**REVIEW OF THE GENDER RECOGNITION ACT 2004: FACTSHEET**

**Background**

A trans person (the term “transgender” is also used) feels, very strongly, that their day to day identity does not match what it says on their birth certificate. Since the Gender Recognition Act 2004 came into force, trans people have been able to obtain a gender recognition certificate by applying to the Gender Recognition Panel, a tribunal. A full gender recognition certificate provides legal recognition that a person has transitioned from male to female or female to male.

**Current position on legal gender recognition**

Most applications to the Panel are under a standard track. Under the existing legislation, there are three tracks for applying for gender recognition: the standard track; the overseas track (used when a person has obtained legal gender recognition outwith the UK) and the alternative track (which applies only in limited circumstances and is rarely used).

 An applicant under the standard track must:

* Satisfy the Panel that they have, or have had, gender dysphoria and produce two medical reports. (Gender dysphoria is where a person experiences discomfort or distress because there's a mismatch between their biological sex and gender identity).
* Satisfy the Panel that they have been living as a man or woman, as the case may be, for at least 2 years. The Panel will consider evidence demonstrating this such as a passport, driving licence and utility bills.
* Make a statutory declaration before a notary public or a justice of the peace that they have lived as a man or woman, as the case may be, for at least 2 years and intend to do so until death.

Once a full gender recognition certificate is granted, trans people can obtain an updated birth certificate. In addition, they are legally recognised in the UK as having become a man or a woman in terms of the 2004 Act, except in some limited circumstances. At present, around 25 people a year from Scotland are granted legal gender recognition.

**The Equality Act 2010**

The Equality Act 2010, which is generally reserved to the UK Government, has a number of exceptions which allow trans people to be excluded from providing or receiving some single sex services, when it is proportionate and reasonable to do so.

For example, the 2010 Act allows employers to impose a requirement that a job can only be open to people who do not have the protected characteristic of gender reassignment, where this is crucial to the post and a proportionate means of achieving a legitimate aim. This could be used by a hospital which determines that a specialist post working with women cannot be carrierd out by trans women.

The Scottish Government is not proposing any changes to the exceptions in the 2010 Act.

**The first Scottish Government consultation**

The Scottish Government consulted on reforming the 2004 Act between 9 November 2017 and 1 March 2018. This consultation followed criticism of the current procedures from trans people themselves and from others. For example, the Women and Equalities Committee at Westminster, in a report published in January 2016, said that “The Gender Recognition Act 2004 was pioneering but is now dated. Its medicalised approach pathologises trans identities and runs contrary to the dignity and personal autonomy of applicants. The Government must update the Act, in line with the principle of gender self-declaration.”

There were over 15,500 responses to the first consultation. 60% of all respondents were in favour of reform and 65% of respondents from Scotland were in favour. However, some groups raised concerns in relation to areas such as single sex spaces for women.

**The next consultation – on a draft Bill**

The Cabinet Secretary for Social Security and Older People announced in Parliament on 19 June 2019 that the Scottish Government will publish a consultation seeking views on a draft Gender Recognition Bill by the end of 2019. It will be accompanied by a comprehensive draft Equality Impact Assessment.

The Bill will propose that applicants for a gender recognition certificate:

* Will no longer need to provide medical evidence to the Panel.
* Will continue to have to provide a statutory declaration that they intend to live permanently as a man or a woman. It is, and will remain, a criminal offence to make a false statutory declaration.
* Will need to state in the statutory declaration that they have already been living as a man or woman for at least 3 months.
* Will be given a mandatory 3 month reflection period after an application has been made and checked to ensure the necessary information and statutory declaration has been provided. The gender recognition certificate will only be granted once the 3 months have passed and the applicant has confirmed that they still wish to proceed.

This means that applicants will need to live in their acquired gender for at least 6 months – 3 months before applying for a gender recognition certifcate and 3 months after applying – before a gender recognition certificate can be granted.

The consultation will seek views on the proposals in the draft Bill.

The Scottish Government does not intend to make gender recognition available to those aged under 16 but the consultation will seek views on what further support is needed generally for children and young people uncertain of their gender identity.

The consultation will also seek views on whether the minimum age of applicants for legal gender recognition should be reduced from 18 to 16.

The Scottish Government does not intend to make gender recognition available to non-binary people (who do not identify as either male or female) but does intend to set up a working group on non-binary people. This will consider possible changes to procedures and practice and what we can learn from best practice internationally, as well as from within Scotland and the rest of the UK.

The Scottish Government will establish a working group on sex and gender in data comprised of professionals from across statistical services. This will be led by and report to the Scottish Government’s Chief Statistician. The working group will consider what guidance should be offered to public bodies on the collection of data on sex and gender. It will also consider what more can be done to produce data that is disaggregated between male and female. Disaggregating data in this way can help provide more information on potential discrimination in society and what action should be taken to tackle this discrimination.

The Scottish Government will also develop guidance to ensure that we continue to uphold both women’s rights and trans rights.  This guidance will be used by the Scottish Government in relation to service provision and policy-making, and will also be available to public services as well as publicly available***.***

**Scottish Government**

**June 2019**