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.

Disagree

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

The 2004 GRA is, legislatively speaking, a new law and it hasn’t yet been fully bedded in.

We are not convinced a great deal of work has been done to assess the impact on women, particularly vulnerable women, and how the GRA impacts on equalities law.

There is a need for empirical evidence of the effects on marriage, privacy in education and sports facilities and in general, NHS, and particularly the effect of women in the prison system. Self-declaration may cause women undue alarm even if, in reality, risk assessments may be carried out to prevent harm coming to them. Information is therefore needed to remove any barriers to women accessing services.

Consultation was carried out with organisations funded by the Scottish Government, so these organisations were unable to respond without keeping the risk to their funding in mind.

Sex education and biological sciences rely on a knowledge of the significance of biological sex, and girls especially should know about what kinds of activity and with whom, would lead to pregnancy.

Comfortable girl-only spaces for females who menstruate, or may menstruate in the future, should be preserved to allow girls to learn information and important self-care measures.

Children don’t always receive a comprehensive sex education within a family setting. An important aspect of sex education is giving children the ability to accurately name their body parts. It’s crucial for educators to retain the ability to give this information and to allow children the power of naming their bodies.

Children at risk of abuse are as important to protect as people with issues relating to gender. There have been instances of Female Genital Mutilation campaigners being attacked and insulted and this must be considered. Scottish Government legislation relating to FGM is useful and important and should be preserved and protected. Women and children from practising communities live in Scotland and we should keep them in mind.

The language required to obtain a grasp of the concepts of Gender Identity is complex. It is not easily accessible to children, people with certain learning disabilities, people with a poor level of English. The concepts are also difficult to understand for someone who does not have a sense of themselves as having an internal gender identity.

The de-medicalisation of the proposed GRA means that co-morbidity with autism, bi-polar disorder, personality difficulties etc may go undiagnosed. De-transitioners are present in our communities in greater and greater numbers and this should be acknowledged, and support put in place.

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?

No

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

There must be a chance to de-transition as this is happening more and more.

Young people, particularly, should have the chance to change their minds.

People should certainly give the issue proper consideration.

Self-definition seems to lead to unlimited vacillations but putting an arbitrary limit on the process won’t work.

There needs to be a cooling-off period as is best practice in other countries with self-declaration.

There should be measures in place to ensure people are not being coerced into this decision. With applications for marriage, three weeks waiting period is built into this process. A safeguard like this could be helpful.

Our group does not agree with self-identification in any case, but we wish the above to be taken into consideration.

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’s self-declaration so it should be permitted as many times as the person wishes.

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:

It would give rise to risk of statistics being skewed in terms of movement across borders.

People could get lost in the system.

People changing gender here could be at risk going back to their home countries.

It could be possible for people engaged in sex trafficking and other criminality (for example, identity theft) to use this to their advantage to avoid people being
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:
They are too young to decide a permanent change.

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 may be coerced to change their legal gender if their parents are worried they might be gay, as changing gender may be more socially acceptable. They could also be pressured to change legal gender in order to succeed at particular sex-specific sport categories. Children should be treated fairly, and shouldn’t be gendered.

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:
Some consultation is needed to ensure all parties affected are aware of what is to happen.

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:
This would only make sense if civil partnership was opened up

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:
This is a material change to the conditions of the marriage so dissolution should be possible.

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:
Yes – more exemptions are needed in line with the Equalities Act(2010). For example, single-sex refuges, sporting categories should be protected.

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:
Different jurisdictions have different legislation explaining what Gender Recognition means, so going along with this transfer may lead to confusion for the individual and for people supporting the individual, and other.

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:
We object to this on the grounds that the definition here requires someone to have a sense of gender identity. We would prefer to extend protections to all
gender-non-conforming people.

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.

None of the above options

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:

We do not support any of these options. However, if ‘gender reassignment’ in the Equality Act 2010 was changed to gender-non-conformity this would include non-binary people.

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.

Yes

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

We are concerned about the impact on the prison estate. Vulnerable female people should be able to live away from males, whether they have a non-binary identity or not.

Conclusion

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

Yes

If you answered Yes, add your comments or evidence:

There should be an environmental impact assessment to ensure the impact of the printed forms and documents is taken into account. Business and regulatory impact assessment – women could be harassed at work more easily. Someone male could self-declare and there would be less oversight than in the current situation. This could impact on private spaces in businesses such as gyms with changing rooms, restaurants with toilets etc. In the workplace, women are currently entitled to women-only toilets. Someone self-declaring would be able to access these spaces without the women having any recourse.

Drug dosage labelling and prescribing, and drug development may be areas where problems present themselves. This will skew equal sex representation in board membership, equal pay audits of companies. As well as gender representation, we should also measure sex-based discrimination.

Equality impact assessment – As well as equal sex representation in board membership, equal pay audits of companies. Adult female humans, and juvenile female humans will face barriers as they attempt to access sex-segregated services, if they are also accessed by people who appear masculine, even if they have a gender identity of woman. This will impact on women’s prayer spaces in mosques. Women will often not feel comfortable sharing wudu facilities with males, however they feel their internal gender to be.

Child rights and wellbeing impact assessment – Children should not be under pressure to choose a gender identity. Current school guidelines suggest children with learning disabilities should be pressured to adopt a particular identity early on, and this could lead to emotional distress.

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

Yes

If you answered Yes, add your comments:

We are concerned that these changes may not help with people with gender dysphoria. A lot of hope is being pinned on the proposed changes to the GRA but the demedicalisation of the process may lead to a lack of support and people falling through gaps.

About You

What is your name?

Name:

Women's Spaces in Scotland

What is your email address?

Email: [redacted]

Are you responding as an individual or an organisation?

Organisation

What is your organisation?
Organisation:
Women's Spaces in Scotland

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.

Women’s Spaces in Scotland is a diverse group of women with a shared goal to protect our country’s single-sex services. Under proposed changes to the Gender Recognition Act, it may soon be possible to legally declare yourself a member of the opposite sex simply by matter of self-identification. We are concerned about the potential impact this will have on women.

As the law currently stands, individuals who wish to legally change their sex from male to female (or vice versa) must publicly present as their preferred gender for a minimum of two years and be under the care of an approved medical practitioner. The proposed move to self-identification will remove these requirements.

Where are you resident?

Scotland

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

Publish response with name