medical records and passport but under the current system the gender on their birth certificate remains unchanged. This means they are left in an unacceptable legal limbo for years with their birth certificate conflicting with their gender identity, their other identity documents and the reality of their daily life.

This can cause trans children and young people as well as their families significant distress and is a barrier to having their rights fully realised. It is important to harmonise these rights by allowing changes to all legal documents with parental consent.

However there still remains a vulnerable group of children who do not enjoy parental support for any change. This requires consideration as to how those under 16 can have their rights to gender recognition realised like their peers.

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.

Currently in Scotland, there is no need for spousal consent for legal gender recognition, so it would be a serious backwards step to begin requiring it.

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.

One of the calls of the Equal Marriage campaign was that civil partnerships should be opened up to everyone, not just to same sex couples. This could be an important first step in changing government policy around civil partnerships

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.

This would reduce the stigmatising of trans people. The current ground that the marriage or civil partnership has broken down irretrievably should be sufficient.

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.

The existing exemptions seem sensible, and think that there is no need to add any others. Upholding trans people’s privacy is one of the key principles of a legal gender recognition process, and therefore any additional exemption may undermine this.

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.

As we hope that Scotland will move to a process of legal gender recognition that reflects international best practice, there would be no reason to not automatically accept legal gender recognition from other countries.

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.:

Non-binary people should have access to the same legal gender recognition process as trans men and trans women. For all of the reasons that the Scottish Government accepts and recognises that trans men and women should be able to have their gender legally recognised, it should follow that if they consider non-binary people’s identities to be as legitimate and valid, that they should also have access to an equal legal gender recognition process.

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

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:

North Lanarkshire Council welcomes the opportunity to comment on the review of the Gender Recognition Act 2004. Society is becoming more inclusive and understanding of the needs of Trans people and these legal changes reflect this. It is clear that consistency of approach towards all people no matter who they are is important. This is reflected in the consideration of non-binary people in the proposals. However societal acceptance of non-binary and gender fluid people is not as high. Any changes in legislation should be accompanied by additional support for the Trans community and their families as they come forward accompanied by a national awareness raising programme for the whole of society to improve understanding of trans and non-binary identities more widely. This would help support statutory agencies in the implementation of the proposed changes.

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: 
North Lanarkshire Council

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?

Scotland

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

Publish response only (without name)