



Humanist Society Scotland

Response to: Scottish Government Review of the Gender Recognition Act 2004

General Comments

Humanist Society Scotland welcome the opportunity to input into the Scottish Government's plans regarding changes to the Gender Recognition Act.

Humanist core values and principles include support for universal equality among individuals¹. We have long challenged discrimination of LGBTI people and campaigned for them to have their fundamental rights respected². While the original act was a significant positive change at the time of its introduction we welcome the review of the Gender Recognition Act, in order to rectify some issues that have been highlighted by Trans individuals, academics and others with how the current Act works in practice.

As part of developing our response to this consultation we took time to engage with academic specialists in family law, transgender support organisations, members of our Humanist community and children's rights specialists³.

In December 2017 the board of Trustees agreed that the Humanist Society Scotland would make the following policy statement regarding recognition of Transgender and non-binary people:

¹ [Amsterdam Declaration 2002](#), International Humanist and Ethical Union: "Humanism is ethical. It affirms the worth, dignity and autonomy of the individual and the right of every human being to the greatest possible freedom compatible with the rights of others."

² For example, Humanist Society Scotland played a major role in campaigning for equal marriage rights for same-sex couples in Scotland and the Society was proud to solemnise the very first same-sex marriage in Scotland in a Humanist ceremony.

³ Humanist Society Scotland held a policy roundtable discussion at its Edinburgh office in February 2018 which we invited a representative of the government's consultation team to attend as an observer.

"We support changing the law to allow trans people and non-binary people the right to self-determination. Current legal requirements are intrusive and not in line with Humanist values of personal autonomy. We also support fairer rights and recognition for all young people, including Trans young people, in keeping with our commitment to principles of UNCRC."

In addition the Society are named supporters of the Equal Recognition campaign launched by the Scottish Trans Alliance and the Equality network⁴.

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?

We agree with the proposal to move to a self-declaration system for legal gender recognition. We believe that a move away from the current system of application to a panel on the basis of a diagnosis or requirement for a set qualifying period not only reduces intrusion into the applicant's life but is in line with similar systems adopted elsewhere in Europe⁵.

We also note that moving to a system of self-declaration helps bring Scotland into compliance with Resolution 2048 of the European Parliament regarding reducing discrimination against transgender people⁶.

As Humanists we are committed to treating individuals as having inherent worth and dignity and having the right to self-determination of their own lives and bodies. A move to recognising a self-declaration process for gender recognition is in line with Humanist principles regarding autonomy of self.

⁴ <http://equalrecognition.scot/supporters/>

⁵ For example Ireland, Denmark and Malta plus others.

⁶ [Discrimination against transgender people in Europe](#)

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?

We agree with the proposal to make an application require a statutory declaration. Given that making such a change is an important life decision we believe it should contain a level of protection and assurance regarding the recognition by the applicant of the consequences of an application. In some ways such a declaration is similar to that of a legal contract made in marriage, thus providing an official legal process for applicant to consider to ensure this is a process they wish to undertake.

While in other states where self-declaration has been established there is no evidence of false applications, the statutory process will provide for protection against any frivolous applications.

Question 3

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

The current 2004 act does not include a restriction regarding limits on the number of applications and we do not see any evidence presented for a need to introduce a new limitation. In terms of reducing false or frivolous applications, we believe the proposals as stipulated in question two regarding making the process a statutory declaration witnessed by a solicitor or justice of the peace is sufficient.

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?

(B) to everyone?

(C) Don't know

We do not believe that applications should be limited to those who were born, adopted in Scotland. We would be concerned that a proposal which would limit scope for recognition for those who may be fleeing persecution, in some cases which may be with regard to their trans identity.

While limiting applications to those with residency may reflect the reality of which country holds responsibility for the persons the birth certificate this could impact on individuals that have not gained residency. The Scottish Government have taken a very supportive stance with regard to helping and offering asylum to people who face serious discriminations around the world which the Humanist Society welcome. Therefore to allow for applications from everyone would allow for people living with asylum status in Scotland to make an application.

Question 5

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?

We agree with the proposal to allow 16 and 17 years to make an application reduced from the current minimum age of 18.

This change brings this area of law into line with that of marriage, certain voting rights, and age of consent. Humanist Society Scotland have actively campaigned in other areas of law⁷.

Question 6

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

Humanist Society Scotland favour Option 5: application by capable children.

A capability assessment model already successfully works in Scotland with regard to instructing legal representation and access to healthcare⁸. Therefore we believe a similar approach should be taken with regard to applications for legal recognition of their acquired gender.

Humanist Society Scotland support the articles contained within the United Nations Convention on the Rights of the Child (UNCRC) as a basis for children and young people's rights. The society support full incorporation of UNCRC into Scots law. We therefore seek recognition of evolving capacities of children and a children's right to have an identity as stipulated in Article 8 of UNCRC⁹.

⁷ For example [the current ban on 16 and 17 year olds](#) being able to exercise their freedom of religion and belief in Scottish schools by opting out of compulsory Religious Observance.

⁸ Age of Legal Capacity (Scotland) Act

⁹ [Article 8 of UNCRC includes Gender Identity as defined by the Children and Young People's Commissioner Scotland.](#)

We do not believe that the other options presented in the paper fully incorporate UNCRC. With regard to option 3 - parental application, we are concerned that this seeks to place the rights of the child fully with the parent or guardian. While Article 5 of UNCRC does give rights to children to be guided and supported by their parents, we do not believe they should have the ability to make applications on their child's behalf. Supportive parents will still be able to assist children through a capable child application model. However utilising the option 5 model will remove the risk of young people being denied access to their Article 8 rights by an unsupportive parent.

Questions 7

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

Yes. Humanist Society Scotland believe that allowing a spousal veto over obtaining a legal gender recognition change is not compatible with our understanding of protecting an individual's autonomy over their own identity. We do not share unfounded concerns that people would be surprised by a spouse's intention to apply and in most circumstances a spouse is likely to be supportive of an application.

However it should be recognised that there may be cases of separated couples where they may not be spousal support. However objections within this situation should not become a reason to deny another individual to exercise their rights. It is our preferred option instead to review Scotland's divorce laws to ensure they are fit for purpose for the twenty-first century and allow for access to a no-fault divorce.

Question 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. Humanist Society Scotland support allowing civil partnerships to continue in these circumstances. We have previously called for, and again believe the best option, is to open civil partnerships to both same-sex couples and mixed-sex couples¹⁰.

¹⁰ [It's time for equal civil partnerships to be made available](#), Humanist Society Scotland, 2016

We have evidence of mixed-sex couples who have approached the society looking for a mixed-sex civil partnership. We therefore cannot supply a requested ceremony that is legally recognised to our members, which we find is unfair and impacts on Humanists and others who would like to be able carry out such ceremonies because it fits with our beliefs and philosophy.

This would remove confusion over this matter and not have a situation whereby only some mixed-sex couples could be in a civil partnership by virtue of a gender recognition certificate.

We believe that the Scottish Government's aspiration to recognise trans and non-binary people is incompatible with the current policy regarding not allowing access for mixed-sex couples to civil partnerships. The Scottish Government should revisit this decision at the earliest possibility.

Question 9

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

Yes. We think there should be a wider review of divorce law in Scotland with the introduction of a no-fault ground for divorce. This would therefore remove any requirement to provide any specific grounds for this reason. We appreciate that Scotland already has reduced separation times before application for divorce than applies in England and Wales however we still believe that the Scots Law on divorce needs to be brought up to date, as we do not feel they reflect the modern community who seek to access them.

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. We would support recognition of other jurisdictions applications in the same way that other jurisdictions marriages are recognised in Scotland without further requirements.

Question 12

Should Scotland take action to recognise non-binary people?

Humanist Society Scotland welcome action from the Scottish Government to recognise non-binary people. Key Humanist values include a support for equal

rights for all individuals and this recognition would give further public recognition for these values in practice.

We believe the current practice which does not recognise non-binary people is unfair. In addition, if such recognition were to be extended to marriage law, it would allow for Humanists to be able to legally marry someone in a ceremony that was meaningful and in line with their beliefs. Currently non-binary people are denied from being able to access a legally recognised Humanist marriage because of the law not recognising them.

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).

The Humanist Society favour options 1, 3, 4 and 6.

Options 1 and 3 will allow for non-binary people to have recognition in their daily lives regarding forms and other official correspondence.

Option 4 will allow for non-binary people to access the same self-declaration system as tran people covered in other parts of this consultation.

Options 6 will ensure long term respect and recognition of non-binary people in law and with regard to protection from discrimination under equalities legislation.

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