

## **Advance HE**

### **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.:**

Advance HE supports higher education institutions and colleges in Scotland improve transgender inclusion and also runs the Athena SWAN Charter. For further information see [www.advance-he.ac.uk](http://www.advance-he.ac.uk). Through our work, we have a unique position of understanding a diversity of views, and we consider the following to be important considerations.

A requirement to have lived in one's acquired gender for any period (full time or part time) may discriminate against those who have differing levels of support to do so, or experience discrimination and harassment from the people or structures around them (family, community, or in their employment or education).

Many individuals may not feel able to truly live in their acquired gender due to fear of prejudice, discrimination, or fears for personal safety. Research presented in Stonewall (2018) LGBT in Britain - University Report showed that, even within a higher education environment, a substantial number of non-binary and trans students feel: unable to wear clothes representing their gender expression at university (24%, and 16% respectively), to use preferred toilet facilities (17%), or have been encouraged to hide their gender identity (20%), and harassed or even assaulted when their identity is known (60% from other students). These figures are exacerbated in universities and colleges in small/medium towns and cities.

A common barrier reported by trans students is having student records and identification in their acquired gender (Equality Challenge Unit (2016) Trans staff and students in HE and colleges: improving experiences). Should people be required to live in their acquired gender before obtaining a GRC, Advance HE recommends that consideration be given as the provision of clear guidance for public, private and charitable organisations on the need to change public facing records and the ID required to change records to enable people to actually live in their acquired gender.

**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.:**

In addition to the comments made under question one, the longer the period that a person is required to live in their acquired gender before being able to obtain a GRC the more likely it will have an impact on their employment and education.

For many students in higher and further education, and particularly for younger people leaving secondary education, the period of living in their acquired gender and of reflection may involve several other transitions. For example: geographical moves to university or for placements/internships; changing from school or employment environments to a college or university environment (wholly or partly depending on whether full-time or part-time study; living arrangements between different residences). The student population, particularly the younger student population, could therefore face particular challenges if they are required to live in their acquired gender for three months before they can apply for a GRC and are then required to reflect for a further three months before being able to obtain a GRC.

Many staff working in higher education institutions and colleges may face similar challenges around continuity of environment and support: for example, Advance HE (2019) Equality in Higher Education: Staff statistical report shows that 23.9% of staff in higher education are on fixed term contracts (FTC).

### **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.:**

If the age of 16 is implemented as proposed within the draft Bill, colleges and universities will need to ensure that their safeguarding provisions adequately consider younger students transitioning.

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

Yes

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

In the 2017-18 academic year, 48,355 students across the UK disclosed that their gender identity was different from that assigned at birth. This equated to around 3.6% of all respondents that provided this information (Advance HE (2019), Equality in Higher Education: Students). The experiences of trans staff and students in universities and colleges is an important issue for Advance HE.

Following review of the provisions of the draft Bill, we wish to note the following points:

#### **Residency of students and staff in Scotland**

We strongly recommend that 'ordinarily resident' in Scotland includes those who are present on limited visas including Tier 2 and Tier 4 so that students and staff spending time in educational contexts in Scotland will benefit from the system on an equal paring with permanently domiciled colleagues and peers. As context, in the 2017-18 academic year 22.3% of higher education staff in Scotland were non-UK nationals (Advance HE (2019), Equality in Higher Education: Staff).

Furthermore, and as noted in NUS Scotland's response to the 2018 GRA consultation, the Scottish further and higher education sectors include a sizable amount of international students who should have the same opportunity to apply for legal gender recognition regardless of citizenship.

#### Higher education data collection, analysis and presentation

Advance HE is recognised as a source of expertise on the collection, analysis and presentation of equality, diversity and inclusion data in the higher education sector. We therefore wish to highlight that the proposed reform of the GRA will not negatively impact the sector's ability to collect, analyse and present data.

The Higher Education Statistics Agency, which collects staff and student data for UK higher education institutions, currently uses the question 'What is your sex?' and the response options 'Male', 'Female' and 'Other' to capture data on the sex of staff and students in UK higher education. This is based on respondents' self-identified sex and how a person chooses to answer this question does not require the respondent to hold a GRC. This approach to data collection mirrors national approaches to data collection, including the 2011 Scottish census and, following parliamentary approval, the 2021 Scottish census. Reform of the GRA will therefore not impact how respondents should answer this question, HESA's ability to collect this data nor Advance HE's role in the analysis and presentation of this data.

#### Non-binary students and staff

Universities and colleges include many staff and students that do not exclusively identify as male or female. In particular, young people (who constitute the majority of further education and higher education students, but by no means all) increasingly understand, recognise and possibly identify with a range of gender diversities. Advance HE supports steps to promote the recognition and inclusion of gender diverse people. However, we wish to note that the Bill, in its current form, does not include non-binary people and therefore does not address the challenges that they face in education.

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

Yes

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

Age - Younger people, in particular 16-18 year olds may face particular barriers when applying for legal gender recognition due to their position in the education system. 16-18 year olds will be encountering administrative processes relating to examinations, qualification certificates and criminal records checks relevant to their chosen professional or educational and learning.