

Checklist to review gender recognition legislation

This checklist should help you understand if there are any major gaps in the gender recognition legislation you are reviewing. It is especially helpful when you are working on a bill that will either be proposed or voted on soon.

How to use this checklist

Go through the three different sections. You will need to answer "Yes", "No", or "Don't know" for each criteria. If you cannot answer "Yes" to a question, you may want to review your legal text to clarify or amend it.

Background information

What (proposed) law are you reviewing?

What country is this law from?

What date are you reviewing this law on?

Month Day Year

Procedures

This section is about legal gender recognition procedures. It concerns how a legal gender recognition process is set up. Often, these technical and administrative elements are decisive for who has access to the procedure, how effective, and how secure it is for the individual applicant.

Separate procedures are available for change of name and registered gender.

Yes

No

Don't know

The applicant has free choice of names, including gender neutral names.

Yes

No

Don't know

In the case of gendered surnames, the applicant is free to adapt their surname as well.

Yes

No

Don't know

The institution in charge (i.e. the name of the ministry or civil registry administration) is clearly evident in the text of the regulation.

Yes

No

Don't know

The procedure is quick and the maximum time this can take is clearly and explicitly regulated.

Yes

No

Don't know

The procedure is free of charge or with a small administrative fee only.

Yes

No

Don't know

The procedure is accessible for citizens and non-citizens who have a link to the country, such as residents, asylum seekers, refugees, or other migrants.

Yes

No

Don't know

Access to the procedure for foreign residents, including refugees, is regulated explicitly.

Yes

No

Don't know

Non-citizens in asylum procedures or detention have access to documents that reflect their name and gender identity during the asylum process or detention.

Yes

No

Don't know

Access to the procedure for minors is explicitly and clearly regulated.

Yes

No

Don't know

Access to the procedure for persons under guardianship is explicitly regulated.

Yes

No

Don't know

Access to the procedure for incarcerated people is explicitly regulated.

Yes

No

Don't know

People with limited legal capacities are involved as much as possible, and their best interests are a primary consideration, in all decisions concerning them.

Yes

No

Don't know

Access to the procedure for citizens living abroad is explicitly regulated.

Yes

No

Don't know

The recognition of foreign decisions (e.g. recognition of legal gender by another country) is explicitly regulated.

Yes

No

Don't know

Privacy of the applicant [i.e. non-disclosure of the applicant's (gender) identity] is ensured throughout and after the procedure.

Yes

No

Don't know

Disclosure of private information about the applicant and without their explicit consent is prohibited. Effective measures have been established to enforce this, such as fining offenders.

Yes

No

Don't know

Grounds for refusal, such as fraudulent intention, are limited and clearly regulated.

Yes

No

Don't know

The possibility for an applicant to appeal the decision is clearly regulated, including the body to whom the applicant should appeal.

Yes

No

Don't know

Enforcement of the legislation for correct implementation is supervised. A remedy or review mechanism is in place in the case practice does not correspond to the law.

Yes

No

Don't know

Requirements

This section is about the legal requirements a person has to meet for gender recognition procedures. These are the criteria for changing name or legal gender. They must not counter an individual's human rights.

Comments

Self-determination of the applicant is the sole basis for legal gender recognition.

Yes

No

Don't know

A person does not need to state association with a certain gender in order to qualify for legal gender recognition. People who identify as non-binary or outside the gender spectrum have access to the procedure.

Yes

No

Don't know

No interference or opinion of a professional third party (mental health experts, etc.) can be requested.

Yes

No

Don't know

No interference or opinion of a private third party (parental or spousal consent, children, colleagues, etc.) can be requested, as a principle.

Yes

No

Don't know

No proof of surgical intervention, hormonal treatment, or any other medical or psychological intervention or status can be requested.

Yes

No

Don't know

The procedure for gender marker change has no age limits. It is fully accessible to young and elderly applicants.

Yes

No

Don't know

The procedure for name change has no age limits. It is fully accessible to young and elderly applicants, even if gender marker change has an age limit.

Yes

No

Don't know

For a minor, the best interest of the child and the right of the child to be involved and be heard according to their evolving capacities prevail.

Yes

No

Don't know

In cases of discordant or reluctant parents or guardians, effective provisions are in place to ensure the child can access the procedure. These provisions respect the best interest of the child. The minor is involved and heard according to their evolving capacities.

Yes

No

Don't know

Diagnostic assessment of a child's gender identity and other forms of testing the child's identity are explicitly omitted. This does not include assessments of a child's capacity to consent.

Yes

No

Don't know

Effective provisions are in place to ensure applicants with limited legal capacity and/or under guardianship can access the procedure. These provisions respect the best interest of the applicant and

involve them according to their capacities.

Yes

No

Don't know

The procedure is fully accessible to an applicant who is married or in a registered partnership.

Yes

No

Don't know

An existing marriage or registered partnership remains intact without any loss of acquired rights. The applicant and their partner can, if freely chosen, transfer their marriage into a registered partnership and vice versa (where available).

Yes

No

Don't know

The procedure is fully accessible to an applicant who is a parent or has custody, guardianship, or visiting rights of children (independent of their age).

Yes

No

Don't know

The procedure is fully accessible to an applicant independent of previous or current convictions.

Yes

No

Don't know

No "wait time", "reflection period", or other additional time component prolongs the application or the recognition from coming into effect.

Yes

No

Don't know

The applicant is not requested to have lived for a certain time in their gender identity (so called "real life experience") or to have used the chosen name.

Yes

No

Don't know

No other personal characteristic, such as physical appearance, sexual orientation, sex characteristics or intersex status, disability, health, ethnic background, or social status, may pose valid grounds for refusal or delay.

Yes

No

Don't know

Effects

This section is about the legal effects of a gender recognition procedure. What are the concrete outcomes and legal consequences for a person of the procedure?

A choice of gender markers beside "male" or "female" is available, such as an "X" gender marker, or omission of the gender marker completely.

Yes

No

Don't know

The applicant receives a document as proof. This confirms the change of name and/or gender marker.

Yes

No

Don't know

Comments

Upon the decision, the applicant is considered a member of the registered gender for all intents and purposes. They enjoy all (gendered) rights and duties at par with others of the same registered gender.

Yes

No

Don't know

Equity provisions protecting the applicant on grounds of their gender identity are explicitly regulated. For example, if a gendered cancer prevention programme exists, it must also account for a person's body independent of their gender marker.

Yes

No

Don't know

A change of name and gender marker leads to an automatic (ex officio) change in all publicly held registries. This change is not traced, and does not "out" the person in these registries.

Yes

No

Don't know

Once a decision is in force, the name(s) and gender marker which were in use prior, are not public or searchable, unless there is an overriding interest or the person concerned consents.

Yes

No

Don't know

A change of name leads to the right to be addressed in all official purposes as belonging to the corresponding gender.

Yes

No

Don't know

State and non-state actors are obliged to rectify gendered information, including gendered letter and number combinations on educational certificates, working references, etc. without a trace. This also applies retroactively.

Yes

No

Don't know

Where necessary, additional documentation (conscription exemption, army leaving certificates, etc), are issued to enable equal access to employment.

Yes

No

Don't know

Existing rights and acquired privileges relating to a marriage or registered partnership remain unaffected.

Yes

No

Don't know

Acquired pension rights and/or similar recurring benefits remain unaffected.

Yes

No

Don't know

Next-of-kin relationships, especially custody and visitation rights to children, remain unaffected.

Yes

No

Don't know

Upon gender recognition, a parent can be registered with the recognised gender as "mother" or "father" according to their gender on birth certificates and documentation of both previously born and future children.

Yes

No

Don't know

Upon gender recognition, a non-binary parent can be registered in accordance with the recognised gender as "parent" on birth certificates and documentation of both previously born and future children.

Yes

No

Don't know

Comments