

## **Anscombe Bioethics Centre**

### **Questions**

**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

**If yes, please outline these comments.:**

The Scottish government acknowledges that the current law is compatible with human rights law. The reason for the proposed change is not legal necessity but is to reduce the bureaucratic burden (in relation to proving that one has lived in the acquired gender) and to avoid “medicalisation” of gender identity. However, on its own, the reduction in the time requirement accomplishes neither of these things. The consultation document acknowledges that the great majority of people who identify as transgender (96.3%) do not have a Gender Recognition Certificate (GRC) and that a GRC is not necessary in order to live in the acquired gender nor to obtain most identification documents, including Government issued ones such as a passport and driving licence to reflect this. Thus, the requirement to live in the acquired gender for a period of time prior to obtaining a GRC reflects what is no more than the present reality for the great majority of trans-identified people.

Delay in legal gender recognition provides an opportunity for people to consider whether this is what they really want. Nowhere in the consultation document does the Scottish government acknowledge that for a proportion of people, transition is followed by regret and sometimes later by detransition. Historically this has been a small proportion of those medically transitioned but historically there have been far greater social and clinical barriers to transition. As these have been reduced, especially among young people, the phenomenon of detransition seems also to have increased (though the extent of this and the reasons for this are not clear as this is an area that is under-researched). Similarly, the phenomenon of desistance from pursuing medical transition following social transition is of relevance here. The proposal to allow legal gender recognition after only three months of living in the relevant gender role increases the risk of regret.

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

Yes

**If yes, please outline these comments.:**

The idea of a period of reflection after applying for legal transition may have value particularly if relatively little time has been allowed for reflection prior to the application.

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

No

**If you wish, please give reasons for your view.:**

The proposal to allow legal gender recognition from the age of 16 is the most problematic element of the proposals, and is all the more problematic when combined with the proposed removal of medical involvement and the proposed reduction in the time living in the acquired gender. Whereas the Government refers to the experience of the small number of countries which have moved to a system of self-declaration, most of these countries limit legal transition to persons over 18 or have specific safeguards for those between 16 and 18.

The consultation document refers to the Gender Identity Development Service (“GIDs”), the specialised clinic run by NHS England for young people presenting with difficulties with their gender identity. However, the document does not acknowledge the controversy that has surrounded this clinic.

Among the general public, alongside concern about safe spaces for women and girls, the administration of puberty blockers and cross sex hormones to minors has been a focus of significant unease.

While 16 is the age of consent for some purposes in Scotland (and in some respects this differs from England and Wales, most notably in relation to marriage) in many respects Scottish law and practice reflects the vulnerability of those between 16 and 18. Thus, while it is true, both in Scotland and in England and Wales, that at 16 a person can “consent to lawful sexual activity” it is also true (again both in Scotland and in England and Wales) that it is illegal for a teacher or someone in a similar position of responsibility to have sex with a person aged 16 to 18 who is in their care. Likewise, a 16-year-old can join the armed forces but the person would not be deployed before 18 (due to international consensus on the use of child soldiers). So, also, the purchase of cigarettes and alcohol and involvement in gambling are restricted to those 18 or over, due to reasonable concerns about a person's maturity. One way the Act could acknowledge the significance of the age of 16, while retaining the present safeguards, would be to count the required period living in the acquired gender prior to application from the age of 16 and for the period of reflection after applying for a GRC to extend until 18. In this way the significance of the age of 16 could be acknowledged but the person would have some protection from making a choice that might be difficult to reverse.

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

Yes

**If yes, please outline these comments.:**

The Anscombe Bioethics Centre exists to support healthcare professionals and the wider community in England, Wales, Scotland and Ireland. From this perspective the

question is whether the change in the law facilitates or inhibits the ethical practice of medicine. Notwithstanding the recent change to ICM, gender dysphoria remains a medical diagnosis associated with incongruent gender identity and this in turn is commonly associated with other mental health issues such as anxiety and depression.

It is important that people with gender dysphoria, especially young people, have access to healthcare and to support. The provision of medical interventions, whether psychotherapeutic, pharmacological or surgical, requires careful medical assessment. Unfortunately, the evidence base for most interventions in this area is weak. In this context clinicians must be free to withhold interventions that, according to their best professional judgement, would be more likely than not to be harmful. Our concern with this change in the law is not that it will necessitate a change in medical practice but that it might add to cultural factors that are already making it difficult for clinicians to withhold interventions in cases where they have reason to think that the risks and harms e.g. to sexual/reproductive function are not justified by potential benefits.

In this respect we welcome the decision not to extend legal gender recognition to those under the age of 16 but have significant concerns about the effect of the law on those between 16 and 18.

## **5 Do you have any comments on the draft Impact Assessments?**

Yes

### **If yes, please outline these comments.:**

We were glad to see the commitment of the Scottish government to the safety of women and the explicit acknowledgement that in the Equality Act 2010 protection of persons whose gender has been reassigned, as with all the protected characteristics, is qualified by equal protection for other protected groups. It would have been helpful if the document had included a more explicit statement in relation to the protection of religion in respect of (for example) the freedom of conscience of healthcare workers and the freedom of parents and of schools to teach in accordance with their religious and ethical views. The aim of increasing awareness of the issue of gender dysphoria within schools and faith communities, and of supporting communication and positive relationships between parents and young people, requires respectful involvement of these communities and of parents and acknowledgement of their role.

In several places the impact assessment states that the change in the law will have neither positive nor negative impact because "Policy is not designed for this". With respect, the impact of legislation often extends to effects which are neither intended nor foreseen, and the fact that the policy is not designed to impact on questions of equality or on healthcare or on family relationships does not mean that it will not have an impact, for good or ill. Reasonable caution about the possible negative impact of these changes on healthcare decisions of persons under the age of 18, and the possible negative impact on the relationship of parents and young persons

who desire a change of legal status before the age of 18 should lead to the maintaining of the current age-limit as a legal safeguard.