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 position of the Equality Network that moving to a self-declaration system would bring Scotland in line with international best practice, and remove the need for intrusive, dehumanising and humiliating evidence when applying for legal gender recognition. We believe that the move would also be consistent with guidance from the World Professional Association for Transgender Health, as set out in their Identity Recognition Statement.

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 a statutory declaration should be required, as this will mean that people don’t make an application without thinking through the consequences of their decision.

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. Although individuals would make an application with the intent of the decision being permanent, the law should allow for the possibility that individual circumstances can change.

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:
We agree with the government’s proposal, as we think that 16 and 17 year olds right to apply for legal gender recognition should reflect their rights in other aspects of their lives. 16 and 17 year olds can vote in elections, get married, and there is a general consensus in Scottish politics that 16 and 17 year olds have full legal capacity.

Through our work in Argyll and Bute, we have supported a number of young trans people, along with their families and teachers. We recently ran an online group involving 7 young people we are currently working with. This consultation was discussed, the group were very engaged in the process and they want to ensure their views are heard. This group has submitted a separate consultation response.

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:
On balance, we feel that parental application is the most practical way forward. It means that young trans people who are under 16 are able to obtain legal gender recognition using a straight-forward administrative framework. Parental application is already the method used to enable young trans people to change their name and gender marker on their passport, medical records and school database. However, we agree with the Equality Network that there should be a back up method by which a capable young person without parental consent can apply for gender recognition where this would be in their best interests. Children’s rights organisations would be important stakeholders in determining how such an approach to extending legal gender recognition to under 16s can be delivered.
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:
Obtaining legal gender recognition is a deeply personal and private decision, and allows an individual the right to have identity documents that reflect who they are. This should not be something that can be delayed or blocked by a spouse.

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:
Irrespective of legal gender recognition, many transgender people will already have identified as their true identity at the time they chose to enter their civil partnership - it would therefore be deeply disappointing if their civil partnership was overturned because they subsequently obtained legal gender recognition. There is, of course, a wider debate, as highlighted during the campaign for Equal Marriage, for the option of civil partnerships to be available to all couples. As the Equality Network has noted, 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:
For there to be a specific grounds for divorce based on legal gender recognition unfairly stigmatises trans people.

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. Upholding trans people’s privacy is one of the key principles of a legal gender recognition process, and we think that 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:
At the moment, people with legal gender recognition from other countries have to make an application, often needing to provide translated evidence, or gain medical reports from doctors based in the UK even if they have been transitioned and legally recognised somewhere else for many years. 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:
Non-binary people’s identities are just as valid as those of trans men and trans women, and it is vital that there are steps taken to ensure they are better recognised and included in society.

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.:

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.

Options 1 and 3 will ensure that non-binary people can complete forms in a way that is respectful and true to their gender identity, and have identity documents that reflect this.

We also think that updating the Equality Act is an important legislative step for improving the rights of all transgender people, not just non-binary people. There is more the government can do to explain how this could be achieved.

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

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

No

Do you have any further comments about the review of the Gender Recognition Act 2004?

Yes

There is clearly a role that Relationship, Sexual Health and Parenting Education can play, and is playing through our Wave project in Highland, and in Argyll & Bute, to highlight trans issues so that diverse gender identities are more clearly understood by all.

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:

Waverley Care

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.: Waverley Care is Scotland’s HIV and Hepatitis C charity. Across Scotland, we are reducing new HIV and hepatitis C infections, encouraging people to get tested and providing much needed support to people living with or affected by these conditions.

Through our work, we are also challenging HIV and hepatitis C related stigma, tackling health inequalities and promoting good sexual health.

Where are you resident?

Scotland

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