

Proposed reform of the Gender Recognition Act 2004



Reform of Gender Recognition Act 2004, SCRA's Consultation Response

Question 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.

Do you agree or disagree with this proposal?

Agree

Disagree

Don't know

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

Background

The Children's Hearings System is Scotland's distinct system of child protection and youth justice. Among its fundamental principles are:

- the needs of children or young people in trouble should be met through a single holistic and integrated system, whether concerns relate to their welfare or behaviour
- a preventative approach is essential, involving early identification and diagnosis of problems
- the welfare of the child remains at the centre of all decision making and the child's best interests are paramount throughout
- the child's engagement and participation is crucial to good decision making

SCRA operates the Reporter service which sits at the heart of the system. SCRA employs Children's Reporters who are located throughout Scotland, working in close partnership with panel members and other professionals such as social work, education, the police, the health service and the courts system. SCRA's vision is that vulnerable children and young people in Scotland are safe, protected and offered positive futures. We will seek to achieve this by adhering to the following key values:

- The voice of the child must be heard
- Our hopes and dreams for the children of Scotland are what unite us
- Children and young people's experiences and opinions guide us
- We are approachable and open
- We bring the best of the past with us into the future to meet new challenges.

SCRA welcomes the opportunity to respond to this consultation.





We recognise that the 2004 Act was pioneering, but that societal change now necessitates the need for a review of its provisions. We also support the shift from a medicalised / quasi-judicial process of decision making about an individual's identity to an approach based more clearly and firmly on an individual's choice and wish.

The shift since 2004 to the right to self-determination, privacy and dignity is in line with our understanding and recognition of human rights and human difference and it is fitting that the process to obtain legal gender recognition should respond to this shift.

Question 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

No

Don't know

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

A statutory declaration is a crucial total life decision. A statutory declaration demonstrates that an applicant wants to live – for the rest of their life – in their acquired gender and affirms that the full consequences of this decision are recognised and accepted.

Question 3

Should there be a limit on the number of times a person can get legal gender recognition?

Yes

No

Don't know

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

The decision needs to stand as an entire life commitment. It should not be a decision in flux.

Question 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?

or

(B) to everyone?

or

(C) Don't know



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Question 5:

(This question relates to the reduction of the minimum age of applicants for legal gender recognition to those aged 16 and over from the current age of 18. Question 6 will ask your views on the options for people younger than 16.)

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

Disagree

Don't know

If you want, you can give reasons for your answer or add comments.

Question 6:

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

Please select only one answer.

Option 1 – do nothing for children under 16

Option 2 – court process

Option 3 – parental application

Option 4 – minimum age of 12

Option 5 – applications by capable children

None of these options

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.

Option 4 is our preferred option and is in line with our views on the minimum age of criminal responsibility in Scotland. However, we recognise that teenage years can be very difficult for some young people, and that this lifelong decision may not alleviate these difficulties. Indeed, on occasion it may add to them. It may be that a combination of the available options is the optimum safeguard for children and young people who would wish to apply for gender self-recognition, but who would require support in order to do so. SCRA would support a process of self-recognition which was not based in the Court, or based on invasive medical assessment, but which provided some appropriate scrutiny and safeguards to the decision being made by the young person.





Question 7:

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

Yes

No

Don't know

If you want, you can give reasons for your answer or add comments.

Although the effects of this would require to be fully assessed and the consent (or not) of a spouse should be recognised in subsequent decision making in respect of the marriage union.

Question 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.

Should they instead be allowed to remain in their civil partnership? This would mean that a woman and a man would be in the civil partnership.

Yes

No

Don't know

If you want, you can give reasons for your answer or add comments.

Question 9:

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

Yes

No

Don't know

If you want, you can give reasons for your answer or add comments.

PART 6:

Question 10:

Are any changes to section 22 (prohibition on disclosure of information) necessary?

Yes

No





Don't know

If you answered Yes, describe the changes you consider are needed.

It may be that change is required as a result of other legislative developments.

Question 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

No

Don't know

If you want, you can give reasons for your answer or add comments.

We support the proposal that a legally recognised decision in relation to gender acquisition from another jurisdiction, including other jurisdictions within the UK should be automatically recognised in Scotland.

Question 12:

Should Scotland take action to recognise non-binary people?

Yes

No

Don't know

If you answered No, and if you want, you can give reasons for your answer.

Question 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.

Option 1: Changes to administrative forms

Option 2: Book of Non-binary Identity

Option 3: Limited document changes

Option 4: Full recognition using proposed self-declaration system

Option 5: Incremental approach

Option 6: Amendment of the Equality Act 2010

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.



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Question 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.

Are you aware of other impacts we have not identified?

Yes

No

Don't know

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

Question 15:

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

- (a) the partial Business and Regulatory Impact Assessment;
- (b) the partial Equality Impact Assessment;
- (c) the partial Child Rights and Wellbeing Impact Assessment; or
- (d) the partial Privacy Impact Assessment?

Yes

No

If you answered Yes, add your comments or evidence.

Question 16

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

Yes

No

If you answered Yes, add your comments.

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