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.

Disagree

If you want, you can give reasons for your answer, or make comments:

Gender is a social construct, and as such does not rely solely upon self-perception, but also on the view of society. Abandoning the assessment model in favour of self-determination leaves transgender people vulnerable to rejection by both their original and acquired genders, and may encourage mis-perceptions of self, leading to untreated mental health issues.

At the same time self-declaration creates a situation a small, but nevertheless significant, minority may exploit this situation to gain access to vulnerable people. This could have an adverse impact on employment and personal relationships, where trust may depend upon gender identity of a service provider, so strong legal protections will be necessary. Specific legislation will also be needed to deal with situations (eg competitive sport, workplace quotas) where fair treatment for specific equality groups is needed. Overall this does not seem to create an effective equality between those acquiring and those born into an established gender identity.

This is not to say that trans people should be denied equal treatment. But given the continued existence of power imbalances between men and women in society, women are particularly vulnerable to the loss of trust in same-sex provisions and facilities that self-declaration implies. At its least level of impact, self-declaration means a loss of choice and opportunities for women; at worst, it puts women at risk of gender-based violence.

So, without a clear, socially determined and accepted system of gender identity, women only spaces and services, including medical provision, intimate services, sport and leisure activities and employment services may no longer offer an effective service to clients who seek same-sex services. This will have an adverse impact on a range of clients and services such as:

- Women and men who seek same-sex only spaces for religious reasons
- Women survivors of abuse who seek women-only safe spaces
- Lesbians and other women who feel unsafe socializing in mixed spaces
- Employment services which seek to promote gender equality for women in male-dominated sectors and vice-versa
- Women (and men) who seek same-sex providers of intimate or medical services

It is difficult to see how the current rights of people seeking same-sex services can be maintained if self-determination creates gender identity and therefore access to same-sex services.

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:

However, this may not be meaningful if self-declaration becomes legal.

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

Yes

If you want, you can give reasons for your answer or make comments:

To be accepted by society, gender change has to be a genuine lifelong commitment undertaken in full knowledge of the consequences. There are long-term physical and psychological risks involved and these should not be taken lightly or seen as reversible.

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:

In the first instance it should be only open to those both registered and resident in Scotland so that evidence of impact can be monitored.

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?

Disagree
If you want, you can give reasons for your answer or add comments:
Young people experience many identity issues, and making irrevocable decisions at this age could lead to lifelong problems. It also suggests that diversity in gender identity is unacceptable, but easily resolved by moving between gender stereotypes. Young people should be encouraged to challenge gender stereotypes rather than embrace them.

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

Option 1 – do nothing for children under 16

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:
For reasons outline above, early transition is problematic. Education that encourages all young people to look beyond gender stereotypes would create more robust identities and a wider acceptance of difference and diversity.

In extreme cases of gender dysphoria a court process open to capable children could be used.

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:
Ultimately this concerns control of one’s own body, and other legislation (eg abortion, coercive control etc) recognizes the right to self-determination.

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:
Civil partnerships should be available to all.

9 Should legal gender recognition stop being a ground of divorce or dissolution?

No

If you want, you can give reasons for your answer or add comments:
A spouse (or any other partner) should not be coerced into an intimate relationship especially where a change of gender is involved.

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:
Self-determination undermines trust and may need new legislation to protect vulnerable groups.

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?

Don’t know

If you want, you can give reasons for your answer or add comments:
For the same reasons as Q1 and Q10, self-determination is in our view problematic. But can gender identity be effectively challenged if a self-declared transgender person from another jurisdiction presents papers in the acquired gender which are identical to those of people born to that gender?

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:
There is a case for multiple gender identities and this might meet the needs of those of the transgender journey, as well as those who wish to remain in the non-binary category. However, those recognized as non-binary might find themselves excluded from rights granted to both M &F genders, and at the same time protection of vulnerable groups might mean further exclusion and specific equalities legislation will be needed.

Three genders (M,F, X) does not seem sufficient to express the complexity of the non-binary identity; in addition MtoF and Fto M would cover the transgender categories.
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 5: Incremental approach, Option 6: Amendment of the Equality Act 2010

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.

Don’t know

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.

Before making changes the Scottish Government should examine and make public the evidence of impacts in other jurisdictions where lighter assessment or self-declaration has been introduced. Evidence should cover:

• The experience of transgender people themselves
• The providers of same-sex services
• Public reaction to and acceptance of self-declared transgender people

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: The Audacious Women Collective

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.

The Audacious Women Collective is the organizing group for the Audacious Women Festival, and annual event taking place mainly in Edinburgh, but drawing our audience and workshop leaders from across Scotland. We are now in our third year of the Festival.

The Festival is a chance for women to break personal, political, institutional barriers & celebrate audacious women. We encourage women to take bold steps to achieve personal ambitions, and to support this some of our events provide safe, women-only spaces where our participants can develop strategies to deal with personal challenges. Other events are open to all. The festival aims to engage with an audience from a wide range of ages, ethnicities, abilities and sexual orientations.

Where are you resident?
The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response only (without name)