

## ANNEX E - SCOTTISH GOVERNMENT'S UNDERSTANDING OF GENDER RECOGNITION IN OTHER JURISDICTIONS

1. The table below summarises the key features of the legal gender recognition arrangements in other countries and territories.<sup>76</sup> Further details are provided in Parts 2-4 of this Annex.

Country	Self-determination model	Assessment model- administrative system-	Assessment model- Court-based process	Treatment model- treatment or surgery required
Argentina	Yes			
Australian Capital Territory		Yes		
Austria				Yes
Belgium	Yes			
Canada- British Columbia		Yes		
Chile <sup>77</sup>	Yes			
Colombia	Yes			
Czech Republic				Yes
Denmark	Yes			
Finland				Yes
France			Yes	
Iceland	Yes			
Ireland	Yes			

<sup>76</sup> By “self-determination model”, the table refers to systems of gender recognition which are based on an applicant’s own declaration as to their lived gender. By “assessment model”, this table refers to systems whereby an applicant’s evidence must be supported by third party evidence from a doctor or psychologist and is considered by either a court or an administrative body. We have categorised as a “treatment model” a gender recognition system which requires an applicant to have had hormone treatment, or to have been sterilised or had reassignment surgery.

<sup>77</sup> For those aged 18 or above and a court based process for those aged 14 to 18.

Malta	Yes			
New Zealand			Yes	
Norway	Yes			
Portugal	Yes			

## 2. Countries with systems based on an applicant's self-determination

### Argentina

2.1. The law in Argentina was adopted in 2012 and provides<sup>78</sup> that a person aged 18 or over must make a request to the National Register of Persons stating that they are covered by this law and seeking an amended birth certificate and a new identity card.

2.2. Where the person is under 18, the request is made by their legal representatives and with their agreement, taking into account the person's evolving capacities and best interests. If the person's legal representatives do not wish to make the application or it is otherwise impossible to obtain approval, a court process can be used.

### Belgium

2.3 Belgium adopted a new law in May 2017 which removed the requirement to undergo sterilisation. Applicants aged 18 and over must make a declaration stating that they are convinced that the sex shown in their act of birth does not correspond with their gender identity.<sup>79</sup> Applicants aged 16 and 17 must be supported by their parent or legal representative and have consulted a psychiatrist.

2.4 The applicant then receives an information pack and the King's Prosecutor is advised of the application and has a period of three months during which they may refuse the application in exceptional cases. At the end of this three month period and before six months have passed in total, the applicant must reconfirm their application before the process is completed.

<sup>78</sup> Ley 26.743 Establécese el derecho a la identidad de género de las personas was adopted in 2012. A translation in English is at <http://tgeu.org/argentina-gender-identity-law/>

<sup>79</sup>See ILGA Europe Media release at <https://www.ilga-europe.org/resources/news/latest-news/new-legal-gender-recognition-belgium>

## Chile

2.5. In November 2018, Chile adopted a new law pertaining to the right to respect for an individual's gender identity<sup>80</sup>. People aged 18 or above can make an application to the Civil Registry. They must be:

- of age
- able to verify their identity;
- unmarried<sup>81</sup>; and
- make a declaration along with two witnesses, under promise or oath, that they know all the legal effects involved in the rectification of their sex as disclosed on their birth certificate.

2.6. The Civil Registry can reject an application only in limited circumstances and can declare the application inadmissible only if the individual has not reached the age of majority or the person is married.

2.7. An individual can use the process on up to two occasions.

2.8. For individuals between 14 and 17, the request must be made to the family court. The court requires to consider evidence, including psychological or psychosocial reports.

## Colombia

2.9. The law in Colombia was adopted in 2015 and provides that a person is permitted to correct the Civil Registry of Birth by filing a petition with a notary public.

2.10. The petition must be accompanied by a sworn declaration indicating their willingness for the Civil Registry of Birth to be corrected and information about their understanding of their sexual identity.

2.11. The notary is required to issue a public deed correcting the entry within 5 business days of receipt of petition and necessary documents.

2.12. Correction of the Civil Registry of Birth may consist of either male to female or female to male.

2.13. The sex shown for a person in the Civil Registry of Birth may be corrected up to twice and requests must be 10 years apart.

<sup>80</sup> It appears that the changes will come into effect once certain secondary regulations have also been issued, including by the Ministry of Justice and Human Rights to regulate the procedure.

<sup>81</sup> The parties to the marriage can divorce as part of the procedure of applying for rectification of the applicant's birth certificate.

## Denmark

2.14. From 1 September 2014, Danish residents aged 18 or over may apply to change their personal number in the Central Persons Register by application to the Minister of the Interior and Social Security and then completing a six month reflection period. If a false statement is made this is punishable under the Danish penal code.

## Iceland

2.15. The Icelandic Parliament approved a new law in June 2019 giving individuals the right to change their official gender registration, according to their gender identity. Children under 18 need the approval of their parents.

## Republic of Ireland

2.16. Under the Irish legislation, which came into force in 2015,<sup>82</sup> a person who was born, or is ordinarily resident in the Republic of Ireland, and is aged 18 or over, may apply to the Department of Social Protection to change their legal sex from male to female or vice versa by submitting an application form incorporating a statutory declaration.

2.17. It is an offence for a person knowingly or recklessly to provide false or misleading information in a material respect in an application. There is also an offence under the Irish Statutory Declarations Act 1938 if an individual makes a statutory declaration which to their knowledge is false or misleading in any material respect. They are liable on conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both.

2.18. Applications by 16 and 17 year olds must be accompanied by a court order permitting their application to proceed. The court order is granted if there is parental consent and medical evidence about the young person's capacity and transition to their acquired gender.

2.19. A person who has obtained recognition of their acquired gender in another jurisdiction can apply for recognition in the Republic of Ireland. Between September 2015 and the end of August 2019, 517 applicants have been issued with gender recognition certificates,<sup>83</sup> an average of 129 applications per year.

2.20. If an applicant later changes their mind, they must request revocation of the GRC. The Minister for Social Protection decides whether to grant this request. Up to the end of August 2019, there have been three such requests, all of which have been granted.<sup>84</sup>

<sup>82</sup> At <http://www.irishstatutebook.ie/eli/2015/act/25/enacted/en/html>. The Irish application form, including the statutory declaration, can be found at <http://www.welfare.ie/en/pdf/GRC1.pdf>

<sup>83</sup> Source is the Government of Ireland, Department of Employment Affairs and Social Protection, Client Identity Services.

<sup>84</sup> Source is the Government of Ireland, Department of Employment Affairs and Social Protection, Client Identity Services.

## Malta

2.21. The law in Malta<sup>85</sup> was adopted in 2015. It provides that all Maltese citizens may request the Director for Public Registry to change their “recorded gender and first name” by way of a declaratory public deed drawn up by a notary public. This deed must contain “a clear, unequivocal and informed declaration by the applicant that one’s gender identity does not correspond to the assigned sex” and a specification of the gender particulars.

2.22. Where a person is under 16, persons exercising parental authority may file an application in court, with the court required to ensure the best interests of the child are taken into account and to give due weight to the views of the child, having regard to the child’s age and maturity.

2.23. Amendments made to an adult applicant’s Act of Birth as a result of legal recognition can only be modified again by a court order.

## Norway

2.24. The law in Norway provides that a Norwegian resident aged 16 and over may apply for a change in the gender in which they are registered in the National Register to the Tax Office. If they are aged between 6 and 16 they must apply along with the person or persons who have parental responsibility for them.

2.25. If in respect of a child between 6 and 16 only one parent consents, the application must be made then to the County Governor of Oslo and Akershus and will be granted if this is best for the child.

## Portugal

2.26. A new law was adopted in Portugal on 31 July 2018, which permits an individual who is a Portuguese national aged 18 and over to have the sex in which they are recorded changed based on their gender identity not corresponding with the sex in which they were recorded at birth.

2.27. Those aged 16 and 17 can apply through their legal representatives, there must be medical evidence as to their legal capacity, but not of a medical diagnosis.

<sup>85</sup> At <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12312&l=1>

### **3. Countries using an administrative assessment model- third party evidence of gender identity is required**

#### Australian Capital Territory

3.1. A person seeking to change their sex on a birth certificate issued in the Australian Capital Territory can apply to Access Canberra enclosing an application form and a statement by a doctor.<sup>86</sup>

3.2. The statement from the doctor or psychologist requires to confirm either that that applicant has had 'appropriate clinical treatment' for the alteration of their sex or that the applicant is an intersex person.

#### Canadian province of British Columbia

3.3. A person seeking to change their sex on a birth certificate issued in British Columbia may apply to change this from female to male or vice versa by applying to the British Columbia Vital Statistics Agency.<sup>87</sup> The application form states that they "have assumed, identify with and intend to maintain the gender identity that corresponds with the requested change". In addition, they must provide a statement in the prescribed form from a physician or psychologist confirming that the applicant's gender identity does not align with the "Sex" designation on the identification issued to the applicant by the provincial government.

3.4. A person under 18 may also apply provided they have the consent of all their parents or legal guardians, and are able to provide a required statement from a physician or psychologist.

3.5. A similar arrangement is also used in the Canadian province of Manitoba.<sup>88</sup>

### **4. Countries using a court-based assessment model**

#### France

4.1. The law in France was altered with effect from 1 January 2017. Any adult or emancipated minor can apply to the court to have their gender corrected in the civil registry, declaring their free and informed consent to the change of documents with supporting evidence. They require to demonstrate sufficient facts in support of this such as: that they appear publicly to belong to the affirmed sex; that they are known in that sex to their family, friends and

<sup>86</sup> Further information including the forms to be used can be found here- [https://www.accesscanberra.act.gov.au/app/answers/detail/a\\_id/1691](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/1691)

<sup>87</sup> Information on the process is at <https://www2.gov.bc.ca/gov/content/life-events/birth-adoption/births/birth-certificates/change-of-gender-designation-on-birth-certificates?keyword=birth&keyword=certificate>.

<sup>88</sup> See [http://vitalstats.gov.mb.ca/change\\_of\\_sex\\_designation.html](http://vitalstats.gov.mb.ca/change_of_sex_designation.html).

colleagues; or that they have changed their forename to one of the affirmed sex.

### New Zealand

4.2. An adult aged 18 and over whose birth was registered in New Zealand may apply to the Family Court for a declaration that the birth certificate issued to them should contain their nominated sex and not the sex recorded in the birth register.<sup>89</sup> Typically, there must be expert medical evidence that the applicant:

- has assumed or has always had the gender identity of a person of the nominated sex;
- has undergone medical treatment usually regarded by medical experts as desirable; and
- will as a result maintain a gender identity of a person of the nominated sex.

4.3. Each case is assessed taking into account the medical evidence and what is medically recommended for that person.

## **5. Countries using a treatment model where medical treatment or surgery is required<sup>90</sup>**

### Czech Republic

5.1. The law in the Czech Republic permits a person to change their legally recognised gender including a change in their personal identification number, provided they have had genital surgery and been sterilised.

### Finland

5.2. A Finnish national, or person resident in Finland must:<sup>91</sup>

- submit a medical statement confirming that they have been sterilised or are otherwise infertile and that they feel they belong permanently to the opposite gender; and
- evidence of the consent of their spouse or partner where they are married or in a recognised partnership.

## **The Scottish Government December 2019**

<sup>89</sup> Births, Deaths, and Marriages and Relationships Act 1995, section 28 and guidance at [https://www.dia.govt.nz/diawebsite.nsf/wpg\\_URL/Services-Births-Deaths-and-Marriages-Information-for-Transgender-Applicants?OpenDocument](https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Services-Births-Deaths-and-Marriages-Information-for-Transgender-Applicants?OpenDocument)

<sup>90</sup> . Paragraph 2.12 of Chapter 2 this consultation notes the impact of the case of *A.P., Garçon and Nicot v. France* in 2017, in the European Court of Human Rights.

<sup>91</sup> At <http://www.finlex.fi/fi/laki/kaannokset/2002/en20020563.pdf>