

Unofficial translation

**Excerpt from:**

Prop 74 L (2015-2016)

Proposition to the Storting (proposal for a legislative decision)

<sup>i</sup>The Legal Gender Amendment Act

Recommendation of the <sup>ii</sup>Ministry of Health and Care Services March 18th 2016,  
approved by the <sup>iii</sup>Norwegian Council of State on the same day.  
(The Solberg Government)

## 11 Notes on the individual provisions

### *On § 1*

The provision defines what is meant by *legal gender* in this law. Legal gender is the gender a person is registered with in the <sup>iv</sup>National Registry. The legal gender is recorded on the basis of the information contained in the birth notice that healthcare workers submit to the National Registry when a child is born. A person's national identity number holds information about their gender. The ninth digit of the birth number is even for women and odd for men, cf. <sup>v</sup>National Registry Regulations § 2-2. See further details under Section 4.1.

### *On § 2*

In this provision the right to change legal gender is established. The condition is that the person feel they belong to the opposite gender than the gender he or she is registered with in the National Registry. Under the proposal, the amendment will be based on a self-declaration. See further details under Section 8.1.

The applicant will contact the Tax Office (<sup>vi</sup>the National Registry Authority) and receive information regarding the effects of amending legal gender and a reply slip to be returned as confirmation that the application is maintained. See also section 8.4.4. The amendment means that the person will be registered with their new legal gender in the National Registry, assigned a new national identity number and that they have lawfully changed gender where this has judicial significance.

The right to amend legal gender also applies if someone wants to change back to their previous legal gender. There is no set limit on the number of times one can change legal gender. Neither is there a proposed requirement of a latency period before one can revert back to the previous gender. A person who has changed their gender, and that changes back to the original gender will not be able to use their original national identity number.

The right to amend legal gender applies to persons residing in Norway. Those who are considered residents according to the National Registry Law and the associated regulations, are the ones who in this provision will be regarded as residents of Norway. Who should be considered as a resident under the <sup>vii</sup>National Registry Law is currently established in the National Registry Regulations §§ 4-1 to 4-7. According to the main rule § 4-1, persons residing in Norwegian municipalities for a period of at least 6 months will be regarded as residents of Norway.

The Ministry may issue regulations that also make this law applicable to Norwegian citizens living abroad.

### *On § 3*

People who are put under guardianship will themselves apply for an amendment to their legal gender. This is also pursuant to the <sup>viii</sup>Guardianship Act § 21, fourth paragraph. Amending one's legal gender will be a "particularly personal matter" not covered by the guardianship without specific statutory authority.

### *On § 4*

The provision regulates the amendment of legal gender for children. Pursuant to the first paragraph, once a person has reached the age of 16 they are themselves able to apply for a legal gender amendment. Consent of the person or persons with custody is not required.

The second paragraph regulates amendments to the legal gender of children between the ages of 6 and 16. They may also apply to have their legal gender changed. However, the application must be submitted by the person or persons who have custody.

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If two people have joint custody for the child, both are required to submit the child's application.

If the parents have joint custody and one parent does not wish to apply with the child, the legal gender may still be amended if this is what is best for the child. This also applies where people other than the parents have custody.

Cases of lacking involvement from one of the two with custody will be processed by the <sup>ix</sup>County Governor of Oslo and Akershus, ref. Draft law § 4, second paragraph, second sentence and § 5 second paragraph. The County Governor will in such cases assess what is in the best interest of the child. Significant factors in this review may be the child's age and maturity, what gender expression the child has practised, in what way and for how long and how consistently the child has expressed their gender identity, the reasons why one parent does not consent to amending the legal gender, the relationships between the child and the two parents and which of these must be presumed to know the child best.

The third paragraph regulates the situation for children under the age of 6. Children under 6 may only amend their legal gender if they have a congenital somatic sex development uncertainty. In such cases, the person or persons who have custody may apply on behalf of the child. The congenital somatic sex development uncertainty must be documented by a healthcare professional. Both the health care professionals and the parents must ensure that the child is allowed to express their views to the extent that they are able to do so based on age and maturity. The Tax Office may normally assume statements from the parents that the child has been informed and been given the opportunity to comment, or that the child is not sufficiently mature to comment.

See further details under Section 8.3.

### *On § 5*

The provision states that applications for a legal gender amendment will first be processed by the Tax Office (National Registry Authority). A person wanting to amend their legal gender will submit a self-declaration that he or she regards themselves as belonging to the other gender than the person is registered with the National Registry, see also the note on § 2. A decision to accept or deny an application for a legal gender amendment is an individual decision as defined by the <sup>x</sup>Public Administration Act § 2. The decision is determinant for a person's right to amend their legal gender. The decision may therefore be appealed in accordance with the Public Administration Act chapter 6. Appeals in such cases should be made to the County Governor of Oslo and Akershus.

Applications for amending legal gender submitted by a child with the support of only one of the two with custody, cf. § 4, second paragraph second sentence, will be processed by the County Governor of Oslo and Akershus. Appeals in such cases are processed by the <sup>xi</sup>National Appeals Body for the Health Services.

See further details under Section 8.4.

### *On § 6*

The legal gender should be assumed in the application of other laws and regulations.

Pursuant to § 2 of the proposal there is no longer a requirement that a person has undergone a complete sex change and sterilization, for their legal gender to be amended. This means, among other things, that one who is legally male may be able to bear children.

Pursuant to the provision in § 6, first paragraph, the general rule is that the legal gender will be assumed in the application of rules in other laws and regulations where gender is of importance.

For example the rules on gender quotas, such as the <sup>xii</sup>Courts of Justice Act § 27, which stipulates that among the members and deputy members in the <sup>xiii</sup>Conciliation Board there will be both men and women, the Courts of Justice Act §§ 64 and 65 demanding that there should be a selection of lay judges for women and one for men, the rules of the <sup>xiv</sup>Gender Equality Act § 13 regarding gender balance in public committees, boards and councils and the requirement of 40 per cent women on the boards of corporations, etc. Another example is the Biotechnology Law which in several provisions use the terms "woman" and "man."

Birth gender is still assumed where it is necessary to establish parenthood and custody under the rules of the <sup>xv</sup>Children Act. This will be the case if a legal male gives birth. Parenthood will then be established in accordance with the rules of motherhood in the Children Act § 2. Paternity will be established by the usual rules, possibly with the assistance of public authorities pursuant to the Children Act § 5.

If a person changes their legal gender to woman and has children with a female spouse or live-in partner using assisted reproduction, parenthood may be determined by the Children Act's rules on co-maternity. In such cases it will not be necessary to establish parenthood from the birth gender.

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If a couple produces children without the help of assisted reproduction, the conditions for establishing parenthood under the rules on co-maternity will not be met. In such cases it will be necessary to establish parenthood on the basis of birth gender for the person who has changed their legal gender. Parenthood will in such cases be established under the rules of paternity in the Children Act. If the couple is married, the main rule is determination of paternity by the *pater est* rule in § 3 first paragraph. For those who are not married paternity is normally determined by a declaration under the Children Act § 4.

See also the Ministry's assessments in Section 8.5.3.

Pursuant to § 6, second paragraph, the rules regarding women who give birth, apply equally to a person giving birth after having amended their legal gender. These include rights under the <sup>xvi</sup>National Insurance Act chapter 14 on benefits during pregnancy, childbirth and adoption allowance in accordance with § 14-4 which is given to the employee who must stop working "because she is pregnant." This will apply equally to male workers. After § 14-17 a lump sum is granted to "a woman who gives birth to children ...". The rules will apply equally to men who give birth.

The National Insurance Act chapter 14 also contain some rights provisions distinguishing between the father and the mother. In particular the rules on parental benefits in §§ 14-5 to 14-16, but also the provision in § 14-17 regarding the lump sum grant. If parenthood is established on the basis of birth gender in accordance with § 6, first paragraph, second sentence, this must be also be assumed in the application of these provisions.

### *On § 7*

The Ministry may issue regulations regarding supplementation and implementation of the provisions of the Act.

### *On § 8*

The Act takes effect from the date decided by the King. The King has the legal authority to implement the individual provisions at different times.

### *On § 9*

Pursuant to the proposed amendments to the <sup>xvii</sup>Personal Names Act, the age limit for adopting, changing or removing a name or surname changes from 18 to 16 years.

In cases where a child has amended their legal gender by approval of the County Governor of Oslo and Akershus and with the consent of one of their parents or others with custody, a notice of the name change will also be approved with the consent of only one parent or another person who has custody.

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The Ministry of Health and Care Services

recommends:

That Your Majesty approves and signs the submitted proposal for a bill to the Storting regarding the Legal Gender Amendment Act.

**We HARALD, King of Norway,**

affirm:

The Storting will be asked to make a decisions regarding the Legal Gender Amendment Act in accordance with the attached proposal.

**Proposal  
for a Legal Gender Amendment Act**

*§ 1 Definition*

Legal gender is the gender a person is registered with in the National Registry.

*§ 2 The right to amend legal gender*

Persons who are residents of Norway and that regard themselves as belonging to the other gender than the one they are registered with in the National Registry, have the right to amend their legal gender. The Ministry may issue regulations making this law applicable to Norwegian citizens living abroad.

*§ 3 Amending the legal gender of persons placed under guardianship*

A person who is placed under guardianship by the Guardianship Act, will apply for the amendment of legal gender themselves.

*§ 4 Amending the legal gender of children*

From the age of 16 children may apply for an amendment to their legal gender by themselves.

Children aged between 6 and 16 must apply for an amendment to their legal gender in concert with the person or persons who have custody of the child. If the parents have joint custody, but the application is submitted with the support of only one of them, the legal gender may still be changed if this is what is best for the child.

An application to amend the legal gender of children under 6 years of age will be submitted by the person or persons who have custody of the child. Children who are capable of forming their own views on the matter should be informed and given an opportunity to express their views before the application is submitted. A legal gender amendment can then be made for the child provided that the child has a congenital somatic sex development uncertainty. The applicant must submit documentation of this health condition from a healthcare professional.

*§ 5 The processing of applications for a legal gender amendment*

Applications for legal gender amendments are processed by the Tax Office (National Registry Authority). The Tax Office's decisions in legal gender amendment cases may be appealed to the County Governor of Oslo and Akershus. Applications from children between 6 and 16 years of age in accordance with § 4, second paragraph, second sentence, submitted in concert with just one of those with custody, will be processed by the County Governor of Oslo and Akershus. The County Governor's decision may be appealed to the National Appeals Body for the Health Services.

*§ 6 Judicial consequences of amending the legal gender*

The legal gender should be assumed in the application of other laws and regulations.

The birth gender should still be assumed if it is necessary for establishing parenthood and custody under the Children Act. A person who amends their legal gender, retains the rights and obligations of fatherhood, motherhood or co-maternity.

The rules that apply to a woman who gives birth to children, apply equally to a person giving birth after a legal gender amendment.

*§ 7 Regulations*

The Ministry may issue regulations regarding supplementation and implementation of the provisions of the Act.

*§ 8 Commencement*

The Act takes effect from the date decided by the King. The King may implement the individual provisions at different times

*§ 9 Amendments to other Acts*

From the time the Act takes effect, the following amendments will be made to the Act of June 7th 2002 No.19 regarding personal names:

§ 10, second paragraph, first sentence should read:

Persons over the age of 16 may not adopt, change or remove a first or last name more than once every ten years.

§ 12 should read:

*§ 12 Notice regarding the names of children*

A notice to adopt, change or remove a name for someone who has not yet reached the age of 16 will be submitted by the person or persons who have custody, or they must have consented to the notice. If the notice concerns a child over the age of 12, the child must also have agreed. Where there is no consent by the first or second sentence, the notice may still be accepted if there are special reasons for doing so.

If the notice concerns a person who has changed their legal gender under the Legal Gender Amendment Act § 4, second paragraph, second sentence, the consent of one of those with custody is sufficient.

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- i Lov om endring av juridisk kjønn
  - ii Helse- og omsorgsdepartementet
  - iii Statsråd
  - iv Folkeregisteret
  - v Forskrift om folkeregistrering
  - vi Folkeregistermyndigheten
  - vii Folkeregisterloven
  - viii Vergemålsloven
  - ix Fylkesmannen i Oslo og Akershus
  - x Forvaltningsloven
  - xi Nasjonal klageinstans for helsetjenesten
  - xii Domstolloven
  - xiii Forliksråd
  - xiv Likestillingsloven
  - xv Barneloven
  - xvi Folketrygdloven
  - xvii Navneloven