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.:
We agree with the Scottish Government’s proposal to remove the requirement to provide medical evidence or evidence that a person has lived in their ‘acquired gender’ for a defined period of time in order to gain legal gender recognition, and to replace this with a self-declaration model. The current system of legal recognition is long, laborious, and in requiring these gate keeping measures undermines trans people’s autonomy. Currently at the University of Edinburgh we use a self-declaration model to recognise our staff members gender identity and treat them accordingly, in line with the Equality Act. We recognise that trans members of our campus community, whether staff or students, are the experts on their own gender identity and believe that the current requirements for gender recognition do not afford trans people this respect. However we at the Staff Pride Network know that staff and students joining the institution can find the process of filling out one of our many forms confusing and upsetting as they are unclear about whether they can fill it out in a manner true to how they live, or whether they need include details about their assigned sex at birth, their previously used names etc. We believe that moving to a self-declaration model of legal gender recognition will help to streamline the process and make it easier for our staff and students to join our institution clear about their rights. Not only this, but it will allow legal gender recognition to be brought in line with the system that many institutions, organisations, and services currently use.

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.:
We agree that applicants should have to provide a statutory declaration confirming that they know what they are doing and intend to live in their acquired gender until death, although we recognise that, as with other lifelong commitments such as marriage, although we might intend to live as one gender for life, we may change our mind.

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.:
No, although we believe that a person should intend to live in their acquired gender until death at the point of applying for legal gender recognition, we recognise that gender is fluid and may change for a person over their life course.

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.:
We believe that the self-declaration system for gender recognition should be open to all people in particular because this would allow trans asylum seekers to gain legal gender recognition. It would also provide options for students who study at the university but who are not considered ordinarily resident in Scotland to have their gender legally recognised in the country where they study and live for the majority of the year, which may be of particular importance to those students who have not previously had the option to do so in their country of origin.

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.:
We agree that 16 and 17 year olds should be able to apply for and gain legal gender recognition. Currently 16 and 17 year olds can marry, vote, live independently and make many other important decisions about their future. Indeed many (although of course not all) of our students will start their university journey around this age and will be asked to make important decisions about their education which are likely to go on to impact on their futures and we trust them to do so. It therefore seems illogical, given that we trust our young people to be able to make many decisions impacting on their futures, that we would not trust our young people to apply for legal recognition of the gender they live their lives as. This raises an additional important point that many 16 and 17 year olds may be ‘out’, and living their lives confidently and with the support of those around them in their ‘acquired gender’ and we should legally be providing structure which support them also.

In addition, although as an institution we would of course recognise trans students’ genders, names, pronouns, etc without a gender recognition certificate we
know anecdotally that if a person does not have a gender recognition certificate they can feel pressure to apply with their old name and gender. With legal
recognition at 16 and 17 there would be an option for young people who did feel this way to gain legal gender recognition prior to coming to university without
much, if any, delay.

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

Not Answered

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.: As the Staff Pride Network do not work with children we are unsure that we have sufficiently informed opinions and therefore will happily be led by those organisations representing and supporting young trans people.

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.: Yes, obtaining legal gender recognition is a matter for the individual whose gender is being recognised. The individual is currently able to socially and medically transition without the consent of their spouse: the legal recognition of their gender is simply a matter of them being able to be recognised legally in their correct gender and to require the consent of their partner would stand to completely undermine their autonomy as an individual to be legally recognised.

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.: Yes, civil partnerships should be open to people of all genders.

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.: Explicitly stating that legal recognition can be a grounds for divorce (along with adultery, and unreasonable behaviour), stigmatises gaining legal gender recognition. Although we hope that it would not be the case, in the instance that a marriage or civil partnership has unfortunately broken down because one partner wishes to gain legal gender recognition, the partners could apply for a divorce via the route of being separated for a year and both partners agreeing to the divorce, or being separated for two years where the partners cannot agree; it does not seem that there should be special grounds for divorce or dissolution related to legal gender recognition.

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.: Yes, it seems like an unnecessarily bureaucratic procedure to force people who have their gender legally recognised in another jurisdiction to make another application for gender recognition. The University of Edinburgh is proud to have a large campus community who come from all over the world and we at the Staff Pride Network would like that those coming from overseas have as smooth and problem-free move as possible, which would include not having to reapply for gender recognition.

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.: Yes, the University of Edinburgh currently has non-binary staff members and students, who have no access to legal recognition. Therefore although we recognise non-binary people at the university, and try to ensure our provisions include them, we have found that there have been some practical difficulties with doing so.
We, at the Staff Pride Network, have had push back on including non-binary people in university gender monitoring, as we find many systems only provide binary gender options, and our non-binary staff and students still experience discrimination and harassment because of people’s prejudiced attitudes towards non-binary people, which often includes invisibilising and minimising non-binary people’s identities.

We hope that the introduction of the legal recognition of non-binary gender identities will help increase visibility and awareness of non-binary people lending weight to the case to develop systems and support social attitudes to include non-binary people more comprehensively in Scotland. In addition to this without non-binary legal recognition although some laws may be able to be used to protect non-binary people, they would not be doing so in recognition of that non-binary individual’s right to legal protection, as currently non-binary people simply are not afforded agency in the eyes of the law, and indeed might rely on treating that non-binary person as their sex assigned at birth in order to do so, completely undermining their right to privacy.

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.: Option 1 – because currently forcing non-binary staff and students to declare themselves either a binary gender or to decline their information is not good enough. Scotland needs to know how many non-binary people reside within it, and need to be able to understand non-binary people’s experiences and without changes to administrative forms this is not possible. As with any data management and research, it is either the case that we do not need to collect gender data, or it is the case that we need to do so accurately, which means including the non-binary people who live in our country.

Option 3 – it will of course be important that non-binary people are able to obtain documents in line with their legal gender recognition.

Option 4 – whilst we move towards a self-declaration model of legal gender recognition, it would seem an inconsistency to allow trans men and women to self-declare their gender, and to exclude non-binary people from this. Therefore we would support a self-declaration model of legal gender recognition for non-binary people.

Option 6 – and finally the Equality Act 2010 should be amended to ensure that non-binary people are legally protect from the experience of discrimination, harassment and prejudice and to foster good relations.

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?

No

If you answered Yes, add your comments.: About You

What is your name?

Name:
University of Edinburgh Staff Pride Network

What is your email address?

Email: 

Are you responding as an individual or an organisation?

Organisation

What is your organisation?
Organisation:
University of Edinburgh Staff Pride Network

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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