

# CONSULTATION ON THE REVIEW OF THE GENDER RECOGNITION ACT 2004 IN SCOTLAND

A GUIDE FOR MARRIAGE SUPPORTERS



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### ABOUT THIS GUIDE

This is a guide for supporters of the Coalition for Marriage interested in participating in the consultation concerning a review of the Gender Recognition Act 2004 in Scotland launched by the Scottish Government in November 2017.

The Scottish Government is currently deciding on whether and how to update legislation covering the legal process by which a person may change gender. The proposals represent a significant change in how the law would approach gender identity.

The Coalition for Marriage encourages eligible marriage supporters to respond on the basis that the position of traditional marriage, between a man and a woman, in Scottish society may be adversely affected by some of the proposed changes.

### HOW CAN I PARTICIPATE?

The online consultation portal is available at this address:

<https://consult.gov.scot/family-law/review-of-the-gender-recognition-act-2004/>

The call for evidence takes the form of sixteen questions, a mixture of open responses and multiple choice answers. It is not compulsory to answer every question.

All evidence must be submitted by **17:00** on **March 1<sup>st</sup> 2018**.

*This guide is not a substitute for your opinion or experience. It is intended to help supporters unfamiliar with some of the terminology used in the consultation by highlighting areas where traditional marriage may be affected.*

### ABOUT THIS CONSULTATION

The Scottish Government's consultation document asks for comments on a number of possible changes which it is considering making to the Gender Recognition Act 2004. These amendments to the law provide for a number of radical changes in respect of gender in Scotland. Proposals consulted on include:

- **De-medicalised transgenderism** meaning that a person could change gender without undergoing an assessment by a doctor. Gender is hereby entirely divorced from biology and becomes a matter of personal choice. This changes the present 'assessment' model of changing gender to a 'self-declaration' model.
- **No transition period** meaning that a person does not have to live for a time as a member of the opposite sex before applying to change gender, but can do so without any background of altered behaviour.
- **Younger transition** by making it possible for 16 and 17-year-olds to change gender.
- **Removal of spousal consent** by consulting on removing the legislation under which the spouse of a person transitioning would need to consent to the change or alternatively have grounds for a divorce should they not wish their marriage to be re-registered as same-sex.

We strongly oppose all of these changes. In our view, they would create a riskier environment both for those considering such a change and for broader society. These risks include:

**1: Bad faith** exposing women and children to the risk that individuals may choose to change gender in order to gain access to vulnerable people or groups.

A study conducted by Oxford University in 2011 found that one reason doctors in Oxfordshire refused to authorise a person's request to change gender was that they were:

*"Seeking gender reassignment to facilitate or normalise paedophilia. This latter small group described gender reassignment as a means by which to increase their intimate contact with children, which they viewed to be more socially acceptable in a female role."*<sup>1</sup>

This finding indicates that a medical assessment does fulfil an important purpose in preventing those who wish to make a transition between genders in bad faith.

If gender were self-certified it may also be possible for individuals to change gender in order to access services intended for somebody of the opposite sex, for instance a male seeking access to a female-only scholarship fund at a university. This would make certain types of social policy making difficult, if not impossible.

**2: Spouses may be forced into same-sex marriages** if their permission is no longer required by law when their husband or wife changes gender.

**3: Trivialising both human sexuality and marriage** as the reforms conceive of gender entirely divorced from biological reality. These changes would make it harder to advocate for traditional marriage based on the union of a biological man and woman.

**4: It is dangerous for the person transitioning** given that many studies (although not all) find a link between poor health, including suicide risk, and identifying as transgender<sup>2</sup>. No longer requiring these feelings to be discussed with a doctor is dangerous for the sufferer and may mean they no longer access the healthcare they need to recover.

**5: It leaves inadequate time for reflection** given the seriousness of the proposed change. The present system which requires a person to first live as a member of the opposite gender at least recognises the challenges of subsequent social integration. A self-declaration system will make legal transition faster but possibly also increase the likelihood of rash decisions being made.

The proposals of the Scottish Government are based upon the recommendations of the House of Commons Women and Equalities Committee, and ultimately Resolution 2048 of the Parliamentary Assembly of the Council of Europe and 'Yogyakarta Principles'. However, the European Court of Human Rights in *Nicot v. France (2017)* confirmed that the present 'assessment model' is already fully compatible with European human rights legislation. There is, therefore, no legal necessity to make any change to the existing legislation and we believe that to do so would cause more opportunities for harm than good.

It is not mandatory to answer every question in this consultation. We have only given comments on those parts of the consultation which we believe are of the greatest importance to marriage supporters. Please use your discretion in deciding which questions to answer and how you wish to approach them.

## QUESTION ONE

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.

**Considerations:** We disagree for the reasons summarised in the 'About this Consultation' section. These include:

- Endangering vulnerable women and children by allowing for transitions in bad faith;
- Trivialising gender and therefore institutions based upon gender differences such as marriage;

- Inadequate medical support for the person transitioning;
- Inadequate time for reflection for the person transitioning.

<sup>1</sup> Saunders, Kate & Bass, Christopher. (2011). Gender reassignment: 5 Years of referrals in Oxfordshire. *Psychiatric Bulletin*. 35. 325-327. 10.1192/pb.bp.110.032664.

<sup>2</sup> See for instance: Reisner, S. et al. (2015). Mental health of transgender youth in care at an adolescent urban community health center: A matched retrospective cohort study. *Journal of Adolescent Health* 56: 274 V7

## QUESTION TWO

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.

**Considerations:** This is a complex question. Given that many people electing to make the transition may be young people, including teenagers, asking them to make a binding commitment to living the remainder of their lives as a person of the opposite gender does not allow room for reflection later in life. A person who wishes to live as a member of their birth sex later in life should not meet any legal impediment to doing so.

On the other hand, a statutory declaration may prevent some of the more spurious applications to change gender and provide a small measure of protection against frivolous gender changes. Supporters will need to weigh the relative merit of these arguments.

## QUESTION THREE

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.

**Considerations:** While this does not have a direct bearing on marriage, a limit of two gender changes would allow a person who has transitioned to decide to return to their birth sex but prevent further changes of a frivolous character.

## QUESTION FOUR

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.

**Considerations:** Option A would best ensure that the Scottish Government is acting only with respect to Scottish citizens.

create a substantial demand on National Health Service funding and draw money away from the other medical needs of Scottish citizens.

It would also act to prevent Scotland becoming a magnet for gender reassignment tourism, both from within the United Kingdom and elsewhere. This would potentially

## QUESTION FIVE

(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.*

**Considerations:** We disagree. The United Nations Convention on the Rights of the Child defines children as those under 18 years of age. Given the rapid developmental changes and the extent of social pressures experienced by children of 16 and 17 years of age, it would not be appropriate to allow them to commit to such a radical course of action, particularly if required to sign a declaration that they do so for life.

This is particularly important given the high attrition rate for adults seeking to change gender. It is estimated that as many as 50% abandon the process midway through.<sup>3</sup>

Children require special protections and we believe it is essential that the precautionary principle is used with respect to allowing changes in gender to be recorded before adulthood.

## QUESTION SIX

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.*

**Considerations:** Option 1 is preferable. For children under the age of 16, it is vital that a precautionary principle is adopted and children are not allowed to make life-changing and possibly permanent legal decisions before they are sufficiently mature to understand the likely consequences.

The Portman Clinic in London reported that 80% of children who were referred for gender dysphoria before

adolescence returned to identifying with their birth gender in adulthood, demonstrating the importance of not rushing to make long-term changes too soon.<sup>4</sup>

Beyond this it is also important that the Scottish Government does not usurp the role of parents and legal guardians by seeking to support applications made without the consent of parents by minor children.

## QUESTION SEVEN

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 your answer or add comments.*

**Considerations:** No. It is important that a spouse who entered an opposite-sex marriage is not forced into a same-sex marriage with a person who legally shares their gender, against their will.

<sup>3</sup> Carroll R, Gender dysphoria and transgender experiences, in Principles and Practices of Sex Therapy, 4th edn., ed. Leiblum SR. New York; Guildford; 2007:490

<sup>4</sup> Spiegel A, Parents consider treatment to delay son's puberty, National Public Radio, 8 May 2008

## QUESTION NINE

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.*

**Considerations:** This question raises complex issues. It is important that those who believe marriage is between a man and a woman are not forced into same-sex marriages by virtue of their spouse's decision to change gender. However, a husband who legally becomes a woman should not have the right to divorce his wife against her wishes on the basis of his own gender change. These situations only arise if the spousal veto is removed (see question seven).

## QUESTION TWELVE

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.*

**Considerations:** No. Non-binary people are those who believe that their gender is neither male nor female. Such a change may result in a further alteration to marriage laws, as non-binary is not a presently recognised category of person, undermining traditional marriage.

In addition such a reform would likely necessitate the creation of multiple categories of gender identity beyond male and female, given the multitude of identities proposed by activists creating confusion and further divorcing gender from biological reality.

## QUESTION SIXTEEN

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

Yes / No

*If you answered Yes, add your comments.*

**Considerations:** Yes. Removing the protections and safeguards which exist in current legislation would create the opportunity for serious harm, both to individuals and wider society as set out earlier in this document. It is very unlikely that any gain in terms of convenience and time saving outweighs the potential problems inherent in the Scottish Government's proposed approach.

## KEEP UPDATED

To stay informed on the work of the Coalition for Marriage, and to receive updates on the Scottish Government's response to this consultation, please join the mailing list on our website: [www.c4m.org.uk](http://www.c4m.org.uk)