

Transgender Europe

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.:

Transgender Europe - TGEU is of the view that adapting officially held gendered information should only be based on the self-declaration of the person concerned.

As the The Parliamentary Assembly of the Council of Europe stated in its Resolution 2048(2015), additional requirements such as a period of "life experience" in the gender of choice, make recognition procedures generally cumbersome. The PACE also establishes that procedures must be quick, transparent and accessible.

European countries with legal gender recognition legislation based on self-determination are increasingly removing the requirement for "real life experience", and so keeping it would be a step back in achieving current European standards and complying to human rights.

We believe that this requirement, as well as the reflection period, only perpetuate harmful myths about trans people; their gender identity potentially as a confusion or phase that must be therefore proved and stable. This perspective is discriminatory and it violates the right to private life by forcing them to disclose their trans status and present themselves in a certain way.

The idea of "real life experience" is based on gender stereotypes (i.e. how should a man or a woman present themselves) that are then imposed on trans people. Performing certain stereotype does not serve in any way as a measure of one's gender identity. Also, this approach excludes non-binary people who would not have a binary role to perform or would not fit into them. This applies to binary trans people (i.e. trans men and trans women) as well, as they are also diverse and would not necessarily fit either.

Furthermore, becoming visible as trans, especially not having been able to change all of their documents (i.e. birth certificate) may put trans people at a higher risk of discrimination and violence. It may as well not be accessible to all trans people. The ability or willingness of trans people to present in a certain way should not interfere with their right to gender recognition.

This measure is not only an obstacle for trans people to fully exercise their rights, but it is detrimental to their health and safety.

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.:

As previously mentioned, we find that this requirement reinforces harmful myths about trans people that directly impact them. Understanding the gender identity of trans people as a possible confusion or phase reinforces incorrect ideas about them and promotes discrimination and stigma. It also slows down and hinders the process.

Periods of reflection are also not included in countries' legislation that are based on self-determination (e.g. Ireland, Luxembourg, Malta, Norway, Portugal).

Introducing this period or other means that might block access to legal gender recognition is contrary to European standards in this field. Waiting periods or other additional verification methods are expressions of distrust into the capacities of trans people to make their own decisions. It also implies that being trans and seeking legal gender recognition is somewhat undesirable.

Trans people need support and empowerment to realise their full potential in a world that is still largely ignorant and hostile against them. Administrative procedures should in this regard be as easy as possible, and thus set an important example for society to trust trans people to make their own sound decisions.

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.:

We support the lowering of the minimum age to apply for legal gender recognition. However, any age limit is discriminatory and we recommend its complete removal. People (also trans people) are capable of identifying their own gender from very young ages. Trans minors should therefore be given access to the same rights as trans adults in equal conditions.

The Convention on the Rights of the Child (1990) includes the best interest of the child, the right to be heard, and the principle of non-discrimination. The Parliamentary Assembly of the Council of Europe in its Resolution 2048(2015) calls on member States to make these procedures available for all people who seek to use them, irrespective of age, medical status, financial situation or police record, as well as to ensure that the best interests of the child are a primary consideration in all decisions concerning children. The European Convention on Human Rights and the Yogyakarta Principles also secure the rights of children. Furthermore, trans children show a higher risk of suffering from discrimination, abuse and bullying. Including them in legal gender recognition procedures is key to ensure their human rights are upheld and that they can grow up with dignity and respect. They should be protected even in the event of parental or guardians' lack of support.

Again, the European trend is to remove age limits (e.g. Norway, Malta).

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

Yes

If yes, please outline these comments.:

We find problematic the lack of legal gender recognition available and appropriate for non-binary people. Countries are increasingly taking into consideration the existence and acknowledgement of non-binary people (e.g. Malta). The PACE calls on member States to consider including a third gender option in identity documents for those who seek it.

The majority of respondents to a large non-binary survey (895 total respondents), carried out by the Scottish Trans Alliance, welcomed an option for a gender marker besides male or female. 64% of respondents answered "Yes" to the question "Would you like to change your legal gender/sex* so that it is not recorded as 'male' or 'female' (i.e. on your birth certificate, passport, driver's licence etc.)?" 14% of respondents would like to change it on some documents but not others, 16% were unsure and only 6% indicated that they did not want such an option.

We strongly encourage an in-depth revision of this issue, as well as an adequate proposal to ensure the fulfillment of rights of all trans people, including non-binary individuals.

Similarly, we are concerned about the exclusion of those people who are not born or adopted in Scotland or who are not ordinarily residents. Often, migrants, refugees and asylum seekers are not allowed to have their gender legally recognized in their countries of origin, citizenship or residency. This situation and/or the discrimination they suffer in their countries is frequently the reason for them to flee. They would benefit from having a document that recognizes their gender identity to navigate their daily lives in Scotland, even if that gender does not match the one on their passport or national identity documents. Including migrants, refugees and asylum seekers would allow them to fully exercise their rights and experience less discrimination.

We find Section 22 potentially harmful as it allows for the possibility of discriminating against trans people. The right to privacy should be more and better protected.

We are similarly concerned about the new section 8S of Annex C of the draft bill, as it “enables a person who has a genuine interest (such as the Registrar General) in a GRC to apply to a sheriff to revoke the GRC on various grounds (subsection (1)). The grounds are that the wrong type of GRC was issued, the application for it was fraudulent, the applicant was incapable of understanding the effect of it, or the applicant was incapable of validly making the application.” Again, this allows for external interventions on trans people’s right to legal gender recognition. Given the high rates of discrimination and hate speech against trans people, this is likely to be used against this community.

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

Yes

If yes, please outline these comments.:

We would like to reiterate that, as the Scottish government has found, there is no evidence that suggests that recognizing trans peoples’ right to legal gender recognition based on self-determination poses a danger to women’s rights. Similarly, we are not aware of negative impacts in countries with self-declaration. We have found that a much higher number of trans people apply for legal gender recognition in those countries, which suggests true accessibility and exercise of rights. Also, that it has positively impacted their lives. Legal gender recognition based on self-determination has been working in some countries for around five years now, so any issues that would have resulted from that system would be well known by now.