

Corporate Policy and Strategy Committee

10.00am, Tuesday, 27 February 2018

Scottish Government Consultation – Review of Gender Recognition Act 2014

Item number 8.6

Report number

Executive/routine

Wards

Executive Summary

This report is in response to the Scottish Government consultation on the Review of Gender Recognition Act 2004. The Gender Recognition Act 2004 allows transgender people to apply to the Gender Recognition Panel to obtain legal recognition of their acquired gender.

The Scottish Government believes the 2004 Act needs to be reformed and simplified. The 2004 Act extends across the United Kingdom. Gender recognition is a devolved matter and is an area within the competence of the Scottish Parliament.

This consultation proposes that the minimum age for applying for legal gender recognition should be reduced from 18 years old to 16 years old. It discusses what arrangements should be put in place in relation to applications by, or on behalf of, those aged under 16 years.

It seeks views on what recognition should be given to non-binary people, who do not identify as either male or female. The proposed reforms include removing requirements for applicants to provide medical evidence and to have lived in their required gender for two years before applying i.e. adopt a self-declaration system for legal gender recognition.

Scottish Government Consultation – Review of Gender Recognition Act 2014

1. Recommendations

- 1.1 The Committee is asked to note the closing date for submitting a response to the Review of Gender Recognition Act 2014 consultation is 1 March 2018.
- 1.2 To review the content of the Appendix, which sets out the Councils response to the consultation and make any subsequent changes.

2. Background

- 2.1 Consultation is an essential part of the policy-making process. The views expressed in response to this consultation along with other available evidence will be used to help inform the Scottish Government's decisions.
- 2.2 The consultation runs from the 9 November to the 1 March. The final deadline for responses is **5pm on the 1 March 2018**.
- 2.3 The Council's equality, diversity, and rights Framework sets out the Council's ambitions to advance equality, promote diversity and enhance rights. It is also a response to the legal requirements of the 'Public Sector Equality Duty', described within the Equality Act 2010, the accompanying Specific Duties (Scotland) Regulations 2012, and various human rights obligations.
- 2.4 The Framework also contains commitments to enable the Council to deliver equal pay, tackle unlawful discrimination, harassment, and victimisation, and promote a culture of equality, diversity, and rights amongst its employees.

3. Main report

- 3.1 The Council's response to the consultation is attached at Appendix 1.
- 3.2 The Council has prepared a response developed from engagement with staff and organisations with expertise in this area including LGBT Youth Scotland, Stonewall and Scottish Trans Alliance. The response is also informed by the views of the Scottish Council Equality Network.

4. Measures of success

- 4.1 No measures of success are reported in responding to this Scottish Government Consultation.

5. Financial impact

- 5.1 There are no additional financial implications arising as a result of this report. The activity required to respond to the consultation is met from existing Council budgets.

6. Risk, policy, compliance, and governance impact

- 6.1 The Council's Equality, Diversity and Rights Project Team manages all risk, policy and governance matters. In addition, the Council's Head of Strategy and Insight reports to the Council's Corporate Leadership Team on such matters. The Edinburgh Partnership Board Member for Equality and Rights also reports on such matters to the Edinburgh Partnership Board. The responses to the consultation are aligned (not in conflict) to the outcomes and actions of the Councils Equality and Rights Framework

7. Equalities impact

- 7.1 This consultation response aims to directly improve outcomes for transgender and non-binary people, which could help to eliminate unlawful discrimination, harassment and victimisation, advance equality of opportunity and foster good relations.

8. Sustainability impact

- 8.1 This report has been prepared in response to a consultation by the Scottish Government and so there is no direct sustainability impact arising from this. However, the proposed change, if enacted, would support sustainability through its action to improve social justice, and economic wellbeing.

9. Consultation and engagement

- 9.1 The response to the consultation has been developed based on engagement with Heads of Council Services and the Council's Equality, Diversity and Rights Project Team (which includes representation from the Edinburgh Equality and Rights Network). Engagement has also extended to members of a wider network including the Scottish Council Equality Network, and organisations who work with transgender people, namely LGBT Youth Scotland, Stonewall and Scottish Trans Alliance.

10. Background reading/external references

- 10.1 [A Framework to Advance Equality and Rights 2012/17](#) – A Report to Policy and Strategy Committee – 12 June 2012
- 10.2 [Progress Report – A Framework to Advance Equality and Rights 2012/17](#) – A report to Communities and Neighbourhoods Committee – 28 March 2017

10.3 [Edinburgh Equalities and Rights Framework 2017 to 2021](#)

10.4 [Scottish Government Review of Gender Recognition Act 2004 Consultation](#)

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11. Appendices

Appendix 1 – Response to Review of Gender Recognition Act 2004 Consultation

Appendix One: Review of the Gender Recognition Act 2004

No	Question	Response and reasons
1 (Paragraphs 3.01 - 3.29)	<p>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-declaration system for legal gender recognition instead. Do you agree or disagree with this proposal?</p> <p>Agree/Disagree/Don't Know. If you want, you can give reasons for your answer or add comments</p>	<p>Agree</p> <p>This proposal would bring Scotland in line with international best practice. The current evidence requirements limit trans people's right to privacy, and further stigmatise trans identities.</p> <p>The current system of requiring medical evidence rather than simply the testimony of the individual suggests that trans people themselves are not the best placed to make decisions about their gender and lives.</p> <p>We already include and work with trans people on the basis of their self-declared gender identity, and so welcome gender recognition law being brought in line with this practice.</p>
2 (Paragraphs 3.30 – 3.34)	<p>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?</p> <p>Yes/ No/Don't know If you want, you can give reasons for your answer or make comments.</p>	<p>Yes</p> <p>Requiring that a person provide a statutory declaration will mean people don't make an application without thinking through the consequences of their decision, and will ensure that it would be a criminal offence to deliberately make a false application.</p>
3 (Paragraphs 3.35 – 3.39)	<p>Question 3 (Paragraphs 3.35 – 3.39)</p> <p>Should there be a limit on the number of times a person can get legal gender recognition?</p> <p>Yes/ No/Don't know If you want, you can give reasons for your answer or make comments.</p>	<p>No</p> <p>It is already the case that changing your legal gender is not an irreversible decision, and this should continue. Similarly to a marriage, although you would make the application with the intent of the decision being permanent, the law would allow for the possibility that circumstances change. If somebody's decision did change, they should be able to apply in the same way again to have their legal gender changed again.</p>
4 (Paragraphs 3.40 – 3.47)	<p>If the Scottish Government takes forward legislation to adopt a self declaration system for legal gender recognition, should this arrangement be open:</p> <p>(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</p> <p>If you want, you can give reasons for your answer or make comments.</p>	<p>B</p> <p>This would mean that asylum seekers would be able to access the legal gender recognition process.</p>

<p>5 (Paragraphs 4.04 - 4.07)</p>	<p>(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) The Scottish Government proposes that people aged 16 and 17 should be able to apply 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.</p>	<p>Agree As a Local Authority we are seeing younger and younger people declaring they wish to transition. Consideration to allowing younger people to self declare should also be given.</p> <p>By lowering the age to 16 we empower these young people into taking control and make decisions without the need for parental consent. This age is particularly relevant as it allows exam certificates to be issued in the correct name reducing anguish and preventing the administration burden of having them reissued later.</p>
<p>6 (Paragraphs 4.08 – 4.41)</p>	<p>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</p>	<p>Option 3 A small but increasing number of trans young people under 16 in Scotland are able to be open about their gender identity and live happy, healthy lives with the support of their parents, families and peers. At the moment, even those young people who have been living for many years as themselves, who are accepted by their families, and who go to school as the gender they identify, are unable to have their gender identity legally recognised. With their parent's consent they can already change their gender on their medical records and passport but under the current system the gender on their birth certificate remains unchanged. This means they are left in an unacceptable legal limbo for years with their birth certificate conflicting with their gender identity, their other identity documents and the reality of their daily life. This can cause trans children and young people as well as their families significant distress and is a barrier to having their rights fully realised. It is important to harmonise these rights by allowing changes to all legal documents with parental consent. However there still remains a vulnerable group of children who do not enjoy parental support for any change. Perhaps it would be considered appropriate for the named person or lead professional to provide consent if transition is seen to be in the best interests of the child and where parental consent is unobtainable due to family breakdown.</p>

7 (Paragraphs 5.01 – 5.08)	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.	Yes Currently in Scotland, there is no need for spousal consent for legal gender recognition, so it would be a serious backwards step to begin requiring it.
8 (Paragraphs 5.10 – 5.16)	Civil partnership is only available to same sex couples. This means that 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	Yes One of the calls of the Equal Marriage campaign was that civil partnerships should be opened up to everyone, not just to same sex couples. This could be an important first step in changing government policy around civil partnerships.
9 (Paragraphs 5.17 – 5.21)	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	Yes This would reduce the stigmatising of trans people. The current ground that the marriage or civil partnership has broken down irretrievably should be sufficient.
10 (Paragraphs 6.01 – 6.06)	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.	No The existing exemptions seem sensible, and think that there is no need to add any others. Upholding trans people's privacy is one of the key principles of a legal gender recognition process, and therefore any additional exemption may undermine this.
11 (Paragraphs 6.23 – 6.31)	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	Yes 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.
12 (Paragraphs 7.01. – 7.06.)	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	Yes
13 (Paragraphs 7.08. – 7.41.)	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	1,3,4,6 Non-binary people should have access to the same legal gender recognition process as trans men and trans women. 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

	<p>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 5 is suitable, describe your preferred option.</p>	<p>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. Scottish Government should also give consideration of lead in time for organisations to make changes to data systems that will allow this recognition to be made.</p>
14	<p>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.</p>	No
15 (Paragraphs 8.01. – 8.06.)	<p>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) 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.</p>	No
16.	<p>Do you have any further comments about the review of the Gender Recognition Act 2004? Yes / No If you answered Yes, add your comments.</p>	<p>Society is becoming more inclusive of Trans people and these legal changes reflect this. It is clear that consistency of approach towards all people no matter who they are is important. This is reflected in the consideration of non-binary people in the proposals. However societal acceptance of non-binary and gender fluid people is not as high. Any changes in legislation should be accompanied by additional support for the Trans community and their families as they come forward accompanied by a national awareness raising programme for the whole of society to improve understanding of trans and non-binary identities more widely. This would help support statutory agencies in the implementation of the proposed changes.</p>