

Response ID ANON-ETBC-GG63-N

Submitted to Review of the Gender Recognition Act 2004

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The Gender Recognition Act 2004

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.

Disagree

If you want, you can give reasons for your answer, or make comments.:

It is important to state at the outset that many do not believe that gender identity is a matter of choice, or something that may be entirely divorced from the biological sex in which we are born. Many believe rather that as individuals we are called to acknowledge and strive to accept our sexual identity and the physical, moral and spiritual differences and complementarities which flow from this. These differences and complementarities are naturally oriented towards the nature of marriage and the flourishing of family life.

The Catholic Church therefore remains steadfast in its conviction that gender cannot be reduced to a mere construct of society that is fluid and changeable. However, at the same time society in general must remain unwavering in its concern for those who experience gender dysphoria and will expect those in authority to ensure appropriate support is available to those who need it.

The Diagnostic and Statistical Manual of Mental Disorders, 5th Edition: DSM-5, of the American Psychiatric Association, continues to recognise gender dysphoria as a genuine, troubling medical condition. By moving to a self-declaratory model and de-medicalising the wish to transition legally we may fail to provide the necessary support for those affected by gender dysphoria in the form of contact with health professionals. There is also a danger that speeding up the process of changing gender legally will increase the possibility of people making choices and commitments they will later regret. We cannot ignore the magnitude of the decision to change legal gender. It is a matter which cannot be taken lightly and before any such decision, appropriate holistic medical and psychological support for the person must be provided. It is worth noting that the European Court of Human Rights (Garcon and Nicot v France [2017] ECHR 338 (06 April 2017)), in a judgement which is legally binding, held that an 'assessment model', which is the existing model in Scotland, is compatible with human rights.

We are also concerned with the Government's citing of the Yogyakarta Principles as 'best practice'. The Yogyakarta Principles were drafted mainly by human rights lawyers who focused on the matter of sexual orientation. There is no sign the Principles were informed by any clinicians with expertise in gender dysphoria. They also have no legal force.

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?

No

If you want, you can give reasons for your answer or make comments.:

As stated above gender dysphoria is a recognised medical condition. It is incumbent upon Government to ensure appropriate support for those persons who suffer from gender dysphoria and not to treat the condition lightly. A process of statutory self-declaration does not afford those who suffer from gender dysphoria an adequate level of support from, or contact with, medical professionals. This is particularly concerning in view of the high rate of suicide and co-morbidities often associated with gender dysphoria.

Further, a commitment that the person will live in the new legal and social gender until death seems to assume that remaining in the new gender, or at least intending to do so initially, is in some way binding. However, statistical evidence reveals that people sometimes 'de-transition' after years of living in the acquired gender and even after sex reassignment surgery. Whilst sex reassignment surgery may be a step further on from legal recognition of a change in gender, the growing number of internet testimonies of de-transitioned adults highlight the reality that people change their minds in the matter of their gender (see <http://www.sexchangeregret.com/>). What such testimonies also highlight is the considerable vulnerability of people who experience gender dysphoria and the undoubted need for appropriate clinical support. Decoupling the ability to change one's gender from a medical diagnosis is a serious step and one with considerable risk and long-term consequences.

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

Not Answered

If you want, you can give reasons for your answer or make comments.:

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

Not Answered

If you want, you can give reasons for your answer or make comments.:

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?

Disagree

If you want, you can give reasons for your answer or add comments.:

The UN Convention on the Rights of the Child defines children as those under the age of 18 years. The Government must be very careful in its approach to this question.

Sixteen and seventeen years of age is a testing time in the life of a young person: it is a very important formative phase and a time fraught with much uncertainty, confusion and vulnerability.

Under existing legislation under 18s are not offered surgery or other irreversible interventions. It is important that this remains the case. Allowing young people of this age to legally change their gender increases the likelihood that they will seek or be offered irreversible surgery.

6 Which of the identified options for children under 16 do you most favour?

Option 1 – do nothing for children under 16

If you want, you can give reasons for your answer, add comments, or describe your preferred option if none of the options given reflects your views.:

The UN Convention on the Rights of the Child defines a child as someone under the age of 18 years. The Scottish Government must be extremely careful in its approach to legislating in this area.

At a time in their young lives fraught with much confusion and vulnerability - even in matters of sexual orientation and sexual identity - is it appropriate to entertain the possibility of allowing an underage child to legally change their gender?

Nobody should treat gender dysphoria lightly. The suffering of those with gender dysphoria must be taken seriously and they must receive all necessary support including support with their mental health from health care professionals.

Young people under the age of 16 are not currently offered surgery or other irreversible interventions. It is absolutely critical that this remains the case. Allowing children of this age to legally change their gender increases the likelihood that they will seek or be offered irreversible surgery.

Again, according to the Diagnostic and Statistical Manual of Mental Disorders, "in natal [biological] males, persistence of [of gender dysphoria] has ranged from 2.2% to 30%. In natal females, persistence has ranged from 12% to 50%". These relatively low overall levels of persistence of gender dysphoria in children should be taken seriously by the Scottish Government which must ensure that adequate clinical support is given to all people who experience gender dysphoria. Allowing children to legally change their gender when the likelihood is that they will or might well be reconciled with their birth gender in the long term seriously fails the child.

The ability of a child of this age to understand the momentous decision to change gender and to appreciate the consequences must also be questioned.

Marriage and Civil Partnership

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

No

If you want, you can give reasons for your answer or add comments.:

Two persons – a man and a woman, biologically complementary – are required to create a marriage. Further, each party to the marriage is of fundamental importance in terms of the relationship, and especially in terms of the equality of the parties as they make their commitment, and neither party should be permitted to 'reframe' the marriage in such a radical way in legal terms, that the original context no longer pertains. To do so is effectively to assume a new consent where no actual consent may be forthcoming.

The possibility of a party refusing consent to legal gender recognition, which would leave him or her in a same-sex marriage he or she did not freely enter, should be retained.

8 Civil partnership is only available to same sex couples. This means that the civil partners cannot remain in their civil partnership if one of them wishes to obtain a full Gender Recognition Certificate.

Not Answered

If you want, you can give reasons for your answer or add comments.:

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

Not Answered

If you want, you can give reasons for your answer or add comments.:

Other aspects of the 2004 Act

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

Not Answered

If you answered Yes, describe the changes you consider are needed.:

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?

Not Answered

If you want, you can give reasons for your answer or add comments.:

Non-binary people

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

No

If you answered No, and if you want, you can give reasons for your answer.:

Non-binary people, estimated to be 0.4% of the UK population, already have the option on many official forms of 'preferring not to say'.

There is also a significant legal and administrative impact of the introduction of a third category of gender and the consultation author is correct to call a move to include the category of non-binary as "radical" and something that requires "careful thought".

There would also be significant costs to the state and to businesses so that any new legal rights for the very small number of people who identify as non-binary might be introduced. Thus, IT systems, toilet facilities, changing facilities, official forms and documents, for example, would all need to be reviewed, reassessed and adapted, so that the new category of gender might be facilitated. There will not only be considerable cost implications but also considerable disruption.

The question must also be asked: if we move away from thousands of years of society recognising two complementary genders to one which recognises three, how long will it be before we are asked to recognise a fourth, fifth and sixth gender?

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.

If you want, you can give reasons for your answer, add comments or, if you think none of Options 1 to 6 is suitable, describe your preferred option.:

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.

Not Answered

If you answered Yes, describe the impacts you have identified.:

Conclusion

15 Do you have any comments about, or evidence relevant to:

Not Answered

If you answered Yes, add your comments or evidence.:

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

Yes

If you answered Yes, add your comments.:

As stated in our response to question 1, it is far from axiomatic that society must accept gender identity to be a matter of choice and/or something that may be divorced entirely from our biological sex. Instead we are to acknowledge and accept to the best of our ability (for some this will be genuinely difficult) our sexual identity and the physical, moral and spiritual differences and complementarities which flow from this. These differences and complementarities are oriented towards the good of marriage and to the flourishing of family life (this also applies to those who do not marry or have children, who are nonetheless still fully male or female).

For the Common Good of society it therefore cannot be accepted that gender should be reduced to a mere construct of society that is fluid and changeable. In fact, the Common Good requires that we remain unwavering in love and acceptance of those who experience gender dysphoria and,

further, ensure that those in authority provide appropriate holistic support to those who need it.

The Catholic Church in this submission is also concerned that the rights of conscience and freedom of religion be protected for those who do not subscribe to the idea that gender is fluid and/or that gender may be wholly divorced from biological sex. This is particularly important for those who work in education, for healthcare workers, marriage celebrants, and religious representatives.

About You

What is your name?

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Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:
Catholic Parliamentary Office of the Bishops' Conference of Scotland

If you are responding as an organisation and want to tell us more about your organisation's purpose and its aims and objectives, you can do so here.

If you are responding to this consultation as an organisation and want to tell us more about your organisation's purpose and its aims and objectives, please do that here.:

The Bishops' Conference of Scotland is a registered charity (No 16650). The Conference enables the Roman Catholic Bishops in Scotland to work together, undertaking nationwide initiatives through their Commissions and Agencies.

The members of the Bishops' Conference are the Bishops of the eight Scottish Dioceses. The Bishops' Conference of Scotland is a permanently constituted assembly, which has a number of commissions and agencies that assist it in carrying out its work.

The Catholic Parliamentary Office is an agency of the Bishops' Conference of Scotland and part of its remit is to engage with the work of Parliament and Government, including responding to consultations and calls for evidence on behalf of the Bishops' Conference.

The Bishops' Conference of Scotland thanks the Scottish Government for the opportunity to respond to this consultation.

Where are you resident?

Scotland

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Very satisfied

Please enter comments here.:

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:
Very satisfied

Please enter comments here.: