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. :

The Christian Institute opposes the existing Gender Recognition Act (GRA). Its fundamental premise is that a man can become a woman and that a woman can become a man. But this is a biological impossibility. The Act creates a legal fiction.

However, the GRA does at least treat changing legal sex with some degree of seriousness. Requirements such as medical evidence and a period living as the opposite sex are very limited safeguards given that the person is making a fundamental change of legal status – one with profound social, moral, physical and psychological consequences.

These limited safeguards do at least allow for third party assessment of an individual’s claim of gender dysphoria in order to sift out obviously fraudulent or frivolous cases. They also give the individual time for reflection and those caring for them the opportunity to help them to resolve the conflicts which have led them to consider changing sex.

The Scottish Government’s proposed self-declaration system would abolish these precautions. This would make the legal system open to abuse by those changing sex on a whim or for deceitful reasons. It also greatly increases the risk of enshrining in law a decision made by an individual which they later regret, such as someone who is subject to a temporary fixation which they later grow out of.

The claim that one’s actual sex is something other than biological sex is a radical and highly contentious statement. It should not just be accepted uncritically and given legal force on demand. This will have enormous practical consequences in both the short and long term for the individual, those close to them, and those they come into contact with.

Transgender regret is a large and growing phenomenon [Independent online, 3 October 2017, see http://www.independent.co.uk/life-style/gender-reversal-surgery-demand-raise-assignment-men-women-trans-a7980416.html as at 1 March 2018], yet the consultation paper gives almost no attention to it. There is a fast-growing body of ‘de-transitioning’ ex-transsexual people who say they were not offered a nuanced medical and psychiatric perspective [e.g. ‘Detransition’, Transgender Trend, see https://www.transgendertrend.com/detransition/ as at 28 February 2018; The Guardian online, 16 September 2017, see https://www.theguardian.com/lifeandstyle/2017/sep/16/transition-caused-more-problems-than-it-solved as at 28 February 2018].

Many feel they were put on a conveyor belt to changing sex with little or no attempt to help them weigh up what was really best for them. Their voices are not often heard in mainstream media. In many of these cases, what was considered to be ‘gender identity disorder’ is later understood to be due to conditions such as borderline personality disorder, autism, childhood trauma, and a wide range of other causes [see https://www.parentsofrogdkids.com/other-causes-for-gender-dysphoria/ as at 28 February 2018]. These are often exacerbated by social pressures, anxiety and depression. Such cases have arisen under the current system requiring medical evidence. If no medical assessment is made, there are likely to be more cases.

According to a recent study:

“…participants with ASD [autism spectrum disorder] were 7.59 times more likely to express gender variance; participants with ADHD [Attention deficit hyperactivity disorder] were 6.64 times more likely to express gender variance” [Strang J F., Kenworthy L., Dominska A et al., ‘Increased gender variance in autism spectrum disorders and attention deficit hyperactivity disorder’, Archives of Sexual Behaviour, 43(8), November 2014, pages 1525-33].

There is already too much of a rush towards ‘transitioning’ without questions being asked of gender-confused people. One person wrote in The Guardian last year: “...I think there should be more emphasis on counselling, and that it [transitioning] should be seen as the last resort. Had that been the case for me, I might not have transitioned. I was so focused on trying to change my gender, I never stopped to think about what gender meant.” [The Guardian online, 3 February 2017, see https://www.theguardian.com/lifeandstyle/2017/feb/03/experience-i-regret-transitioning as at 28 February 2018]

Annex L of the consultation paper speaks of the ‘benefits of legal gender recognition in terms of reducing discrimination and improving their mental health’. Undeniably, transgender people are at greater risk of poor mental health and suicide attempt rates are extremely high. But it is a mistake to see discrimination as the cause of this. People who genuinely believe they are in the wrong body have a psychological problem that must be identified and treated. Affirming them in their misconception is not treatment. Post-transition transgender people still have high rates of mental health problems, including suicide attempts. Allowing someone to change legal sex does not address the underlying psychological issue. Instead, they need to be helped to acknowledge, accept and embrace their true identity, shown by their body. There are some similarities to anorexia where a person’s perception of their body is completely at odds with the reality. It would be grossly cruel to offer weight loss treatment to an anorexic on the basis that their own perception was more important than biological reality.

There are also serious safety and privacy concerns about this proposal, as seen in other jurisdictions. In one documented case a man claimed to be transgender in order to enter a women’s refuge shelter and abuse an occupant [Toronto Sun, 15 February 2014, see http://torontosun.com/2014/02/15/a-sex-predators-sick-deception/wcm/127b4003-d06d-489d-9679-861651dd3160 as at 28 February 2018].
The following are incidents in the USA and Canada since 2013:

- Time magazine reported in May 2016 that girls from a swimming team in New York City were too scared to use the women's changing room at a public swimming pool following the introduction of a new “gender identity” policy. The girls, aged from about seven to 18, became concerned after they saw a “bearded individual” in the women's changing room [Time, 13 May 2016, see http://time.com/4324687/even-in-liberal-communities-transgender-bathroom-laws-worry-parents/ as at 29 November 2016];
- Cases were reported in Idaho, Virginia, California and Seattle of male predators pretending to be female to spy on women in changing rooms and bathrooms [LifeSite News, 13 July 2016, see https://www.lifesitenews.com/news/transgender-male-arrested-for-taking-pictures-of-woman-in-target-changing-rooms as at 1 March 2018; The Daily Wire, 22 April 2016, see http://www.dailymail.co.uk/news/5190/5-times-transgender-men-abused-women-and-children-amanda-prestigiaco as at 1 March 2018].
- A Michigan woman complained about the presence of a man in the female changing rooms at her gym. Instead of taking her concerns seriously, the gym revoked her membership [ABC News, 7 March 2015, see http://abcnews.go.com/Health/planet-fitness-revokes-women-s-membership-transgender-complaint/story?id=29465983 as at 1 March 2018].

At a time when public consciousness is particularly sensitive to sexual abuse and harassment, it is perplexing and distressing that the Scottish Government would want to grant men the self-determined legal right to access female facilities without any attempt at an objective assessment of their intentions. Transgender Trend is a non-religious, pro-LGB campaign group. They had this to say about self-declaration:

“This would mean that any man would be able to declare himself ‘female’ in order to gain access to facilities where privacy is crucial to the dignity, comfort and safety of women and girls, such as toilets, changing-rooms, women’s refuges, single-sex hospital wards, prisons, rape crisis centres and women’s support services. The obvious consequence would be that women would not feel safe to access the services and facilities intended for them.” [Transgender Trend, 27 November 2016, see http://www.transgendertr.org/transgender-equality-debate-in-parliament/ as at 27 February 2018]

One effect of this change would be to abolish the possibility of any truly female-only protected spaces. Men too, especially the elderly, can be extremely uncomfortable at the presence of biological females in male-only changing areas. Their rights are also ignored by this proposal.

Free speech is at stake too. There are many people who simply do not believe that a man can become a woman, and vice versa. This may be for religious reasons, or scientific, cultural, academic or philosophical reasons. All of these are worthy of respect in a democratic society.

Yet some of those in the public eye who have expressed this view, such as Germaine Greer, have been vilified by activists and had their freedom of speech undermined [The Guardian online, 23 October 2015, see https://www.theguardian.com/education/2015/oct/23/petition-urges-cardiff-university-to-cancel-germaine-greer-lecture as at 28 February 2018; International Business Times, 8 October 2015, see http://www.ibtimes.co.uk/feminist-julie-bindel-banned-manchester-student-union-talk-free-speech-1522670 as at 28 February 2018; The Guardian online, 13 February 2016, https://www.theguardian.com/uk-news/2016/feb/13/peter-tatchell-snubbed-students-free-speech-veteran-gay-rights-activist as at 28 February 2018].

In further liberalising the law in this area, what protections will there be for the freedom to disagree? People must not be required to use, for example, pronouns that they object to using because they consider them false. No one should be forced by the law to speak something they sincerely and rationally believe to be a lie. This is a question of freedom of conscience and compelled speech.

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:
The consultation document says: “Choosing to apply for legal recognition of your acquired gender is an important life decision. This needs to be reflected in any new self-declaration system for obtaining legal gender recognition”. This is an understatement, but the sentiment is right.

As already mentioned, the current system includes modest safeguards to make it clear that changing legal sex is not to be done frivolously. One of these requirements is a statutory declaration that the change is being made for life. This helps to convey the significance of the step being taken, and must be retained.

The Government states that it has identified no “evidence of false or frivolous statements being made by applicants” in other countries. But it is difficult to see what would constitute a “false or frivolous statement” in the Government’s eyes. Someone wanting to change their legal sex may want to do so with conviction and sincerity at the time, but this could still be a transitory feeling. Many people come to deeply regret their decision to transition. Yet when their transitioning began they would not have regarded their self-understanding as frivolous or false.

This is especially the case when the statement being made is subjective and depends on feelings that are inaccessible to the observer. As the ‘detransitioners’ are keen to stress, self-understanding develops over time, especially in the young. A self-declaration system will inevitably give legal recognition to temporary feelings and beliefs and could exacerbate the problems faced by a person confused about their gender.

A statutory declaration must reflect the enormity of the life-decision being made, so that even those with the strongest feelings may be given pause for thought and more opportunity to discuss matters with their doctors, counsellors and friends.

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:
If legal gender recognition is to be allowed at all, the limit should be set at two occasions.
Limiting the number of times legal recognition can be applied for would help to reduce the risk of ill-considered applications. The Scottish Government recognises this. Ultimately, however, protections of this sort will never stop the risk of such applications. The body of ‘detransitioners’ will continue to grow, and under the new system there will undoubtedly be many wanting to return to their legal birth sex. It is vital that they are able to do so.

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.: If the Scottish Government makes the mistake of going ahead with a self-declaration system, it must be restricted to nationals and residents. Opening up the system to everyone would risk Scotland becoming a gender reassignment magnet for non-nationals, both from within the UK and elsewhere. The residency requirement should also be long enough to deter ‘sex change’ tourism – at least two years.

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.: Allowing minors to change legal sex is fundamentally misguided. Those aged 16 and 17 are undergoing a whole host of developmental and social changes and are still trying to work out some of the basics about what they believe about themselves and the world around them. It would be a mistake to allow them to make this radical and controversial life-changing decision when they do not have the maturity for it.

As considered above, there are many adults who come to regret their decision to change legal sex. Many of those between 16 and 18 are already at a time of flux in their lives. It is highly likely that they would later regret a decision to change sex if they did so at this age. Most people looking back to their 16 or 17-year-old selves recognise that their worldview and beliefs have substantially changed. Lowering the age limit allows them to set themselves on an utterly life-changing legal – and medical – path on the basis of perceptions that may change completely in a few years. While they could change back legally to their true sex, the effect of hormones and surgery cannot be undone. Allowing minors to legally change sex will inevitably encourage them to seek these irreversible changes.

In Scotland 16 and 17-year-olds cannot legally:

- Buy alcohol in licensed premises
- Buy cigarettes
- Stand for election as an MSP
- Serve as a juror
- Get a tattoo
- Buy fireworks or possess them in a public place
- Have a credit card
- Place a bet

How utterly inconsistent it would be if a child could change sex in Scotland at an age when we do not think they have the maturity to buy cigarettes. The health consequences of smoking a cigarette are nothing compared to being sterilised by hormones or ‘sex change’ surgery.

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.: Children under 16 should not be able to obtain a legal sex change. It would contradict their best interests. It is startling that the Scottish Government is even considering the possibility of children and even “very young children”, being given the legal capacity to make such a life changing decision.

Annex M of the consultation notes that “studies indicate overall that for 85.2% of the children, their [gender dysphoria] distress discontinued either before or early in puberty”. And while the document goes on to say that according to one study, “in 39% of children the feelings did continue beyond the onset of puberty”, this seems to be factually misleading. In fact, the referenced study states that amongst those who were traceable only 27% remained gender dysphoric. In any case, the proportion of those persisting is very low.

It has been reported that 40% of the children referred to Tavistock go on to take puberty blockers [The Mirror online, 22 October 2017, https://www.mirror.co.uk/news/uk-news/record-50-children-week-referred-11390561 as at 28 February 2018]. Almost all of those taking blockers then go on to take cross-sex hormones, suggesting that medical intervention increases persistence. If puberty resolves gender dysphoria, then the very act of using puberty blockers could be a self-fulfilling prophecy. The very cure for the distress is being blocked. It is denying the child the possibility of a safe, natural exit from gender dysphoria, avoiding risky drugs, surgery and lifelong medical dependence.

This being the case, it is clear that many children are being encouraged down a track they would not have chosen at a later stage in life. Even those meant to be medical specialists are not able to accurately predict whether a child would otherwise continue or discontinue in their dysphoria. The growing body of ‘detransitioners’ only cements this fact. If medical experts are frequently at fault, how can we expect a solicitor, a court, a parent, or the child themselves to have, as the consultation puts it, a “clear view of their gender identity”?

Out of the five options presented by the consultation, the Government states that it does not favour two of these. Out of the remaining three favourable options, two of these are open to the possibility of a child obtaining a legal sex change against their parent’s wishes. Allowing a child to change legal sex without the
They do not like.) The Scottish Government must uphold freedom of speech and prevent such specious accusations.

There is, in fact, no law in England or in Scotland which makes it a criminal offence to call someone by a gender pronoun which

A disturbing case was reported in England recently of the police being called out against a teacher who had ‘misgendered’ a pupil, on the grounds that it was a hate crime

This violates their freedom of speech, and, in the case of teachers, engages their employment rights. A disturbing case was reported in England recently of the police being called out against a teacher who had ‘misgendered’ a pupil, on the grounds that it was a hate crime

A disturbing case was reported in England recently of the police being called out against a teacher who had ‘misgendered’ a pupil, on the grounds that it was a hate crime

The Times, 24 February 2018, [There is, in fact, no law in England or in Scotland which makes it a criminal offence to call someone by a gender pronoun which they do not like.) The Scottish Government must uphold freedom of speech and prevent such specious accusations.

Marriage and Civil Partnership

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

No

If you want, you can give reasons for your answer or add comments.: Removing spousal consent as a requirement for legal gender recognition creates a number of problems. If spousal consent is removed as a requirement, then problems arise when considering legal gender recognition as a grounds for divorce (Question 9). Whether you maintain the status quo on divorce or change it, there are big problems. If legal sex change stops being a ground for divorce, then there is the potential of trapping people for a prolonged period in a form of marriage to which they fundamentally object. If legal sex change is kept as a grounds for divorce, then those undergoing the change would themselves have the ability to divorce their spouses at the point of self-declaration, even if their spouse wants to stay together. To avoid these scenarios, spousal consent must be required.

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.

No

If you want, you can give reasons for your answer or add comments.: Allowing same-sex couples to remain in their civil partnership after a legal sex change increases the likelihood of heterosexual civil partnerships being introduced. It does so by creating civil partnerships in which the partners are legally of opposite sexes. We therefore oppose this idea.

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

Not Answered

If you want, you can give reasons for your answer or add comments.: See response to question 7.

Other aspects of the 2004 Act

10 Are any changes to section 22 (prohibition on disclosure of information) necessary?
If you answered Yes, describe the changes you consider are needed.:
It is crucial that existing exceptions to the disclosure offence where the disclosure is for religious purposes are retained in full. The Scottish Government must recognize and respect the widespread conscientious objection to the idea of ‘sex change’ amongst religious people. Denying places of worship the ability to take account of a person’s legal sex change in decisions about membership, for example, would be a fundamental attack on religious liberty.

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?

No

If you want, you can give reasons for your answer or add comments.:
It would be reckless for Scotland to automatically recognise someone’s legal sex change just because they have met the threshold in another country. Scotland cannot control what criteria, if any, other countries use in this area. For consistency, Scottish law must be the arbiter in all situations.

Non-binary people

12 Should Scotland take action to recognise non-binary people?

No

If you answered No, and if you want, you can give reasons for your answer.:
The consultation paper admits that: “Provisions to recognise non-binary people are radical and require careful thought.” This is another understatement. Trying to recognise a category that has no objective foundation could have untold ramifications and threatens to bring the law further into disrepute. The practical and legal difficulties in creating rights for a ‘third sex’ would be enormous and, as the consultation itself indicates, extremely expensive.

There is no biological basis for the category ‘non-binary’. Any reputable biology text book will tell you that the human race is divided into male and female. The rare intersex conditions that might be physical exceptions to this are a separate issue. The medical plight of those with intersex conditions must not be exploited by activists as though they are the same thing as ‘non-binary’. Most of those who reject male and female categories have no physical abnormality or ambiguity, while most of those who do have an intersex condition happily identify as male or female. ['Answers to Your Questions About Individuals With Intersex Conditions', American Psychological Association, 2006, see https://www.apa.org/topics/lgbt/intersex.pdf as at 1 March 2018]

Very few people think of themselves as non-binary. The consultation paper uses a figure of 0.4%, which is based on a survey that was not representative and is probably an overestimate.

People who say they are non-binary are physically male or female. This is biological fact, not about how they feel: they are male or female, regardless of their feelings. In this way it is similar to race or age, or even medical conditions. Your beliefs about whether you have diabetes do not change the results of a blood test.

A person’s rejection of a male or female identity is likely to be about the expectations and stereotypes that go with biological sex. They are rejecting what they understand maleness and femaleness to mean in our society. A biological man has no way of knowing what another biological man feels like, still less a biological woman. So how could he know that he feels like neither? It must be that he does not feel like what he thinks a man or woman feels like. That perception will be based on society’s stereotypes, which may be inaccurate. But that is not a problem that can be solved by the invention of ‘non-binary’.

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.

Not Answered

If you answered Yes, describe the impacts you have identified.:

Conclusion

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

Not Answered

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?

Not Answered

If you answered Yes, add your comments.:
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 Christian Institute

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.

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The Christian Institute is a non-denominational charity established for the promotion of the Christian faith in the UK and elsewhere, and the advancement of education. We are supported by around 4,000 churches and church ministers from almost all the Christian denominations. We have over 55,000 supporters throughout the UK, including around 6,000 in Scotland.

Where are you resident?
Scotland

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