

From: [REDACTED]@gov.scot

Sent: 30 July 2018 08:23

To: [REDACTED]@gov.scot

Cc: [REDACTED]@gov.scot; [REDACTED]@gov.scot

Subject: RE: Gender Representation on Public Boards (Scotland) Act 2018 – Implementation – Guidance and Reporting

[REDACTED]

1. Thank you for the chance to comment.
2. We have made some suggested amendments to paras 2.12 to 2.18, as shown above.
3. A few comments:-
 - We assume the guidance should say that a trans woman who has a full GRC is treated as a woman: the new suggested para 2.12 refers.
 - We have also just noticed, in the context of Brexit, that section 21(6) of the GRA 2004 appears to provide some rights to people who have obtained gender recognition in another EU Member State: please see <https://www.legislation.gov.uk/ukpga/2004/7/section/21> and <https://www.legislation.gov.uk/ukpga/2004/7/notes/division/4/21> We have suggested a new para 2.13 accordingly and have made other changes: we'll need to ask [REDACTED] to check these.
 - We have amended para 2.14 to make it clear that a person does not need to have surgery or medical treatment to fall within the protected characteristic of gender reassignment.
 - On 2.15 para 2, the UK Gender Recognition Panel outlines in section 5 of this guidance the type of evidence they need to show that a person is living in an acquired gender: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/689099/t451-eng.pdf However, I don't think you need to refer to this in the guidance: what is there already strikes me as sufficient.
 - 2.15 para 3 raises the question of what "undergoing a process" means: we appreciate this is taken from the legislation. In some cases, a process may be living as a woman and surgical or hormonal treatment: but a trans person is not required to have such treatment. In other cases, a process may be living as a woman and seeking advice from a Gender Identity Clinic or support from a trans organisation or voice therapy: but, again, these steps are not mandatory. In some cases, all the process the person is doing may just be to live as a woman.

Given this, I have suggested the deletion of the last sentence as the person must be living as female to fall within the definition in the 2018 Act.

- We have added 2.16 on trans men, which we have taken largely from the Explanatory Notes to the 2018 Act:
<http://www.legislation.gov.uk/asp/2018/4/notes/division/2/2>

4. When the consultation is issued, there may be comments from groups (such as Women's Spaces in Scotland, Women and Girls in Scotland, plus Fair Play for Women) who are opposed to reforming the GRA 2004.

5. Do we need to say anything in the guidance on people who present as non-binary? I assume they would not be treated as women for the purposes of the 2018 Act, even if their birth certificate identifies them as female.

6. We are happy to meet/discuss.

[REDACTED]
[REDACTED]

From: [REDACTED]@gov.scot

Sent: 12 July 2018 14:17

To: [REDACTED]@gov.scot

Cc: [REDACTED]@gov.scot; [REDACTED]@gov.scot

Subject: Gender Representation on Public Boards (Scotland) Act 2018 – Implementation – Guidance and Reporting

All –

Gender Representation on Public Boards (Scotland) Act 2018 – Implementation – Guidance and Reporting

As you will know, the above Act received Royal Assent earlier this year and we are now into implementation. The key tasks over the next period are to deliver statutory guidance and to make regulations setting out the reporting arrangements for those with duties under the act.

We intend to consult on drafts of both and I attach a draft of the consultation document and a draft of the statutory guidance.

([REDACTED]). We would very much welcome any comments you have on any elements of these at this stage, and in particular:

- [REDACTED]/[REDACTED] – can you look over the draft guidance covering the definition of woman (paras 2.12-2.15 of the guidance doc). What we've got here is a starting point, but we think it needs more work.
- [REDACTED]/[REDACTED]– you will be interested in the references to the PSED. Some of this text will need to change given the ongoing work on the review of the specific duties, but there is time to get these more aligned over the summer.
- [REDACTED] – your input in relation to the public appointments process has been hugely valuable. As discussed, we look forward to some more material from you, particularly for the 'good practice' section.
- [REDACTED] – your input into all of this will be essential. If it would be useful to meet to discuss in more detail then please get in touch.

I'm on leave from today until the end of July, so if comments could be sent back to me by then that would be appreciated.

Many thanks.

[REDACTED]
Equality, Human Rights and Third Sector Division

Draft guidance

<< File: Gender Representation on Public Boards (Scotland) Act 2018 - Draft Guidance - circulated 12 July.docx >>

Draft consultation doc

<< File: A21149121.docx >>