



GRA (Scotland) Consultation 2018

Consultation documents:

- <http://www.gov.scot/Publications/2017/11/5459>
- https://consult.gov.scot/family-law/review-of-the-gender-recognition-act-2004/user_uploads/sct1017251758-1_gender_p4--3-.pdf.

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? Agree Disagree Don't know If you want, you can give reasons for your answer, or make comments.

Agree

ECU is aware that many staff and students in post-16 education are dissatisfied with the current process of application for GRA for its negative impacts on many individuals' dignity and mental health. Further to this, the process unnecessarily delays when an individual can rely on documentation which supports their preferred gender identity. Such delays are particularly detrimental when they correspond with application processes to a College or University as a student or during a period of study.

Participation in further and higher education – as a student or as an employee – rarely requires evidence of a GRC (with the exception of pensions and certain occupational requirements) but does strongly rely on different types of identity documentation which will be supported by a GRC. Administratively the knock-on effect of delays can cause significant administrative barriers for students in post-16 education where record systems overly rely on name and gender/sex as identity markers. This adversely affects interaction with important 'third party' systems supporting the student journey (for example funding, visas, certificates of accreditation, Disclosure and barring service checks for professional courses). Staff transitioning face similar challenges with job applications, references, and pensions.

ECU has been working with the sector to encourage greater reliance on processes which support self-identification of gender (and name, where applicable) to reduce these administrative burdens and barriers - see ECU (2016) *Trans staff and students in HE and colleges: improving experiences* <https://www.ecu.ac.uk/publications/trans-staff-and-students-in-he-and-colleges-improving-experiences/>. Such efforts would be greatly supported by a GRC process which also places greater weight on self-identification.

We also highlight the difficulties many students and staff experience in living in their acquired gender for a defined period prior to a GRC, or accessing medical support particularly when transferring between educational contexts, or in unsupportive family environments (and note the role that trans identity has in student family estrangement-see for example [NUS \(2010\) *Evaluating Estrangement: a report into the estrangement*](#)

We support a system which aims to:

- Recognise the rights of individuals to self-identify their preferred gender without providing medical evidence or evidence that they have lived in that gender for a prescribed period.
- Reduces lengthy time and procedural barriers to attaining gender recognition which can lead to barriers with record keeping and use of preferred gender in educational settings.

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? Yes No Don't know If you want, you can give reasons for your answer or make comments.

No

We hold concerns about the statement 'live in their acquired gender until death'. For some individuals, their understanding of their gender identity will change over time, and this may go beyond current gender 'binaries' in UK legislation. Some countries legally recognise more than two genders and the UK may do so in future. We continue to receive anecdotal evidence that this statement may adversely affect **younger** adults who are increasingly understanding gender as a developing, fluid and non-binary concept.

Question 3 Should there be a limit on the number of times a person can get legal gender recognition? Yes No Don't know If you want, you can give reasons for your answer or make comments.

Don't know.

See answers to 2 for further context.

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? or (B) to everyone? or (C) Don't know If you want, you can give reasons for your answer or make comments

Don't know.

We recognise the benefits to those seeking to join UK further and higher education as students or as staff in prior recognition of their preferred gender, particularly in reducing barriers around applicant records systems, visa applications, ID required for housing and banking and so forth.

We recognise however the administrative demands this may place on the service if not subject to the limitations proposed.

We would strongly suggest that 'resident' in Scotland includes those who are present on limited visas including Tier 2 and Tier 4 so that students and staff spending time in

educational contexts in Scotland will benefit from the system on an equal paring with permanently domiciled colleagues and peers. As context 22% of students in higher education in Scotland were international (HESA 2015-16).

Question 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 for and obtain legal recognition of their acquired gender. Do you agree or disagree? Agree Disagree Don't know If you want, you can give reasons for your answer or add comments.

Agree

Further to comments given to Question 1 we highlight that 16-18 is a key transitional period for many young people in education. We support the right to self-identify from 16 in order that students may more easily live and be recognised in their preferred gender into and during further education, and make easier transitions to higher education where applicable.

Which of the identified options for children under 16 do you most favour? Please select only one answer. Option 1 – do nothing for children under 16 Option 2 – court process Option 3 – parental application Option 4 – minimum age of 12 Option 5 – applications by capable children None of these options 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. Q

Choose not to respond to this question. Under 16s do sometimes enter Further or Higher Education but instances are rare and we consider this question therefore to be outside of ECU's remit. We do however point to the importance of student wellbeing for pre-16 academic attainment and the subsequent impact on access to further and higher education, and support efforts to ensure under 16s are supported to live in their preferred gender identity.

Question 7 Should it be possible to apply for and obtain legal gender recognition without any need for spousal consent? Yes No Don't know If you want, you can give reasons for you're answer or add comments

Don't know – beyond ECU's scope.

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

Don't know – beyond ECU's scope.

Question 9 Should legal gender recognition stop being a ground of divorce or dissolution? Yes No Don't know If you want, you can give reasons for your answer or add comments.

Don't know – beyond ECU's scope.

Question 10 Are any changes to section 22 (prohibition on disclosure of information) necessary? Yes No Don't know If you answered Yes, describe the changes you consider are needed.

Don't know – the concerns relating to potential misuse in legal and medical settings are considered beyond ECU's scope. However we support measures taken to protect an individual's data relating to GRA.

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 No Don't know If you want, you can give reasons for your answer or add comments.

Yes.

The UK considers itself a world-leader in education, particularly higher education. Ease of movement by individuals across jurisdictions (within the UK and internationally) is an important part of maintaining international excellence and encouraging a diverse student body, and attracting leading international experts. We support any efforts to minimise barriers to recognition of staff and students' preferred gender (and names) within Scottish post-16 education and employment.

Question 12 Should Scotland take action to recognise non-binary people? Yes No Don't know If you answered No, and if you want, you can give reasons for your answer.

Yes

We support steps to promote the recognition and inclusion of gender diverse people. In particular we note the **age** impact here and its implications for further and higher education settings where increasingly young people (who make up the majority of FE and HE students, but by no means all) understand, recognise and possibly identify with a range of gender diversities.

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. Option 1: Changes to administrative forms Option 2: Book of Non-binary Identity Option 3: Limited document changes Option 4: Full recognition using proposed self-declaration system Option 5: Incremental approach Option 6: Amendment of the Equality Act 2010 None of the above options 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.

Option 1

Question 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 If you answered Yes, describe the impacts you have identified

No.

Question 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) the partial Child Rights and Wellbeing Impact Assessment; or**
- (d) the partial Privacy Impact Assessment?**

Yes

If you answered Yes, add your comments or evidence.

(b)

Further to the EIA we note:

Age – we support providing 16-18 year olds with the right to apply for legal gender recognition due to the particular barriers they may face at a period of progressing beyond post-16 education, and/or from further to higher education. This may involve a number of administrative processes relating to examinations, assessments registration and criminal records checks relevant to their chosen professional or educational and learning.

Question 16

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

No

If you answered Yes, add your comments