

FOI Reference: 202200275036

Request for “notes, analysis, minutes, plans, or correspondence in relation to the 'Book of Non-Binary Identity', as proposed in the 2017 Consultation on Gender Recognition reform (paragraphs 7.10 and 7.11) and information on whether the Scottish Government Non-Binary Working Group has given any consideration to the 'Book of Non-Binary Identity'.”

1. DOCUMENT: REVIEW OF THE GENDER RECOGNITION ACT 2004: LEGAL RECOGNITION OF NON-BINARY PEOPLE – 13/06/2017

7. In relation to non-binary people, I am proposing that the consultation consider a wide range of options. I am not proposing a “do nothing” option, given our commitments in this area:

- Option 3: the establishment of a Book of Non-Binary Identity. This would be voluntary and separate from the Birth Register. Under this option, a non-binary person could pay a fee to enter their name in the Book. A formal acknowledgement would be provided, recognising the entry. However the Book would not (unlike the Birth Register) have any legal significance.

2. DOCUMENT: REVIEW OF GENDER RECOGNITION ACT 2004 – 07/03/2018

Option 3: the establishment of a Book of Non-Binary Identity (BONBI)

8. This would involve NRS establishing a Book of Non-Binary Identity (BONBI). This would be voluntary and separate from the Birth Register. Under this option, a non-binary person could pay a fee to enter their name in the Book. A formal acknowledgement would be provided by NRS, recognising the entry. However the Book would not (unlike the Birth Register) have any legal significance.

9. Officials discussed option this in general terms with children and young people present at a recent seminar organised by LGBT Youth Scotland. The children and young people present were strongly against this option, thinking there was little point to it. A similar scheme allowing those with Scottish affiliations to log overseas civil status events, the Book of Scottish Connections, has been operated by NRS for some years and is very little used or recognised.

3. ATTACHMENT ‘Gender recognition consultation - timings - submission to Cabinet Secretary’ FROM EMAIL ‘RE: Review of Gender Recognition: timing of consultation paper: draft submission’ - 14/09/2017 11:51

The book of Non-Binary Identity (the BoNBI)

14. We will ask if you are content to drop from the consultation the proposed Book of Non-Binary Identity. This would be a register run by NRS in which people could register a non-binary identity but there would be no legal effect. The EN/STA can be expected to argue that there would be little or no point in such a Book. The more we consider it, the more we tend to agree.

4. DOCUMENT: GENDER RECOGNITION- POINTS IN CONDOC FOR CABSEC COMMUNITIES, SOCIAL SECURITY AND EQUALITIES – 14/09/2017

The book of Non-Binary Identity (the BoNBI)

14. We will ask if you are content to drop from the consultation the proposed Book of Non-Binary Identity. This would potentially be a register run by NRS in which people could record a non-binary identity but there would be no legal effect. The EN/STA can be expected to argue that there would be little or no point in such a Book. The more we consider it, the more we tend to agree. Previous schemes (such as the Book of Scottish Connections, which allowed those with ties to Scotland to register overseas civil status events but without legal effect) have not been well used.

5. DOCUMENT: GENDER RECOGNITION CONSULTATION – DRAFT – SUBMISSION TO CABINET SECRETARY COMMUNITIES, SOCIAL SECURITY AND EQUALITIES – 20/09/2017

7. Annex A discusses some specific issues in the consultation where we would be grateful for your views. The questions where we would be grateful for your views are:-

- Are you content for the consultation to include the Book of Non-Binary Identity (the BoNBI) as one of the options in relation to recognition of non-binary people, but add that the SG is doubtful about its merit? (Paragraphs 26 to 28 of Annex A).

ANNEX A

The book of Non-Binary Identity (the BoNBI)

26. Paragraph 7.10 of the consultation discusses the proposed Book of Non-Binary Identity (BoNBI). This would potentially be a register run by NRS in which people could record a non-binary identity but there would be no legal effect. The EN/STA can be expected to argue that there would be little or no point in such a Book. The more we consider it, the more we tend to agree. Previous schemes (such as the Book of Scottish Connections, which allowed those with ties to Scotland to register overseas civil status events but without legal effect) have not been well used.

27. The Cabinet Paper included this as one option in relation to non-binary people. One option for the consultation is to include it but add that the SG is doubtful about its merit.

28. Are you content for the consultation to include the Book of Non-Binary Identity (the BoNBI) as one of the options in relation to recognition of non-binary people, but add that the SG is doubtful about its merit?

6. DOCUMENT: GENDER RECOGNITION CONSULTATION- UPDATE ON CONSULTATION POSITION- SUBMISSION TO CAB SEC COMMUNITIES, SOCIAL SECURITY AND EQUALITIES - 14.12.2017 – 14/12/2017

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	375	54%
Option 2 – Book of Non-binary Identity	116	17%
Option 3 – Limited document changes	165	24%
Option 4 – Full recognition using proposed self-declaration system	441	63%
Option 5 – Incremental approach	120	17%
Option 6- Amendment of the Equality Act 2010	370	53%
None of these options	70	10%
Not Answered	125	19%

7. DOCUMENT: GENDER RECOGNITION ACT 2004: REVIEW: NOTE TO FIRST MINISTER – 04/06/2018

Annex A- The consultation and consultation outcomes

There were mixed views from respondents on what should be done to increase recognition of non-binary people (respondents were able to select more than one option).

Option	All respondents	Scottish residents
Book of Non-Binary Identity	12%	12%

Annex C- Scheme for reform of the 2004 Act

Non-binary people

15. There were mixed views from respondents on what should be done to increase recognition of non-binary people (respondents were able to select more than one option).

Option	All respondents	Scottish residents
Book of Non-Binary Identity	12%	12%

16. My view is that we cannot move to full recognition of non-binary people now. There would be costs (as this would be the recognition of a third gender, along with

male and female) and there are, as the EHRC indicates, wide-ranging implications. Therefore, I would propose:

- We discuss further with the Equality Network/Scottish Trans Alliance and others whether there would be any point in establishing a Book of Non-Binary Identity (a way of recording non-binary identity but with no legal effect). Up until now, the EN/STA have seen little point in such a Book, and a parallel Book of Scottish Connections operated by NRS has not been well-received or used due to this lack of legal effect.

8. DOCUMENT: GENDER RECOGNITION – STAKEHOLDER UPDATE – CIRCULAR GR 1/2018 – SEPTEMBER 2018 – 12/09/2018

ANNEX – QUANTITATIVE ANALYSIS OF RESPONSES TO CONSULTATION

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.