

## ITEM No ...5...

**REPORT TO:** POLICY AND RESOURCES COMMITTEE- 24 FEBRUARY 2020

**REPORT ON:** REVIEW OF THE GENDER RECOGNITION REFORM (SCOTLAND) BILL – A CONSULTATION BY THE SCOTTISH GOVERNMENT

**REPORT BY:** CHIEF EXECUTIVE

**REPORT NO:** 60-2020

### 1.0 PURPOSE OF REPORT

The report aims to keep elected members informed of the consultation to reform the Gender Recognition Act 2004. The report also includes a proposed response on behalf of Dundee City Council.

### 2.0 RECOMMENDATIONS

It is recommended that Committee:

approves the proposed response for submission to the Scottish Government by the deadline of 17 March 2020.

### 3.0 FINANCIAL IMPLICATIONS

There are no direct financial implications of this report.

### 4.0 MAIN TEXT

- 4.1 The Scottish Government has issued a consultation paper on proposals to reform the Gender Recognition Act 2004 with a deadline for responses of 17 March 2020. This builds upon the Scottish Government's earlier consultation on the Review of the Gender Recognition Act in March 2018. Dundee City Council's response was approved in March 2018 (Article III of the Policy and Resources Committee of 12 March 2018 refers) <https://www.dundee.gov.uk/reports/reports/100-2018.pdf>
- 4.2 The Act currently allows transgender people over 18 - who can provide evidence of living in their acquired gender for two years prior and/or have been diagnosed with gender dysphoria and intend to live in their acquired gender for the rest of their life - to apply for a Gender Recognition Certificate to change their legally recognised gender.
- 4.3 The Scottish Government believes the Act is now out of date and needs to be reformed and simplified, with less intrusive and onerous requirements, and more centred on the wishes of the individual. The Scottish Government committed to 'review and reform gender recognition law so it is in line with international best practice for people who are transgender or intersex'.
- 4.4 Summary of proposed reforms set out in the consultation paper:
- Reducing the minimum age of application from 18 to 16
  - The removal of current medical requirements when applicants are seeking legal gender recognition;
  - The removal of the need to apply to the Gender Recognition Panel (GRP), a UK tribunal. Instead, applicants would apply to the Registrar General for Scotland who already has a number of existing functions under the GRA;
  - Applicants must either have been born or adopted in Scotland or be ordinarily resident in Scotland;

- Applicants must have lived in their acquired gender for a minimum of 3 months (rather than the current 2 years) before submitting an application for gender recognition;
- After an application has been accepted by the Registrar General, the applicant would have to confirm after a reflection period of 3 months that they wish to proceed;
- Applicants would have to confirm that they intend to live permanently in their acquired gender;
- Applicants would still be required to submit statutory declarations, made in front of a notary public or a justice of the peace; and
- It will be a criminal offence to make a false statutory declaration in relation to gender recognition and to make a false application for gender recognition.

4.5 Full details of the key provisions proposed for the proposed amended Gender Recognition Act are listed under Appendix 1. These reflect the feedback received on the first consultation and are in line with the comments submitted by Dundee City Council.

4.6 The consultation paper sets out a series of questions and the proposed response from Dundee City Council is attached at Appendix 2. These responses are supportive of all the proposals in the draft bill which offers a balanced and appropriate range of measures.

## **5.0 POLICY IMPLICATIONS**

This report has been screened for any impacts on Equality and Diversity, Fairness and Poverty, Environment and Corporate Risk. There are no major issues.

## **6.0 CONSULTATIONS**

The Council Management Team were consulted in the preparation of this report.

## **7.0 BACKGROUND PAPERS**

Gender Recognition Reform(Scotland) Bill consultation:

<https://www.gov.scot/news/gender-recognition-consultation-opens/>

DAVID MARTIN  
CHIEF EXECUTIVE

DATE:13 FEBRUARY  
2020

## HIGH LEVEL SUMMARY OF PROPOSED BILL PROVISIONS

Section in Bill	Key Provisions Proposed in the Gender Recognition Reform (Scotland) Bill
2	An applicant must be at least 16 and either have been born in Scotland or adopted in Scotland or be ordinarily resident here. Section 11 gives powers to the Registrar General to make regulations on applications.
3	Once the Registrar General has considered the application, the Registrar General cannot determine it until a 3 month reflection period has passed and the applicant has confirmed in writing that they wish to proceed. (This confirmation is known in the Bill as the "notice of confirmation").
4	<p>The Registrar General must grant the application if it includes a statutory declaration by the applicant that the applicant is at least 16; was born or adopted in Scotland or is ordinarily resident here; has lived in their acquired gender for at least 3 months; and intends to live in their acquired gender permanently.</p> <p>Section 14 makes it a criminal offence to make a false statutory declaration in relation to gender recognition or a false application for gender recognition or a false notice of confirmation after the reflection period has expired.</p>
5 to 7	<p>Makes provision on statutory declarations by the applicant on whether they are married or in a civil partnership and on what type of GRC the Registrar General should issue.</p> <p>Where the applicant is single, the Registrar General should issue a full GRC.</p> <p>Where the applicant is married or in a civil partnership and both parties wish to stay in the relationship, the Registrar General should issue a full GRC. In other cases, the Registrar General should issue an interim GRC.</p>
7	Also makes provision on the court issuing a full GRC where the court has granted a decree of divorce or dissolution on the grounds of the issue of an interim GRC and also makes provision on issuing a full GRC on application by a person with an interim GRC.
8	Provides recognition for GRCs issued in England and Wales or Northern Ireland and for gender recognition obtained overseas.
9	Provision on an applicant being able to review and appeal gender recognition decisions made by the Registrar General.
9	Makes provision on applications to the court to quash a GRC on the grounds that the application was fraudulent or the applicant lacked capacity.
10	Makes provision on correction of administrative errors in GRCs.
12	Makes provision on the Registrar General for Scotland sending a copy of a GRC issued in Scotland to other Registrar Generals in the UK, if this is necessary to update records held by other Registrar Generals.
13.	Makes provision on continuity of marriages or civil partnerships after gender recognition.



**Gender Recognition Reform (Scotland) Bill - Respondent Information Form for Dundee City Council**

Question 1. Do you have any comments on the proposal that applicants must live in their acquired gender for at least 3 months before applying for a GRC?

Yes

No

If yes, please outline these comments

Question 2. Do you have any comments on the proposal that applicants go through a period of reflection for at least 3 months before obtaining a GRC

Yes

No

If yes, please outline these comments

Question 3. Should the minimum age at which a person can apply for Legal gender recognition be reduced from 18 to 16?

Yes

No

Don't Know

If yes wish, please give reasons for your view.

This is in line with our response to the first consultation. This change would complement the existing legal and democratic rights of 16-17 years old in Scotland.

Question 4. Do you have any other comments on the provisions of the draft Bill?

Yes

No

If yes, please outline these comments

It is noted that the Scottish Government has decided not to extend legal gender recognition at this stage to non-binary people. The Council endorses the Scottish Government's intention to establish a working group to consider possible changes to procedures and practice in relation to non-binary people and learn from best practice in the UK and internationally.

Question 5. Do you have any comments on the draft Impact Assessments?

Yes

No

Don't Know

