

The Diversity Trust

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.:

It is useful to remind ourselves of the purpose of the waiting period in the original Gender Recognition Act. The assumption was that trans people would need to prove their ability to live in their acquired gender to a medical professional before being legally recognised. Government was concerned that no one should change gender frivolously. And there was some concern that trans people might regret their decision; and should not go through a legally-binding process until they were sure they were doing the right thing.

In the meantime, it was required that trans people live full time in their acquired gender. This would only be possible if they were able to change ID documents such as driving licences and passports. This would be done on the basis of self-ID when the trans person came under the care of a gender clinic.

Since 2004 the medical profession has become increasingly confident that trans people are indeed who they say they are, and do not need to go through a lengthy process of proving their identities.

In addition, more and more trans people are transitioning socially outside of the medical system. This is in part because of the ever-increasing waiting times for treatment at gender clinics.

For the trans person, the key event in the process is the decision to live full time in their gender. Legal recognition is nice to have, but due to the complexity of the existing system the majority of trans people no longer seek it. They have already taken the difficult and potentially frightening step of social transition. In all probability they will have agonised over the decision for years prior to taking that step.

Therefore, if a trans person has already gone through a process of changing their ID, possibly their name, and introducing themselves to the world in their new identity, there is little value to them in making them wait an additional 3 months.

We therefore welcome the reduction in the period in which the applicant must live in their desired gender from 24 months to 3 months. We also ask why a 3-month period is deemed necessary, as it is not of any obvious benefit to the applicant.

Whether any such period is required is open to question.

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.:

Given that there is no obvious benefit to applicants in having a 3-month waiting period between social transition and applying for legal gender recognition, it is difficult to see any benefit at all in further delay.

The period of reflection also has potential to create practical issues. Suppose a trans person dies before the period of reflection has expired. Will their death certificate have to be made out in their birth gender because of this, or will their expressed wish to be recognised in a different gender be respected?

Finally, this provision gives credence to the accusations of anti-trans campaigners that gender changes will be undertaken frivolously, because it is possible to change your mind later.

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

Yes

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

NHS guidelines allow young people to access cross-sex hormones from the age of 16. Therefore legal gender recognition must apply from age 16. Furthermore, many young people are transitioning socially at ages much younger than 16. They need some form of legal recognition of that transition, otherwise they will constantly be at risk of outing and victimisation. The form and/or process of recognition may need to be different to that for adults, but it is absolutely necessary.

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

Yes

If yes, please outline these comments.:

The Bill makes no provision for people who identify outside of the gender binary; non-binary people. The absence of any legal recognition for non-binary people causes major problems, both for them and for services that are required to provide segregated support. There is a significant gap in the provision of things like hospital beds, domestic violence services, sexual violence services and so on because there can be no funding available to support non-binary people without legal recognition that such people exist. We therefore encourage the Scottish Government to move with all speed to investigate how the law can be changed to alleviate these problems.

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

Yes

If yes, please outline these comments.:

We support the view of the Scottish Government that the proposals in the Bill will not have any negative impact on the rights of women. We note that from the early days of gender therapy, it was a requirement of the medical process that the patient undergo social transition and live in all ways as a person of the acquired gender. The fact that trans people would self-ID, and would make use of social spaces appropriate to their acquired gender, has been an acknowledged part of the transition process from long before 2004. If this were a problem, it would surely have been noticed by now.

We reject the idea that treating one small population group with dignity, respect and compassion will somehow result in a reduction in rights for a larger population group.