

Beyond Gender (an LGBT Youth Scotland youth group)

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.:

Beyond Gender is a group of around 20 young trans and non-binary people aged 16-25 run as part of LGBT Youth Scotland's youth work services in Edinburgh.

As trans and non-binary people, we are the experts in our own lived experience. It is this and our knowledge of international best practice on Gender Recognition that informs our response.

Beyond Gender supports the move to self-declaration but opposes the proposed requirement that trans people should live in their acquired gender for three months minimum before applying for a GRC (Gender Recognition Certificate).

Beyond Gender thinks no amount of time should be required as trans people are the experts on their gender identity, we know best if, and when, a GRC is needed.

Other statutory declarations do not require evidence of backdating, nor do the GRC systems in other countries, allowing for people to self-declare when applying.

This requirement results in an unnecessary hurdle for trans people,

particularly if any evidence is required as trans people are less likely to have access to official records as they are more likely to be affected by homelessness and unemployment. Our group recognises and accepts trans people on the basis of self-declaration, as we do not believe there are any external markers that are proof of someone's 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.:

Beyond Gender opposes the proposed requirement for applicants to go through an additional reflection period of three months. This once again does not recognise that trans people are the experts on their gender identity. This set up places the onus on trans people to confirm their gender once again. It is awkwardly designed and could potentially result in people forgetting to opt in to confirm their desire for a GRC, again creating an unnecessary barrier.

Additionally, no reflection period is required for significant legal procedures such as marriage, or name changes.

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.:

Beyond Gender welcomes the reduction of the minimum age to apply for a GRC to 16 years of age. Given that 16-year olds can join the army, vote, buy a house and leave school we believe they should be able to update the gender marker on their birth certificate.

However, we believe there should be options provided for those under the age of 16. Current empirical evidence on gender identity posits that gender identity begins to form in early childhood. Consequently, it is important for our GRC system to meet young trans people's needs, including the needs of trans children.

The precedent exists in other countries, such as Chile, where parents and guardians can consent to children's desire to apply for a GRC.

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

Yes

If yes, please outline these comments.:

Regarding other comments Beyond Gender is incredibly disappointed that the Scottish Government does not provide options within the proposed reform of the GRA for the legal recognition of non-binary genders. This erasure denies non-binary people's humanity. Having no legal recognition forces non-binary people into the closet. In the initial 2018 consultation, 66% of people from Scotland who responded were in favour of recognition for non-binary people, and 75% of those answering the question were in favour of full recognition for non-binary people using a self-declaration system. We are confused that despite overwhelming public support, this has not been reflected in the draft bill. This denies the democracy of the Scottish public. The Scottish Government has been willing to acknowledge non-binary people by offering them medical support and by bringing together a working group, hence why won't this be reflected legally? Non-binary genders are recognised in other countries, such as Canada and Malta successfully. We demand the right, following the EHRC, for non-binary people to identify as their gender and have this respected.

Furthermore, Beyond Gender opposes the proposal to introduce a further offence regarding gender recognition. We believe the existing Scottish criminal offence of knowingly making a false statutory declaration is sufficient. We are concerned that this additional offence would be weaponised to harass and harm trans people by transphobic individuals or groups. We are concerned as insufficient information has been provided for us to understand how judgements will be made as to who has taken advantage of the GRC process. Additionally, if this law went ahead we would like to know how the government would ensure that it would not be used maliciously against trans people and what measures there would be in place to hold those making false accusations about trans people to account?

We understand that gender recognition will only be available to those who are 'ordinarily resident' in Scotland and we are concerned that this means that there will not be provision for asylum seekers. We have a duty to provide options for all trans people and so Beyond Gender calls on the Scottish Government to ensure there are options for asylum seekers to obtain gender recognition

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

Yes

If yes, please outline these comments.:

We welcome the inclusion of the draft Impact Assessment and its conclusion that the proposed bill will not have a detrimental impact on the rights of any other protected groups.