

REVIEW OF GENDER RECOGNITION ACT 2004

Trans people

Q. What is gender identity?

A. Gender identity is a person's own experience of their gender. Some people's gender identity doesn't match the sex they were assigned at birth.

Q. What does "transgender" or "trans" mean?

A. These are umbrella terms used to describe people who find that their gender identity does not correspond with the sex they were assigned at birth.

Q. What does non binary mean?

A. A non-binary person does not identify as a man or a woman but has a gender identity somewhere between or beyond those categories. Non-binary people can also be included under the trans umbrella, although some may not consider themselves as trans.

Q. What is transitioning?

A. Transitioning is a term used to describe the process and steps an individual takes in order to live in the gender they identify as. Transitioning can involve dressing differently, telling friends and family, changing some documents such as their name and sex shown in their passport or their name and title on utility bills, or telling friends and family.

For some people transitioning also involves medical intervention, such as hormone therapy and surgery, but not all trans people want or are able to have this.

In NHS Scotland, gender reassignment services are provided in terms of the Gender Reassignment Protocol, at www.sehd.scot.nhs.uk/details.asp?PublicationID=4759.)

Transitioning and gender reassignment medical treatment are distinct from the legal process of gender recognition, which is explained in the next section. Our consultation concerns only the legal process of obtaining gender recognition of the gender in which a person lives.

The existing legislation

Q. What legislation is currently in place?

A. A transgender person's gender identity does not correspond with the sex shown on their original birth certificate.

The Gender Recognition Act 2004 meant that for the first time a transgender person could apply to a tribunal for a "gender recognition certificate" which would allow the recipient to be legally recognised in the gender they live in.

When a person is issued with a full gender recognition certificate, this has the effect of changing their sex for legal purposes.

The Act applies across the UK, and where the person's birth was registered in the UK, they are also issued with a new birth certificate reflecting this gender.

The full terms of the Gender Recognition Act 2004 are available at: www.legislation.gov.uk/ukpga/2004/7/introduction.

Q. How does legal gender recognition currently work?

A. Applications are considered by the Gender Recognition Panel, which is a UK-wide tribunal.

Applicants must be at least 18 years old. The vast majority of applicants use the standard track which means that they must:

- Satisfy the Gender Recognition Panel that they have, or have had, gender dysphoria by producing two medical reports.
- Satisfy the Gender Recognition Panel that they have lived in the acquired gender throughout a period of two years.
- Make a statutory declaration before a person authorised to take oaths that they have lived in their acquired gender throughout the period of two years.

It is not necessary for a person to have had medical treatment such as hormone treatment or gender reassignment surgery in order to obtain legal recognition under the 2004 Act. However, if an applicant under either the standard or alternative track has had such treatment or surgery, then details of that treatment must be provided in a medical report submitted with their application.

If the Panel is content that an application meets the requirements of the 2004 Act they will issue the successful applicant with a full gender recognition certificate.

Q. How many people living in Scotland have been issued with a full gender recognition certificate?

A. In 2016-2017, the Gender Recognition Panel issued a total of 318 full gender recognition certificates but do not provide statistics on where people live.

From information held by National Records of Scotland that up to the end of 2016, the total number of people born or adopted in Scotland who have been recognised in their acquired gender is 287.

The consultation

Q. What does this consultation propose?

A. Key areas covered by the consultation are whether:

- Scotland ought to adopt a new streamlined administrative process for legal gender recognition.
- The minimum age of applicants should be reduced. Currently applicants must be at least 18. It also considers various options for applicants under 16.
- Scotland should legally recognise non-binary people.

Q. Who does the Scottish Government want to hear from?

A. To help develop well-informed policy and legislation, it is important that we receive responses reflecting the range of views held on this subject.

We strongly encourage anyone interested in the issues in this consultation to respond.

Self-declaration

Q. How would self-declaration work?

A. The Scottish Government proposes that, subject to views expressed during the consultation, Scotland should adopt a self-declaration system for legal gender recognition.

We propose that trans men and women aged 16 and over would be able to apply and there would be no medical requirements.

People would have to supply a statutory declaration confirming that they understand what they are doing and intend to live in the acquired gender for the rest of their lives.

The consultation also seeks views on possible options for people under 16 and for non-binary people.

Q. Who else has a self-declaration system?

A. A number of countries have recently adopted a 'self-declaration' process for legal gender recognition where the applicant's declaration of their gender identity is key and no medical or other evidence is necessary.

One example is the Republic of Ireland, which adopted a self-declaration process in 2015.

Age

Q. Why do you propose reducing the minimum age of applicants from 18 to 16?

A. There is clear evidence that people aged 16 live full time in their acquired gender and want this to be legally recognised, for example before they go into full time work or further education.

The proposed change would also be consistent with the age at which young people can exercise other rights under the law in Scotland without parental involvement or consent, such as getting married or entering a civil partnership, voting in Scottish elections or recording a change of name.

Q. What about people younger than 16?

A. The Scottish Government has not yet reached a view about whether it is appropriate to allow people under 16 to apply for legal gender recognition.

The consultation notes that there is a careful balance to be struck in relation to people under 16.

On the one hand, children must be treated with dignity and respect, and their views and wishes should be given weight in line with their individual capacity.

On the other hand, we must ensure that children have the right protection and care.

Non-binary people

Q. What are the proposals on non-binary people?

A. The consultation sets out some possible options for advancing the recognition of non-binary people in Scotland and seeks views on those options.

The Scottish Government is aware that some countries offer legal recognition of the gender identities of non-binary people, or offer alternatives to identifying as either a man or woman for the purposes of official records and identity documentation.

The consultation sets out the Scottish Government's understanding of the approach taken in a number of other countries and territories.

Women

Q. What do the Scottish Government proposals mean for women's services?

A. In Scotland, women's services like refuges are often already inclusive of all trans women, whether or not they have a full gender recognition certificate.

Q. Does the consultation propose any changes to exemptions in the Equality Act 2010 in relation to single sex services?

A. No.