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. The current evidence requirements are intrusive and humiliating, violate trans peoples’ right to privacy, and further stigmatise trans identities.

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 their lives.

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 mean people don’t make an application without thinking through 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?

No

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, and this should continue. Similarly to marriage, although you would make the application with the intent of the decision being permanent, the law would allow for the possibility that circumstances change. If somebody’s decision did change, they should be able to apply in the same way again to have their legal gender changed again.

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:

This would mean that asylum seekers would be able to access the legal gender recognition process. It would also mean trans people planning to visit Scotland for a while would be able to ensure their gender is recognised while they are here. It may also provide an option for trans people who live in other parts of the UK to have their gender legally recognised using self-declaration.

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. Consideration to allowing younger people to self declare should also be given.

By lowering the age to 16 we empower these young people into taking control and make decisions without the need for parental consent. This age is particularly relevant as it allows exam certificates to be issues 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. Perhaps it would be considered appropriate for the named person or lead professional to provide consent if transition is seen to be in the best interests of the child and where parental consent is unobtainable due to family breakdown.

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 irrevocably 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.: 

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.:

Society is becoming more inclusive 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: [redacted]

What is your email address?

Email: [redacted]

Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation: Orkney Islands 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:

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