

## SIAA Response

### Review of the Gender Recognition Act 2004

March 2018

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-declaration system for legal gender recognition instead.**

Do you agree or disagree with this proposal?

- Agree
- Disagree
- Don't know

We welcome Scotland's proposal to introduce a self-declaration system for legal gender recognition as it brings Scotland in line with human rights standards and reflects international best practice. The current system impedes trans people's right to privacy and self-determination and adds to the stigma that they already face.

Removing the psychiatric diagnosis requirement from legal gender recognition sends a clear message that trans people are not unwell, removes associated stigma and that they are able to decide for themselves how they identify and want to live.

Our members include and work with trans people on the basis of their self-declared identity and so we welcome the implementation of gender recognition law.

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

We believe that there should be allowances made for individuals to change gender. It is already the case that changing your legal gender is not an irreversible decision, and this should continue.

We also believe it is important to note that a statutory declaration may prevent particular individuals or marginalised groups from applying.

We believe that any individual looking to acquire legal gender recognition should be legally entitled to an independent advocate to support them through the process, ensure that they know their rights and understand

what is required of them.

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

- Yes
- No
- Don't know

The level of individuals who frequently adopt a different gender is really low, so there is nothing to be gained by implementing a limit.

We also believe that by setting a limit, it will discourage individuals who may otherwise apply.

**4. If the Scottish Government takes forward legislation to adopt a self-declaration system for legal gender recognition, should this arrangement be open:**

- only to people whose birth or adoption was registered in Scotland, or who are resident in Scotland?
- to everyone?
- Don't know

We believe it is really important that the arrangement is open to any individual regardless of their birth or residence details as otherwise particular individuals or groups may be further marginalised or face intersectional inequalities, e.g. asylum seekers, refugees or people born outside of Scotland.

**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 and obtain legal recognition of their acquired gender. Do you agree or disagree?**

- Agree
- Disagree
- Don't know

We welcome the Scottish Government's proposal to extend the application to 16 and 17 year olds as it reflects their existing rights and legal provisions (e.g. voting, marriage and driving) and the political consensus that 16 and 17 year olds have full legal capacity to make decisions that affect their lives.

As aforementioned, we believe that it is imperative that any individual going through the application process has a legal entitlement to an independent advocate to support them.

**6. Which of the identified options for children under 16 do you most favour? (Please select only one answer).**

- do nothing for children under 16
- court process
- parental application
- minimum age of 12
- applications by capable children
- none of these options

We support the view of Scottish Trans that out of the options provided, parental application is the most appropriate. Option 3 means that young trans people under the age of 16 are able to obtain legal gender recognition, and would use existing administrative and legal frameworks. It also means that trans people under 16 will have access to a simple, accessible process that is not reliant on assessment or scrutiny from outside experts.

Malta and Argentina are leading examples of international best practice. There is no lower age limit for applying for legal gender recognition – your parents or guardians make an application on your behalf. Legislation in both countries refers to the UNCRC, and taking the child’s best interests and views into account. If the consent of parents or guardians is unobtainable, but it is still considered in the child’s best interest, a court is able to rule that they should still have their gender legally recognised.

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

- Yes
- No
- Don’t know

We believe that it impinges upon an individual’s human rights and autonomy if they are forced to seek the consent of their spouse in order to obtain gender recognition.

**8. 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

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

- Yes
- No
- Don’t know

We believe that it is really important for legal gender recognition to not be grounds for divorce or dissolution.

**10. Are there any changes to section 22 (prohibition on disclosure of information) necessary?**

- Yes
- No
- Don’t know

We believe that it is imperative that the Scottish Government consult with the UK Government so as to ensure that people’s rights are protected and that any amendments are made to the Equality Act 2010.

While we recognise that there is an existing provision in the Equality Act that allows approved celebrants to refuse to marry or register a civil partnership for a person the approved celebrant reasonably believes holds a full GRC under the 2004 Act, we believe that this contradicts the legislation that states that it is unlawful to discriminate against persons who have certain 'protected characteristics' (includes gender reassignment). Transgender and non-binary individuals should be able to enjoy all the same rights as any other individual.

Independent advocacy is vital during this process so that individuals know their rights, what is required of them and to ensure that they are not directly, or indirectly discriminated against.

**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

A person would not be required to re-marry, or change their date or place of birth. We believe the same rules should apply to their gender recognition.

**12. Should Scotland take action to recognise non-binary people?**

- Yes
- No
- Don't know

Currently, there is very little recognition for non-binary people in Scotland; as well as not having legal gender recognition, non-binary people are often routinely not recognised in service provision, on identity documents, and in employment.

We believe that non-binary people's identities are as valid as those of trans men and trans women and it is vital that there are steps taken to ensure that they are fully recognised and included in society.

**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).**

- Changes to administrative forms
- Book of Non-binary Identity
- Limited document changes
- Full recognition using proposed self-declaration system
- Incremental approach
- Amendment of the Equality Act 2010
- None of the above options

We support Scottish Trans' suggestions that:

- Options 1 and 3 will ensure that non-binary people can complete forms in a way that is respectful and true to their identity, and have ID that reflects this.

- Option 4 would allow non-binary people access to the same legal gender recognition process as trans men and

trans women.

- Updating the Equality Act 2010 is a vital legislative step for all transgender people, not solely non-binary people. However, it is important that a human rights based approach is applied to the update and that people's rights are protected, upheld and respected regardless of how they identify.

**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

**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) partial Child Rights and Wellbeing Impact Assessment; or**

**d) the partial Privacy Impact Assessment?**

Yes

No

It is vital that a full impact assessment is carried out prior to implementation so as to ensure that no one group or characteristic is put at risk, marginalised or experiences consequent inequalities.

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

Yes

No