CIRCULAR GR 1/2018

12 September 2018

Dear Colleague

CONSULTATION – REVIEW OF THE GENDER RECOGNITION ACT 2004

The purpose of this letter is to provide you with an update on the Scottish Government’s progress following on from the consultation, Review of the Gender Recognition Act 2004 (at https://www.gov.scot/Publications/2017/11/5459).

The Annex to this letter provides information about consultation responses. The full independent analysis report will be published shortly.

The Government’s Programme for Scotland 2018-2019, Delivering for Today, Investing for Tomorrow was published on 4 September at the link below.


The Programme confirms on page 16 that the Scottish Government:

“will continue work that will enable us to bring forward legislation on gender recognition in the next legislative programme.”

As this work progresses we will issue further updates when we are in a position to do so.

Yours sincerely

SARAH E DUNCAN
Family Law
ANNEX – QUANTITATIVE ANALYSIS OF RESPONSES TO CONSULTATION

1. This annex provides quantitative information about respondents’ views on: whether Scotland should adopt a self-declaration process for legal gender recognition; whether applicants aged 16 and 17 should be able to apply using that process; the options for people aged under 16, and about recognition of non-binary people.

2. Responses to the consultation from organisations have been published, where the Scottish Government has permission to do so, at: https://www.gov.scot/Topics/Justice/law/17867/gender-recognition-review/review-of-gender-recognition-act-2004-list-of-orga. We will publish the responses from individuals, where we have permission to do so, in due course.

General

3. There were 15,697 responses to the consultation once duplicate responses were removed, of which 15,532 responses were from individual members of the public and 165 from groups or organisations.

4. Overall, 49% of respondents are resident in Scotland, with 38% resident in the rest of the UK and the remaining 13% resident elsewhere in the world. The majority of organisations (62%) were based in Scotland. The following table gives a breakdown of the types of organisations who responded.

Organisations by type

<table>
<thead>
<tr>
<th>Organisations by type</th>
<th>Scotland</th>
<th>Rest of the UK</th>
<th>Rest of the world</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Children or Young People’s Group</td>
<td>6</td>
<td>1</td>
<td></td>
<td>7</td>
</tr>
<tr>
<td>LGBT Group</td>
<td>14</td>
<td>10</td>
<td>2</td>
<td>26</td>
</tr>
<tr>
<td>Local Authority, H&amp;SCP* or NHS</td>
<td>11</td>
<td></td>
<td></td>
<td>11</td>
</tr>
<tr>
<td>Other</td>
<td>19</td>
<td>11</td>
<td>2</td>
<td>32</td>
</tr>
<tr>
<td>Religious or Belief Body</td>
<td>20</td>
<td>3</td>
<td></td>
<td>23</td>
</tr>
<tr>
<td>Third sector support organisation</td>
<td>5</td>
<td>2</td>
<td></td>
<td>7</td>
</tr>
<tr>
<td>Trans Group</td>
<td>7</td>
<td>10</td>
<td>11</td>
<td>28</td>
</tr>
<tr>
<td>Union or Political Party</td>
<td>10</td>
<td>1</td>
<td></td>
<td>11</td>
</tr>
<tr>
<td>Women’s Group</td>
<td>12</td>
<td>5</td>
<td>3</td>
<td>20</td>
</tr>
<tr>
<td>Total Organisations</td>
<td>104</td>
<td>43</td>
<td>18</td>
<td>165</td>
</tr>
</tbody>
</table>

*Health and Social Care Partnership
Adopting a self-declaratory system for legal gender recognition (Question 1)

5. The majority of respondents (60%) who answered the question, agreed with the Scottish Government proposal to introduce a self-declaratory system for legal gender recognition and 39% disagreed. Of Scottish resident respondents, 65% agreed with the proposal and 34% disagreed.

Allowing 16 and 17 year olds to apply using self-declaration process (Question 5)

6. A majority of respondents (61%), who answered the question, agreed that people aged 16 and 17 should be able to obtain legal recognition of their acquired gender using the self-declaration process. Of the remaining respondents, 37% disagreed. Of Scottish resident respondents, 66% agreed and 32% disagreed.

People aged under 16 (Question 6)

7. The Scottish Government’s consultation asked respondents to select from a range of options for people aged under 16.

8. Option 1 (do nothing for children under 16) was selected by 31% of respondents (28% of Scottish resident respondents) who answered this question.

9. Option 2 (court process) was selected by 6% of respondents (also 6% of Scottish resident respondents).

10. Option 3 (parental application) was selected by 23% of respondents (27% of Scottish resident respondents).

11. Option 4 (minimum age of 12) was chosen by 7% of respondents (also 7% of Scottish resident respondents).

12. Option 5 (application by a capable child) was selected by 23% of respondents (also 23% of Scottish resident respondents).

Non-binary people (Questions 12 and 13)

13. A majority of respondents (62%) who answered the question said that Scotland should take action to recognise non-binary people. 33% did not think action should be taken. Of Scottish resident respondents who answered the question, 66% said action should be taken and 30% considered action should not be taken.

14. The consultation also asked for views on some options for giving recognition to non-binary people. Respondents could select more than one option.

15. The most frequently selected option, chosen by 75% of respondents (and 78% of Scottish resident respondents), was Option 4 (full recognition using the proposed self-declaration system). Options 1 (changes to administrative forms) and 6 (amendment of the Equality Act 2010) were supported by 68% and 62% of respondents respectively and 71% and 66% respectively of Scottish resident respondents. Option 3 (limited document changes) was chosen by 40% of all respondents who answered the question, and by 44% of Scottish resident respondents who did so.
16. The least frequently chosen options were Option 2 (book of non-binary identity), Option 5 (incremental approach) and None of the above, which were selected by 17%, 14% and 13% respectively of respondents who answered the question. In respect of these options, 17% of Scottish resident respondents who answered question 13 selected Option 2, 15% selected Option 5 and 10% chose None of the above.

17. The most frequently selected combination of options was Options 1, 3, 4 and 6, preferred by around 1 in 4 of those responding to the question concerning options for recognising non-binary people.

Family Law
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