

The Christian Institute

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 draft Bill does not define what it means to 'live in the acquired gender for three months'. Under the current system, 'living in the acquired gender' has objective meaning (e.g. modifying passports or other documents), for which evidence can then be given. But under the proposed system, where such requirements are removed, a definition is absent. The time requirement is therefore meaningless since 'living in the acquired gender' is a self-defined status in the first place. Even if there were a clear definition, the proposed system asks for no evidence, so officials would still be unable to assess whether someone had spent three months 'living in the acquired gender'. Even the most unsubstantiated claims could not be disqualified.

Moreover, three months is far too short a period, regardless of definition and evidence requirements. Three months of 'living in the acquired gender' cannot be taken to represent an intention of permanence. Such a major life decision cannot be made in such a short time. The matter of time periods will be dealt with more fully under question 2.

In short, while the three-month period gives the appearance of an evidential threshold, this is illusory. The Bill does not require legal sex-changers to:

- Meet objective criteria defining what it means to 'live in the acquired sex';
- Prove that they are meeting their self-defined criteria.

Since there is neither definition nor proof required (beyond a formal declaration) of the three months, what is proposed is effectively a self-declaration system. The problems with such a system are explained in detail under question 4.

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.:

Reflection periods provide a 'breathing space' to allow for contemplation over a person's decision, and the opportunity for reconsideration and possible reversal. In this case, the Cabinet Secretary has said that "building in time for reflection enshrines in law the seriousness of the process".[1] In other words, the Government expects that the reflection period may provoke applicants to think again and potentially change their mind. This is a tacit admission by the Government that

without proper thought, some may regret a legal sex change. It acknowledges that such people must not be able to obtain a full GRC without proper opportunity for reconsideration. However, it is astounding that the Government also believes three months (or even six, including the pre-application period) to be a long enough reflection period. Based on the evidence, the proposed reflection period is so short that almost nobody will use it as an opportunity to turn back. Those who develop regret will only do so later on, when it is much more difficult to reverse their change (see question 4).

It is important that any reflection period in the law is grounded in what is known about transgender reflection and regret more generally. Partly due to its controversial nature, little research has been done into the area of regret, desistence and detransitioning. But there is increasing anecdotal evidence, with hundreds of detransitioners emerging on blogs and social media sites. Some have spoken out, and provide us with a window into the process of reflection and regret. Their stories show the lengths of time this difficult process involves. The Scottish Government should consider the 'lived experiences' of detransitioners in deciding the duration of a reflection period. The following well-known cases highlight the length of time that regret usually takes to form, and why three to six months is a totally inadequate period for meaningful reflection:

- Scottish detransitioner Sinead Watson took testosterone from 2015 after a 12-13 month waiting list, and received a double mastectomy in 2017. She describes an immediate "period of bliss" and believes she would have continued pursuing surgery had she not realised that transition was not addressing her underlying problems. She marks the beginning of her regret at her 27th birthday in January 2018. The beginning of her transition until the decision to reverse was around three years.[2]

- The English detransitioner and founder of the Detransition Advocacy Network, Charlie Evans, identified as a man for nearly ten years before detransitioning.[3]

- [REDACTED]

'Pique Resilience Project' (PRP) is a group of five American detransitioned and desisted young women: Dagny, Jesse, Helena, Chiara and Price. They speak about their personal experiences and provide information on detransition. It is worth considering how long each of them took to abandon the pursuit of a trans identity:

- Dagny identified as non-binary and as a trans man from age 15 to 19, receiving testosterone for two years before deciding to detransition.
- Jesse identified as a trans man from age 16 to 19, and as non-binary both at ages 15 and 19. She received testosterone for 14 months before detransitioning.
- Helena identified as non-binary and transgender as a teenager and received testosterone aged 18 to 19 before detransitioning.

- Chiara identified as a trans man from 16 to 19 before desisting.
- Price identified as transgender at 17 years old before desisting at 21.[5]

From the evidence we have, it seems that regret usually develops over a period of years. While reflection and reconsideration should be encouraged – and detransitioners are grateful to have had the opportunities to do so – it cannot be rushed.

The above cases are instructive. They are women who, given their subsequent detransition, should have been blocked from obtaining a GRC. However, had they sought it under the proposed system, all of them would have obtained full GRCs with ease. The proposed period of reflection would have been far too short. This is the central problem, but other issues arise. The proposed reflection period is said to be about providing opportunity for contemplation and possible reversal (thereby ‘enshrining in law the seriousness of the process’). If this is the case, the Scottish Government has a duty to understand the nature of transition, regret and detransition. As well as the timespans involved in detransition, the Government should also be aware that the process of regret is often preceded by (1) increased conviction and desire for transition and (2) temporary euphoria following medical interventions. Detransitioners well know the intense pursuit of transition and the perceived benefits of it.

Firstly, future detransitioners will often feel increased conviction, and so pursue transition more aggressively, before seeking reversal.

- Chiara of PRP, for example, says that before reconsidering her identity, she spent two years fiercely “fighting tooth and nail” with her mother to obtain hormones. She says her desire for testosterone was all-consuming.[6]
- Jesse of PRP says that her commitment to the transgender cause became so strong she founded her own ‘Gender Sexuality Alliance’ group at high school, and explains that even when doubts first appeared, they were addressed with further transition. Jesse says that feelings of inauthenticity made her think: “Oh I need to start dressing even more masculine, I need to cut my hair in a certain way now, I need to increase my testosterone dose, I need to do all these other things’, and then it started a laundry list of things I needed to do to keep up with this new persona I was developing.”[7]
- Sinead Watson expresses a similar mentality: “I’d convinced myself that medically transitioning would solve my problems. So after being on testosterone and all the problems were still there I thought ‘OK, clearly I haven’t transitioned enough, so as soon as I get the mastectomy then I’ll start to feel better’, so then I had the mastectomy in 2017 and I wasn’t magically better anymore so I had two roads to walk down; I could either continue going for surgeries, continue medically transitioning as far as is currently available, and just hope that at the end of it I wasn’t ill anymore, or I could stop and ask myself whether this is actually what I should be doing.”[8]

Those who will later detransition exhibit just as much conviction about transitioning as others, and even when doubts do creep in they can be addressed with further transition. A person in such a frame of mind should not be able to obtain a GRC after a mere three-month reflection period. This is especially the case considering that

their pursuit of legal recognition may be an attempt to suppress underlying doubts and problems.

Secondly, the transition process often involves deceptive periods of euphoria. Most transgender people perceive benefits in their transition before ever developing dissatisfaction. This can be seen in a 2016 study entitled, "Quality of life improves early after gender reassignment surgery in transgender women". This title is accurate insofar as transsexuals' "self-perceived health compared to 1 year previously rose in the first post-operative year". However, the study goes on to say "after which it declined."^[9] In the study, every measure of physical and mental health was worse three years after an operation, and every measure except physical functioning worsened even further by five years. This corresponds well with Tavistock research suggesting a decrease in self-harm and suicidality after six months of sex-change treatment, while going on to find that after a year of taking the hormones there was "a significant increase" in adolescents who said they "deliberately try to hurt or kill themselves". The research went on to suggest that after a year "the suppression of puberty does not impact positively on the experience of gender dysphoria", showing that girls were "more dissatisfied" with their bodies. These girls saw "a significant increase in behavioural and emotional problems" and "a significant decrease in physical well-being".^[10] This suggests, along with other research, that trans people often experience a short-lived 'honeymoon period' following intervention. This period may last months or even years, but it does not represent a permanent contentedness.

Anecdotal evidence strengthens this case:

- Sinead Watson says that "after the double mastectomy in 2017 there was a period of bliss, where it was like 'I've finally done it, I set this goal for myself and I've achieved it'... the novelty of that wore off and I thought 'why do I still hate myself?'"^[11]

- [REDACTED]

- Two anonymous detransitioners (one who identified as a trans man for nine years and the other for four years) write: "Following the peak of euphoria reached on the psychological rollercoaster when medical transition first begins, there is plummeting ahead".^[13]

- The detransitioners at Pique Resilience Project likewise share this account of temporary euphoria, and the same story is replicated throughout other 'detrans' blogs as well. Temporary contentedness, lasting much longer than three or six months, should not be mistaken for permanence.

These two points (the intense pursuit and the deceptive 'honeymoon period') are highly relevant to question 2. If the proposed reflection period is an attempt to mitigate against cases of regret – and it is difficult to understand it any other way – then the Government must appreciate that regret takes time to emerge and that transgender people can experience a period of both increased conviction and euphoria before rethinking begins. For some, a legal sex change might be pursued in

an attempt to suppress the first signs of doubt. It might be thought of as an item on the laundry list to happiness, only for it to be found not to address underlying problems. For some this desire to obtain instant legal recognition will be overwhelmingly powerful, and this is precisely why they should not be able to do so. The easier legal recognition is to obtain, the sooner an insecure teenager will reach to obtain it – only to find themselves in a deeply regrettable position, more difficult to reverse. Moreover, the fact that trans people may feel content or even euphoric in their acquired identity (whether medical or legal) should not make them eligible for a full GRC. The data indicates that euphoric episodes are usually temporary. A trans person receiving hormones or surgery is in a position of particular vulnerability; a temporary satisfaction with intervention (followed by a strong desire for more) will only cloud their reflection within such a short period.

Given the wider context of transition, reflection, regret, and detransition, it is clear that the draft Bill's reflection period cannot accomplish its intended purpose. It cannot be expected to bring ill-considered legal sex changes to a halt in three or even six months alone. Such processes take years. While a reflection period is necessary, it must be much longer. As much reflection time as possible should be built into any law allowing legal sex changes. The current proposal appears to be no more than a token gesture.

[1] Scottish Parliament, Statement on gender recognition, 20 June 2019

[2] 'What the Hormones Didn't Change | a Detrans Story, with Watson,' Benjamin A Boyce, YouTube, 14 January 2020, see <https://www.youtube.com/watch?v=M0zWaNdKp7Y&list=PLRdayXEOwuMH3f0pmZqVQUU62rgJlzvt9&index=52&t=0s> as at 16 March 2020

[3] Sky News, 'Hundreds' of young trans people seeking help to return to original sex', 5 October 2019, see <https://news.sky.com/story/hundreds-of-young-trans-people-seeking-help-to-return-to-original-sex-11827740> as at 16 March 2020

[5] 'About', Pique Resilience Project, see

<https://www.piqueresproject.com/about.html> as at 16 March 2020

[6] 'Detransition & Self Acceptance | with Chiara', Benjamin A Boyce, YouTube, 21 February 2019, see <https://www.youtube.com/watch?v=-fCOVjhZ3VI> as at 16 March 2020

[7] 'Hip To Be Trans? | with Jesse, of The Pique Resilience Project', Benjamin A Boyce, YouTube, 16 March 2019,

<https://www.youtube.com/watch?v=tA9GhyM2r9A> as at 16 March 2020

[8] 'What the Hormones Didn't Change | a Detrans Story, with Watson,' Benjamin A Boyce, YouTube, 14 January 2020, see <https://www.youtube.com/watch?v=M0zWaNdKp7Y&list=PLRdayXEOwuMH3f0pmZqVQUU62rgJlzvt9&index=52&t=0s> as at 16 March 2020

[9] Lindqvist, E K, Sigurjonsson, H, Möllermark, C et al, 'Quality of life improves early after gender reassignment surgery in transgender women', *European Journal of Plastic Surgery*, 40(3), 2017

[10] Board of Directors agenda and papers, 23 June 2015, The Tavistock and Portman NHS Trust, pages 49-55

[11] BBC Scotland: The Nine, 'Gender Recognition Act: Sinead's story', 10 February 2020, see <https://www.bbc.co.uk/programmes/p082wx9n> as at 16 March 2020

[13] Anonymous, 'Our Voices Our Selves – Amplifying the Voices of Detransitioned Women', in Moore, M and Brunskell-Evans, H (Eds.), *Inventing Transgender Children and Young People*, Cambridge Scholars Publishing, 2019, page 172

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 minimum age at which a person can apply for legal gender recognition should not be reduced to 16. This is both due to the condition of 16-year-olds (naturally and before the law), and the current social context (outlined in answer to question 4). What is more, all the countries mentioned in the consultation as allowing minors to change legal sex apply additional requirements to these applicants. The draft Bill, however, makes no mention of additional requirements, or even of parental consent for children below 18. This makes the Government's proposals doubly concerning. Those aged 16 and 17 are undergoing a whole host of developmental changes. They are developing the capability for abstract thought, beginning to consider a variety of viewpoints, and learning to think about the process of thinking itself. This is not to say that 16-year-olds lack the ability to solve logical problems, may not experience intense distress relating to their gender, or do not have strong convictions about legal recognition. However, as several of the examples in question 2 show, many minors will lack the ability to think critically about the origins of and solution to their discontentedness or emotional needs, until several years have passed. As the University of Rochester's Health Encyclopedia says, 16-year-olds "may be able to use logical operations in schoolwork long before they can use them for personal problems" and "when emotional issues come up, they can cause problems with a child's ability to think in complex ways"[1].

Recent statements from the Scottish Sentencing Council (SSC) take this even further. Last month, the Council published research into the cognitive maturity of younger people. According to the Council, "The review findings confirm that the adolescent brain continues to develop into adulthood and does not reach full maturity until approximately 25-30 years of age." The Council went on to make remarks that are particularly relevant in the context of adolescent transgender identity:

"Furthermore, brain development may be delayed or hindered by other factors such as mental disorders and distress, adverse childhood experiences, traumatic brain injury ("TBI"), and alcohol and substance use. These contextual risks therefore introduce significant vulnerability in young people. The very nature of brain development during the transition to adulthood is often at the root of the risk-taking behaviour which can cause further damage to the already vulnerable younger brain."

While this statement was made in the context of criminal activity, there is clear carry over into the debate at hand. Trans teens are subject to mental distress. The intensity of this is often seen as a factor validating their opinions and demands. According to the Council, however, distress compromises development, and leads to greater risk-taking and poorer decision-making. For their own sakes, the demands of such people should therefore be treated with much higher levels of caution. It is absurd for the Government to be proposing gender recognition for 16-year-olds, while guidelines published by the SSC propose that – for developmental reasons – prison or detention should only be used on under-25s as a last resort.[2]

[REDACTED]

[REDACTED]

In many ways the law in Scotland still respects the cognitive limitations of minors. While the consultation refers to some of the rights now afforded to minors, it fails to mention that in Scotland 16 and 17-year-olds cannot legally:

- Buy alcohol in licensed premises;
- Buy cigarettes;
- Stand for election as an MSP;
- Serve as a juror;
- Get a tattoo;
- Buy fireworks or possess them in a public place;
- Have a credit card;
- Place a bet.

The Scottish Government does not give clear reasons why the right to change legal sex should be removed from this list of prohibitions other than refer to the rights minors already possess. If the present increase of trans identity among teenagers is in any way responsible for Government plans to lower the age limit, the Government is seriously misreading the situation. It needs to carefully consider the kind of person who will make use of the proposed drop in the age limit.

The examples of detransitioners given in answer to question 2 are again helpful. Often, these women sincerely sought transition below the age of 18. The current system would have prevented them acquiring a gender recognition certificate. This

would have been appropriate given their subsequent detransition, and many will now be grateful that this was the case. But again, were the proposed system in place, they would have been able to obtain a GRC.

It is well known that the UK's Gender Identity Development Service has seen a more than 3,000% increase in young people referred for gender dysphoria in the last decade. Between 2018 and 2019, 2,590 young people were referred for gender dysphoria. Though there has been a rise in very young children at the clinic, 85% of referrals are aged 11-17. This cohort is further characterised by a gender imbalance – 75% are female.[4]

Very little research has been done into the nature of this group, but the phenomenon demands proper analysis before any lowering of legal recognition to 16. Officials at Westminster are currently researching the matter, looking into such things as the influence of social media. It is notable that Westminster's reported reconsideration of gender recognition reform seems to be linked to this very issue. In the words of a Government source: "While we believe adults should be able to live their lives, and trans rights should be respected and protected, the government also has a role to play in protecting children".[5]

In their analysis of the phenomenon, many experts have raised serious concerns about the roles of gender stereotypes and social contagion. This latter term refers to the spread of feelings or behaviour throughout populations. In recent years it has been applied to the social ills of self-harm and eating disorders, and the subcultures that promote them. These behaviours are often "maladaptive coping mechanisms" (behaviours that try – but fail – to address underlying problems).

Notably, they seem to concern a particular demographic: young people with poor mental health and little direction, engaging in self-abusive behaviour. Anorexia contagions, for example, have been well studied, with research showing social media exacerbating the problem. Until a policy change in 2012, the social media site Tumblr had been a hotbed for directionless teens, with a pool of pictures, memes, and in-jokes celebrating anorexia and self-harm – thus facilitating contagion. But, just as in 2012, today's Tumblr is home to a very troubling trans subculture. A cursory search reveals a constant stream of posts and videos glorifying the transition process, graphic self-loathing, memes, comics, and in-jokes. Much makes light of irreversible intervention. A lot of it represents very genuine, agonised cries for help. But it all contributes to a dangerous ecosystem which normalises the claims of gender ideology, and demonises anyone who disagrees. Social contagions thrive under conditions like these. In the light of such a disturbing picture, we believe the Scottish Government should be seeking to help the vulnerable teenagers caught up in this movement, not simply offering easier gender recognition. This is not a serious remedy to a deep social problem, and it highlights a troubling lack of discernment on the part of the Scottish Government in this area.

Even when the more disturbing material is laid aside, there is a growing and complex trans teen subculture. Online there is the rising prominence of [REDACTED] ideology that states "you don't need dysphoria to be trans". Many of the young people who now exist under the broad transgender banner make no pretence of suffering from gender

dysphoria at all. Many of them are simply discontent with society, gender stereotypes, and the perceived need for conformity.

Transgenderism has become an outlet through which teenage angst is expressed. While these people are often dismissed as 'transtrenders', many of them will go to extreme lengths in advancing the trans cause in their personal lives. Who is to say that vulnerable teenagers like these will not leap at the opportunity presented by a self-declaration system? A survey quoted in the draft impact assessments shows that of those giving reasons for not trying to change legal sex, 35% of males and 51% females said they 'did not meet the current requirements'. This could mean many future applicants will not even have gender dysphoria in their own eyes, let alone in the eyes of the medical profession. The Government must assess the nature of the group who may make use of a lowered age limit.

Given that the majority of people seeking out specialist gender services are in their mid-teens, and given the present size and complexity of transgender teenage culture, an age reduction is reckless. Reducing the age limit for legal sex change opens the door to an understudied group of vulnerable individuals. Far from providing the Government with a mandate for lowering the minimum age for legal sex change, the present cultural situation should, if anything, lead to it being increased.

[1] 'Cognitive Development in the Teen Years', University of Rochester Medical Center, Health Encyclopedia, see <https://www.urmc.rochester.edu/encyclopedia/content.aspx?ContentTypeID=90&ContentID=P01594> as at 16 March 2020

[2] 'Research indicates the brain does not fully mature until at least the age of 25', Scottish Sentencing Council, 21 February 2020, see <https://www.scottishsentencingcouncil.org.uk/news-and-media/news/research-indicates-the-brain-does-not-fully-mature-until-you-are-at-least-25/> as at 16 March 2020; BBC News Online, 'Scottish courts urged not to jail 'immature' under-25s', 28 February 2020, see <https://www.bbc.co.uk/news/uk-scotland-51657466> as at 16 March 2020

[3] 'Legal case to protect children from experimental medical treatment', CrowdJustice, 24 January 2020, see <https://www.crowdjustice.com/case/protect-children/> as at 16 March 2020

[4] 'Referrals to the Gender Identity Development Service (GIDS) level off in 2018-19', The Tavistock and Portman NHS Foundation Trust, 28 June 2019, see <https://tavistockandportman.nhs.uk/about-us/news/stories/referrals-gender-identity-development-service-gids-level-2018-19/> as at 16 March 2020

[5] The Times Online, 'Gender Recognition Act changes halted after child fears', 22 February 2020, see <https://www.thetimes.co.uk/article/gender-recognition-act-changes-halted-after-child-fears-w6qbx0g7h> as at 16 March 2020

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

Yes

If yes, please outline these comments.:

While the necessary three months of ‘acquired gender’ gives the appearance of an evidential threshold, this is misleading. Ultimately, no definition or proof of these terms is given or asked of the applicants, and what is being proposed is a self-declaration system. The following reasons – not sufficiently addressed by the Government’s consultation document – outline why self-declaration would be wide open to problems, especially in the current cultural climate.

Until recently it had been assumed that there was an essential relationship between a diagnosis of gender dysphoria and transgenderism and, by extension, a legal sex change. The current medical requirement and two-year period at least maintain that relationship, upholding a semi-objective basis for a legal sex change. However, under the proposed system, this will not be the case. As the Scottish Government notes, some say “that being trans is not a mental illness and should not require a psychiatric assessment or diagnosis of gender dysphoria”.^[1] That is to say, some wish a dysphoria diagnosis not to be a necessary requirement to being legally transgender. It is vital to note that by following this logic, a ‘de-medicalised’ system endorses a radical new approach that demotes gender dysphoria to simply ‘one of many possible reasons’ for applying for a GRC. To understand the scale of this change, consider that the proposed Bill would not require sex-changers to:

- Believe they are members of the opposite sex;
- Desire to be members of the opposite sex;
- Feel dysphoric or uncomfortable in their birth sex.

By removing the need for any remotely objective medical or mental basis for a legal sex change, the Bill reduces gender recognition law to the recognition of a mere wish. While the Gender Recognition Act already disconnects legal sex from biological sex, now the Scottish Government wants legal sex to be disconnected from all other bases, including gender dysphoria. In the eyes of the law, sex will become a matter of choice alone. This is not merely the streamlining of an overly-bureaucratic process. Rather, it is a deeply philosophical act. The Scottish Government is emptying the very meaning of a person’s sex. Consciously or not, it is enshrining an essentially deconstructionist notion of one’s sex, with major long-term implications.

In the short term, a practical concern arises about the kind of person who may make use of such an open system. Critics have predicted a rise in ‘frivolous’ applications, and in response, the Scottish Government has tried to reassure against such a scenario. It makes two points in its response. Firstly, the Government says that “...research into countries using self-declaration systems ... has not identified evidence of false or frivolous statements”.^[2] And secondly it assures the public that people “...will still be subject to criminal proceedings for lying or making false applications”, thus discouraging frivolity in the first place.^[3]

It is worth briefly considering these reassurances.

The first begs the following question: According to the Scottish Government, what would constitute a false application in the first place? While false statements about age or citizenship can be identified and disqualified, this is not what is usually meant

when critics speak of ‘frivolous statements’. The principal concern here ought to be the possibility of ill-considered intentions “to continue to live in the acquired gender permanently”;^[4] applicants whose declarations will be regretted in later life, regardless of the strength of conviction at the time. The law must protect against an increase in such applicants. But the proposed system would have no means of identifying or disqualifying ill-considered applicants, since it would have no definition of what constitutes such a person in the first place. An applicant merely has to state that they “intend to continue to live in the acquired gender permanently” to obtain a certificate. Such a statement will be perfectly true for many ill-considered transitions.

For example, if a teenage girl really does, at the time, intend to live permanently as a man, then, whatever she may later think, she really did at that time intend to live as a man. Even if the applicant later considers herself to have been misled or to have made a ‘frivolous’ declaration, this would not falsify the original declaration. Applications later thought of as frivolous would often not be thought of as frivolous at the time by the people making them.

However, the Government’s second point (that criminal proceedings would discourage frivolous applications) raises even more questions. If, as the Government surely believes, it really were possible to classify some applications as ‘frivolous’ and therefore ‘false’, where would that leave those seeking to revoke a GRC? If anyone is open to the charge of having made a ‘false declaration’, it is surely such an individual. What if, in the light of an attempt to revoke an ill-considered certificate, hostile onlookers now regard the initial application as false and thus unlawful? Could prosecutors legally threaten cases of regret, arguing that an initial declaration had been ‘false’? The Government does not address this concern, but simply says that “a person who commits any such offence is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (currently £10,000) (or both) and on conviction on indictment to imprisonment for a term not exceeding 2 years or an unlimited fine (or both).”^[5]

This is a significant sanction. By comparison, the Sentencing Council Guidelines for the offence of inflicting grievous bodily harm/unlawful wounding specify that an offence which involved some aggravating factors might attract a custodial sentence of a year and six months (a sentence of two years would require a number of aggravating factors to be present).

Sinead Watson, a Scottish detransitioner, expresses these concerns about the draft Bill: “As a Scot, and as a detransitioner, as someone who was once absolutely convinced – and I mean hell-bent in the belief that transition would solve all of my problems, that it was the best thing for me, that I would never regret it – to read what some of these proposed changes would enact really, really concerns me.” Sinead worries how her initial legal sex change might be viewed in the light of her attempts to go back: “They say that it’s illegal if someone is caught lying about their gender identity... But that’s kind of scary in and of itself because what does that mean for detransitioners? How can you tell the difference between someone lying about it for nefarious purposes and someone who genuinely came to regret it like I did? So, would I be committing a criminal offence by detransitioning?”^[6]

It is worth remembering that the detransitioned experience is viewed by many trans activists as a threat to transgender ideology. In some quarters, detransitioners are routinely dismissed as fakes and liars. Pressure might well be applied to prosecutors, urging action against a detransitioner for making what activists regard as a 'false statement'.

The prime concern here is regarding 'the chilling effect'. Detransitioners should not be afraid of revoking ill-considered GRCs. In the minds of regretful individuals, the new offence could add another obstacle to the detransition process. While much attention is given to the difficulties of transitioning, the difficulties detransitioners already face are often overlooked. Detransitioning is an arduous process that requires money and motivation. Some may find it simplest to suppress regret and come to terms with the transgender lifestyle they have chosen for themselves. In the words of one regretful transsexual, Rene Jax: "I'm sixty years old. There's no reason for me, after a lifetime of being in transition to go and start living, dressing as a man anymore. There's no benefit in it. But there is a benefit in my standing before an audience of young kids in college, who are considering this path, and saying to them, 'OK, I'm the real deal. I started living as a woman when I was twenty, I've lived forty years of my life, I've had breast augmentation, I've had genital surgery, I've had four years of hormones, all of it has not made my life any better, it's never solved the problem.'" [7]

Ideally, Jax should be able to go back to living as a man, but believes the cost of the detransition (whether social, medical or financial) outweighs the benefit. Younger detransitioners like Sinead, however, express fear at the legal obstacle that could add an additional cost to detransition. It would be a tragedy if people who regret changing sex felt the legal risk was trapping them in a transgendered life.

Detransitioners must have the option to reverse a sex change without fear, but the current system where someone can acquire further certificates to change back and forth is incoherent and absurd. Such absurdity will be exaggerated under a self-declaration system. Ultimately the problem lies with the very concept of changing legal sex. If this is to continue to be allowed, there should be high thresholds for the acquisition of a GRC, and the one-time-only possibility of revoking such a certificate with relative ease and no legal implications.

The Government has been sceptical about the possibility of 'frivolous' statements. Yet recent social developments must surely force it to rethink. The unprecedented rise in young people identifying as transgender raises questions about the nature of many claims. There is a fast-growing number of detransitioners, with one claiming to be in contact with hundreds who express regret over their sex-changes. These people often argue that they had been persuaded to believe they were gender dysphoric when, under normal circumstances, they would not have been. They say that underlying problems, including eating disorders, body dysmorphia, and disillusionment with gender stereotypes, have all been hijacked by a contagious belief in the possibility of dysphoria.

Many of these people will strongly identify as trans for a time, often aggressively pursuing transition, before disillusionment and regret. Research has shown that peer pressure, YouTube and social media play significant roles in a large number of

cases of children claiming to have gender dysphoria. There is much online advice that pressures young people to transition quickly, describing vague symptoms as evidence of dysphoria, and explaining how individuals can convince parents and doctors into giving them medical intervention. The Gender Identity Development Service has seen around 35 resignations in three years, with many staff members worried about over-diagnosis. Even the Director of the service, Dr Polly Carmichael, has admitted that we should be “asking questions about whether some people are getting caught up in something”.^[8]

This is all well-known and highly relevant to the draft Bill. A growing number of teenagers are strongly identifying as gender dysphoric trans people for reasons that should concern us. Many will come to regret it. We must be cautious in how we respond to their claims – offering them immediate legal approval is profoundly irresponsible. A Westminster inquiry is in the process of investigating possible reasons for the rise, including the influence of social media and the promotion of transgender issues in schools. At the very least, the Scottish Government should not be considering any changes to the Gender Recognition Act until this inquiry is over.

In the present culture, many others bear the status ‘transgender’ while denying the relevance of gender dysphoria at all. Online, transgender culture divides between the ‘traditional’ ██████████ and the ‘progressive’ ██████████. While ██████████ (a slur term) – or ‘transmedicalists’ – insist that one must have gender dysphoria to identify as the opposite sex, ██████████ state that “you don’t need dysphoria to be trans”. This view is gaining ground. This is not merely internet subculture. Such ideas exist in the minds of thousands of young people, and have even, as already noted, penetrated the Scottish Government. The consultation documents tacitly give credence to the ██████████ idea, giving implicit support to the view expressed by the Westminster Government in 2018 that “the current arrangements exclude individuals who want to be legally recognised but who do not experience gender dysphoria as it is medically defined – i.e. they don’t experience discomfort or distress.”^[9]

The relevance, here, however, concerns not the Government but the public. If such views continue to persist, how will it affect the number and nature of GRC applicants when the proposed system is introduced? After all, the consultation documents themselves present figures that should make the Government think twice. The LGBT survey quoted in the documents shows that of those giving reasons for not applying for a GRC, 35% of males and 51% females said they did not meet the current requirements.^[10] That is to say that it appears there is a significant cohort of ‘trans’ people who desire a legal sex change despite neither having been diagnosed as dysphoric nor having lived in the ‘acquired gender’ for two years. The Scottish Government should not be opening the door to this cohort.

Given the major cultural shifts that are taking place over this issue, the Government may think it is prime time to change the law. This would be a tremendous mistake. At this time, thousands are adopting identities that they would not otherwise adopt, and many vulnerable people are being deeply misled. In short, there could not be a worse juncture for such a monumental change in the law.

Finally, the Government has said it is not worried about those with malicious intent. It is mistaken. As noted in the consultation, exceptions in the Equality Act 2010 allow

transsexuals to be excluded from single or separate sex services where this is objectively justified. Women's domestic violence refuges can refuse to accommodate men who say they are women because of the impact on vulnerable clients, for example. This is a vital safeguard against potential abusers.

However, it strains credulity to believe that changes to the Gender Recognition Act will have no effect on equality law. Allowing people to change legal sex at a lower threshold shifts the climate in which they operate. If changing legal sex is viewed as so routine that it can be done on demand, it will be more difficult to justify using an exception. And it is unlikely that existing exceptions will survive intact for long after the GRA is changed. There have already been calls for the Equality Act to be updated.[11]

[1] Gender Recognition Reform (Scotland) Bill: A consultation by the Scottish Government, December 2019, page 17

[2] Review of the Gender Recognition Act 2004: A Consultation, November 2017, page 18

[3] Gender Recognition Reform (Scotland) Bill: A consultation by the Scottish Government, page 3

[4] Ibid, page 47

[5] Ibid, page 78

[6] 'Detransition and the Scottish Gender Recognition Reform Bill', ImWatson, YouTube, 28 December 2019, see

<https://www.youtube.com/watch?v=9G-PNRE22vw> as at 16 March 2020

[7] 'I Want My Sex Back. Detransitioned transgender people who regretted changing sex', RT Documentary, YouTube, 9 September 2018, see

<https://www.youtube.com/watch?v=0R7DXnqkfJw> as at 16 March 2020

[8] BBC Radio 4, 'The Trans Revolution', 8 April 2018, see

<https://www.bbc.co.uk/programmes/b09xjx34> as at 16 March 2020

[9] Reform of the Gender Recognition Act – Government Consultation, Government Equalities Office, July 2018, page 30

[10] Gender Recognition Reform (Scotland) Bill: A consultation by the Scottish Government, pages 126-127

[11] Transgender Equality: First Report of Session 2015-16, Women and Equalities Committee, 14 January 2016, pages 28-29

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

Yes

If yes, please outline these comments.:

Many of the Scottish Government's answers to questions in the Impact Assessments appear woefully inadequate. For example, the Draft Child Rights And Wellbeing Impact Assessment says:

Question: What likely impact – direct or indirect – will the policy/measure have on children and young people?

Government Answer: The provisions of the draft Bill would have a direct impact on people aged 16 and 17.[1]

The Scottish Government fails to provide any meaningful analysis. It does not engage in detailed discussion about the effects the proposed law would have on children.

On pages 105-107 the Government considers the impact of the proposals on children's rights. This is done superficially, and the Government mentions only perceived benefits, not possible problems. For example, it is said with regard to UNCRC Article 6 ("I should be supported to live and grow") that: "Extending gender recognition to those aged 16 and 17 could affect their development as it may permit them to be legally recognised in the identity they are living in." [2] But the concern is that a variety of social pressures are leading many children to identify as members of the opposite sex, and that the proposed law risks boxing children into a problematic identity and preventing maturation. With reference to Article 3 ("Adults must do what's best for me") the Government merely says that the Article is relevant. It does not give any indication about how this right may be affected.

On page 107, the Government answers the question, "How many children and young people are likely to be affected by the policy or measure?" [3] It provides limited research into the prevalence of gender dysphoria in children. The Government must take account of two important developments:

1. The proposed law separates legal sex from dysphoria.
2. A growing group of young people are claiming that "you don't need dysphoria to be trans". How such a group will make use of a liberalised law, especially in the years to come, is an open question.

In paragraph 4.4 of page 109, the Government says that: "There is evidence that trans young people are more than twice as likely as non-trans people to be diagnosed with depression (50.6% compared to 20.6%) and with anxiety (26.7% compared to 10%). There is evidence that this is not an inherent feature of their being transgender. There is also some evidence that transitioning to living in their preferred gender and being supported with gender confirming medical interventions may help improve mental health, in many cases reaching levels experienced in the general population." [4]

This is appallingly one-sided. The evidence that mental health problems are solely due to external factors, and that transitioning helps alleviate mental health problems is very weak (see answer to question 2 for information on the 'honeymoon period').

Comments from anonymous GIDS clinicians reveal that the reality is far more troubling: "Counter to child development theory and knowledge, this service changes children's bodies with the aim of improving their mental health, which mostly does not seem to work."

"This experimental treatment is being done not only on children, but very vulnerable children, who have experienced mental health difficulties, abuse, family trauma, but sometimes those [other factors] just get whitewashed... If someone was suggesting plastic surgery or any other permanent change we'd be saying, hang on a minute." [5]

Between pages 119-123 the Government lists those countries that allow minors to obtain legal sex changes.[6] It is worth noting that all of these jurisdictions make additional requirements upon the applicants. The draft Bill, however, makes no mention of additional requirements, or even of parental consent for children below 18. If the Government is to base its practice on that of other countries, it should replicate these features as well.

[1] Gender Recognition Reform (Scotland) Bill: A consultation by the Scottish Government, page 103

[2] Ibid, pages 105-106

[3] Ibid, page 107-108

[4] Ibid, page 109

[5] BBC Panorama, 'Trans Kids: Why Medicine Matters', 2 March 2019

[6] Gender Recognition Reform (Scotland) Bill: A consultation by the Scottish Government, pages 119-123