

Evangelical Alliance

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.:

Introductory comments

The Evangelical Alliance UK is the largest and oldest body representing the UK's two million evangelical Christians. Established in 1846, today we work across a diverse constituency of over 18,000 individual members, 3,000 churches and 500 organisations. The Evangelical Alliance is the founding member of the World Evangelical Alliance, which unites evangelical alliances based in different countries, representing anywhere from 300 million to a billion evangelical Christians worldwide. This reflects the global reach and influence of evangelical faith, which can also be seen in the huge social and ethnic diversity in British evangelical churches. Throughout its history, the Evangelical Alliance has been at the forefront of campaigns for Christian unity, religious liberty and social transformation.

Within Scotland we count the Baptist Union of Scotland, Free Church of Scotland and Salvation Army amongst our membership along with many organisations who are active in bringing social transformation across Scotland including Bethany Christian Trust, Blythswood Care, Glasgow City Mission and Scripture Union Scotland.

Our members are engaging with people with gender dysphoria and those involved in the wider trans movement on a regular basis. We are therefore well aware of how different each person's experience is and our members look to respond compassionately and pastorally to each individual. This consultation has been framed by the Scottish Government to look primarily at the policy around gender recognition, rather than the wider support services available to those with gender dysphoria. A wider review of the medical support available to those with gender dysphoria should follow. Regardless of policy direction following this consultation we will continue to offer pastoral support services to those in our member churches and organisations who are suffering from gender dysphoria and also to help our members develop effective policies and procedures in this area.

Self-declaration and the three-month period of living in an acquired gender
The Evangelical Alliance remains opposed to the proposes changes to introduce a self-declaration system for gender recognition. In general, we consider that self-declaration would, by virtue of making changes in legal gender easier, encourage earlier medical transition leading to the possibility that many individuals may come to make decisions they regret.

The underlying premise of the self-declaration model is that gender is entirely subjective and purely a matter of choice. Furthermore, this model legislates that in effect where there is a dissonance between gender identity and biological sex, it is gender identity which overrides biological sex. The Evangelical Alliance believe this approach does not give credit to either scientific or medical reasons behind the importance of biological sex, making assumptions that gender is purely chosen and not given, and that both gender and ultimately biological sex can be changed simply by choice. It is this challenge, at the heart of the self-declaration principle, that leads to the variety of concerns the Evangelical Alliance has about the legislative proposals.

Changing one's legally recognised gender is a significant and life-changing step, and the current two-year time period helps to reflect this – reflecting what has been the historic 'watchful waiting' approach of the medical profession prior to prescribing medical interventions. There are important safeguards for both the individual and wider society contained in the current approach with the two-year time period, combined with the role of medical and other professionals, reducing the risk of fraudulent applications and allowing the chance to minimise the chances of regret and resultant desire to detransition.

On the contrary, the Evangelical Alliance believes reducing this timeframe to a three-month period ahead of applying for a GRC increases the likelihood of future regret and desire to detransition. The existing safeguards should be maintained and strengthened, not weakened, to limit this eventuality.

Finally, there is no definition given in the consultation or legislation as to what is meant by living in the acquired gender. With the resulting wide societal impacts of the current cultural debate around biological sex and gender it is important that clear definitions are given about these terms as outlined recently by the Law Society of Scotland. (<https://www.lawscot.org.uk/members/journal/issues/vol-65-issue-01/sex-and-the-equality-act/>)

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 outlined above, the Evangelical Alliance remains opposed to the changes to introduce a self-declaration system for gender recognition. We consider that the assessment model and two-year time frame provides a helpful time for reflection and embeds the precautionary principle in practice.

Furthermore, as acknowledged in the consultation paper (Pg.11, Scottish Government consultation paper), the European Court of Human Rights in *Garçon and Nicot v France* ECHR 121 (2017), recently held that an 'assessment model' is compatible with human rights, thereby raising doubts as to any legal compulsion the Scottish government may feel in undertaking a move towards self-declaration.

A period of watchful waiting and reflection is vital in any GRC system and, however imperfect, the current system provides for this. For such a life changing decision the Evangelical Alliance believes that any period of reflection should be significantly longer than three months and at a minimum, existing safeguards should be maintained. Any reflection period should also be in conjunction with trusted individuals and medical professionals.

Additionally the Evangelical Alliance is concerned that the Scottish Government did not appear to consider the importance of a reflection period prior to the current consultation. Whilst a reflection period is to be welcomed we remain concerned that the Scottish Government still does not appear to recognise the existence and likely increase of detransition if the system is based on a purely subjective basis outlined above, making no provision for this within the proposed legislation.

It is clear that further research is needed in this area before moving ahead with these proposals and we recommend the Scottish Government should commission research into the instances of detransition and the likely impacts of alternative systems on this phenomenon before proceeding further.

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 Evangelical Alliance has significant ethical concerns in this area. The UN Convention on the Rights of the Child (UNCRC) defines children as those under the age of 18 years. The Evangelical Alliance recognises that teenagers are vulnerable to the turmoil of puberty, peer pressure and social media, from which most will emerge over time with a clear sense of their own identity. Meanwhile, they should be sensitively protected from taking far-reaching decisions (illustrated by making life-long declarations) given the potential gravity of the consequences.

Whilst some teenagers seem to go through a natural and temporary phase of wanting to be the other gender and dress in other clothes, many appear to naturally 'grow out of it' to develop a congruent gender identity. (Drummond K.D. et al. A follow-up study of girls with gender identity disorder. *Dev Psychol.*

2008;44(1):34-45). The evidence base suggests that on average 80 percent of children who present with gender confusion will desist naturally during the course of adolescence (Steensma et al., 'Factors Associated with Desistance and Persistence of Childhood Gender Dysphoria: A Quantitative Follow-Up Study', *Journal of the American Academy of Child & Adolescent Psychiatry*, p. 582-590, Vol. 52, No. 6, June 2013; Spiegel, A., 'Parents consider treatment to delay son's puberty', *National Public Radio*, 8 May 2008.). Across various other studies, persistence in biological males has ranged from 2 to 30 percent and in biological females, from 12 to 50 percent (*American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Arlington, VA, American*

Psychiatric Association, 2013 (451-459), p.455 re: rates of persistence of gender dysphoria). Consequently, encouraging children to transition at an early stage ignores scientific evidence that most will children emerge from puberty and adolescence with their gender identity resolved in favour of their natal sex. Moreover, even amongst adults, one study estimated that as many as 50% abandon the process of changing gender midway through (Carroll, R., 'Gender dysphoria and transgender experiences', in Principles and Practice of Sex Therapy, 4th edn, ed. by Leiblum, S.R. (New York: Guilford; 2007), p.490). Moreover, given the developmental and cognitive changes afoot during adolescence, the principle of informed consent cannot be readily presumed (For a review of the literature, see Stephen J. Ceci and Richard D. Friedman, 'The Suggestibility of Children: Scientific Research and Legal Implications', Cornell Law Review 86(1) 2000: 33-108. See also - Amelia Courtney Hritz et. al., 'Children's suggestibility research: Things to know before interviewing a child', Anuario de Psicología Jurídica 25(1) 2015: 3-12). It is, therefore, respectfully submitted that children require special protections and the precautionary principle is deployed with regard to allowing any changes in gender prior to adulthood.

Almost all examples listed in the consultation paper do not allow under 18s full individual autonomy over changing gender and have further safeguards built in to ensure the protection of young people from making hasty, life-altering decisions.

These examples include court-based models and parental consent (Annexe E, Pg. 83 Scottish Government consultation paper) none of which is included in the Scottish Government's draft legislative plans. It is not clear from the consultation if these safeguards have been considered. Furthermore, given the decision to change legally recognised gender is one of the biggest decisions any person can make, it is hard to follow the logic of why the age to obtain a GRC should be reduced below the age where alcohol and tobacco and other goods and services such as credit cards and mortgages can be purchased.

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

Yes

If yes, please outline these comments.:

The Evangelical Alliance has many concerns regarding the proposal to move towards self-declaration. A fundamental principle of the Scottish Government must of course be to first do no harm, in common with the basic duty of care throughout the medical profession. Stories of individuals seeking to 'de-transition' and re-identify with their birth gender (<http://www.telegraph.co.uk/health-fitness/body/gender-reversal-surgery-rise-arent-talking/>) should weigh heavily upon the deliberations of the Scottish Government, yet disappointingly these do not seem to have been fully contemplated within the current consultation. At present there is no reference at all to what may happen if a person changes their mind and then wishes to revert to their birth gender. It is not clear what legal provision there will be in such cases. It is also not clear how the proposed system will prevent situations where individuals wish to change gender numerous times.

Although in theory the provision is made that the declaration will be life-long, in practice it is hard to see how this will work in the scenarios just listed.

Research

Related to this concern is the lack of research evidence based around the issue of self-declaration and issues of gender identity more generally. The 'best international practice' approach cited by the Scottish government appears to be informed by the composite of:

1. The House of Commons Women and Equalities Committee report on Transgender Equality (January 2016); accessed at: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/inquiries/parliament-2015/transgender-equality/>
2. Yogyakarta Principles (2006), accessed at: <http://www.yogyakartaprinciples.org/>
3. 2015 Resolution 2048 of the Parliamentary Assembly of the Council of Europe (April 2015)
4. The examples of 16 other countries and territories who have gender recognition processes listed in the consultation document

In respect of the above, unfortunately the House of Commons Women and Equalities Committee report drew upon a narrow evidence base and failed to account for the views of wider societal stakeholders and the necessary range of medical and psychological expertise required in understanding the complex issues around gender dysphoria. In addition, the Yogyakarta Principles were largely a product of individuals and non-governmental organisations with a stated interest in sexual orientation and gender identity. Moreover, in 2015, Resolution 2048 of the Parliamentary Assembly of the Council of Europe (Pg. 19, Scottish Government consultation paper) remains unratified by the Committee of Ministers for the Council of Europe – the main enacting body for European Human Rights legislation and is not legally binding upon the Scottish government. Finally, as outlined in response to question three above, the other examples listed do not correlate to what is proposed in Scotland – particularly in relation to under 18s. It is acknowledged that the Scottish Government recognises there is no legal or human rights requirement to introduce a self-declaration system (Pg. 11, Section 2.13, Scottish Government consultation paper). Indeed, recent media reports (<https://www.thetimes.co.uk/article/gender-recognition-act-changes-halted-after-child-fears-w6qbx0g7h>) suggest that the UK Government has recently decided not to pursue a similar policy, outlining again there is no compulsion to adopt a self-declaration model.

Taken together, the Evangelical Alliance does not consider these sources to be a satisfactory basis to create a 'need' for the profound legislative changes of a self-declaration system proposed for Scotland. There are very limited examples in the impact assessments provided of research (a) into other countries with

self-declaration systems, (b) into de-transitioning and how that may or may not be affected by a self-declaration system, and (c) into any impacts of age reduction to include 16 and 17 year olds – the principle parts of the proposed reforms. In light of this, the Evangelical Alliance humbly submits that further research should be commissioned into all these areas before any legislative decisions are taken.

Single-Sex Safe Spaces

The Evangelical Alliance recognises the significant concerns which have been raised in relation to single-sex spaces. As an alliance of organisations which runs numerous overnight residential activities, taking thousands of young people and adults on trips annually in Scotland, this is a real and recognised concern within the Evangelical Alliance membership. While the Scottish Government's sincere intention to protect women is clear, it is difficult to see in practice how the proposed changes increase will not lead to a self-declaration system in practice across Scotland. The proposed changes will lead to a system where it will be assumed that gender identity over-rides biological sex in practical decision-making and policies in areas such as schools, leisure centres and other community spaces. Recent stories concerning single-sex facilities, prison accommodation (<https://www.dailyrecord.co.uk/news/scottish-news/sex-swap-prisoner-sparks-revolt-7666459>), (<http://www.dailymail.co.uk/news/article-2525441/Transgender-murderer-Paris-Green-moved-womens-prison-sex-inmates.html> and intimate medical treatment (<https://www.thetimes.co.uk/article/the-female-nhs-nurse-i-asked-for-came-with-stubble-83rq9p0gg>), through to all-women shortlists (<https://www.thetimes.co.uk/article/fight-to-bar-trans-women-from-labour-shortlists-dlxmdgqtq>) and Glasgow Life leisure centres (<https://www.dailyrecord.co.uk/news/scottish-news/row-erupts-cross-dressing-men-14444999>) illustrate a number of the unintended consequences that a self-declaratory model may have upon the wider cohesion of Scottish society. It is not yet clear what practical safeguards are in place to ensure the legal protections for single-sex spaces are being satisfied. It is hard to see how women's rights are enhanced by the move to a self-declaration system and indeed how there does not become greater risk of harm, however indirect and however unintentional, from the changes proposed.

The Evangelical Alliance considers in moving towards a self-declaratory model, although motivated by compassion, the Scottish Government is likely to create a series of potentially intractable problems as legislators attempt to balance subjective self-determination with the concerns and beliefs of other stakeholders and existing societal practices.

The Scottish Government stresses at great length the minimal nature of the proposed legal changes, saying in a factsheet accompanying the consultation document (published December 17th, 2019) that "there will be no change to public policy in this area" with the consultation paper itself stating that rights and responsibilities will not change (Pg. 22, Scottish Government consultation paper). However regardless of the intent of the Scottish Government, these consequences mean that public policy will change.

De-medicalising GRC process

There is concerning yet cogent evidence (Dhejne C et al. Mental health and gender dysphoria: A review of the literature. *Int Rev Psychiatry* 2016; 28(1):44-5) that amongst those who present with gender dysphoria there is an elevated prevalence of co-morbid psychopathology, especially mood disorders, anxiety disorders and suicidality (Zucker KJ et al. Gender Dysphoria in Adults. *Annu Rev Clin Psychol*, Vol 12, 2016:217-247). The Evangelical Alliance is concerned with the problematisation of the word 'medicalise' as many individuals with gender dysphoria will, rightly, be under the care of medical specialists. Diagnosis can be a complex process. As such, the proposed changes towards self-declaration would potentially deprive individuals of contact with mental health professionals at the time when their assessment and advice could be crucial. There is a real risk that individuals who require psychological support will not receive it. Many teenagers already have to contend with the volatility of puberty and social transition and there is a risk that pursuing legal gender transition may unhelpfully distract a young person from addressing extant psychological issues (such as anxiety and/or depression) with the help of mental health professionals.

Indeed, the present consultation of the Scottish Government has failed to distinguish between gender incongruence and gender dysphoria. In totality, the Evangelical Alliance considers that the move towards a self-declaration model is likely to lead to unintended but adverse outcomes over and beyond the current legal framework.

Regret and detransition

Further to comments above, the Evangelical Alliance considers that further significant consideration should be given to what happens in instances of regret and detransition following any changes to the GRC system. The use of a statutory declaration may possess the modest benefit of a deterrent effect in respect of frivolous abuse. This may be deemed necessary given that some transgender ideology no longer recognises gender identity as fixed but as a fluid variable that can oscillate (International Gay and Lesbian Human Rights Commission, Institutional memoir of the 2005 Institute for Trans and Intersex Activist Training, 2005:7-8) - although the Evangelical Alliance notes that this appears *prima facie* to be logically incompatible with a declaration of intent to live in an acquired gender until death. Furthermore, it appears to the Evangelical Alliance that establishing the necessary *mens rea* in respect of a false declaration may be extremely challenging in the majority of cases.

Consequently, any proposed regime of statutory declaration must aim to deter and prevent frivolous abuse, yet allowing a compassionate means of recognising personal mistakes for those individuals who wish to return to their birth sex. In the view of the Evangelical Alliance, whilst not perfect, the current assessment model arguably achieves both of these objectives by assessing the individual and providing space and means for genuine longitudinal reflection and as such should be retained as a matter of policy. We are concerned that where this does not happen there will be an increase in the numbers of individuals expressing

regret and wishing to de-transition, often after medical interventions – [REDACTED]

The Evangelical Alliance considers that by embracing self-declaration, the Scottish government encapsulates the notion that gender identity is a personal choice at the expense of objective scientific evidence. Given the primacy of subjective personal choice and autonomy, limiting the number of occasions that an individual may change their 'fluid' gender identity in absence of medical and psychological advice appears to be philosophically incoherent and immediately susceptible to legal challenge.

As such, in a regime of self-declaration the Evangelical Alliance considers it difficult to envisage how the Scottish government can prevent abuse of the system they will create. We remain concerned that this issue does not seem to have been adequately considered by the Scottish Government thus far.

Burden of responsibility

The Evangelical Alliance has a number of concerns about the impacts of the proposed self-declaration model placing an unfair burden of responsibility on individuals within the general population. These range from responsibility being placed upon staff members at leisure and residential centres to decide on the legitimacy of gender identity of a person seeking entry into a single-sex space, to the responsibility placed on someone identifying as transgender to ensure they receive the correct medical treatment corresponding to their biological sex. In such cases the Evangelical Alliance believes this burden is an unfair one to be placed on the individuals concerned, and in some cases will lead to very challenging situations across the country as protected rights compete against each other. In both examples listed above, the Evangelical Alliance is concerned that the move to self-declaration system, with the consequent move to place gender identity above biological sex, will hinder rather than help individuals and organisations to develop effective policies that promote the health and wellbeing of all.

We would humbly submit that, in light of all the concerns mentioned above, the Scottish Government would withdraw these proposals and maintain the current system.

Hate crime and free speech

The Evangelical Alliance is cognisant of the ongoing policy discussion around Hate Crime in Scotland following Lord Bracadale's Independent Review of Hate Crime Legislation and the Scottish Government's subsequent consultation and legislative plans. The Evangelical Alliance holds concerns that proposed developments in respect of the Gender Recognition Act 2004, when set against deep seated theological beliefs and personal conscience may lead to an expansion of the notion of 'hate crime' and 'compelled speech' for those who hold to a biological view of gender and thereby compromise the Article 9 and Article

10 ECHR Convention Rights as they are applicable to evangelicals in Scotland. The Evangelical Alliance has been fully engaged in this discussion making submissions to both Lord Bracadale's review and the Scottish Government's consultation. It is respectfully submitted that for evangelicals and others in Scotland there is considerable overlap between the two policy areas which would benefit from co-ordination and further consultation with those potentially affected by any proposed changes. Again, the Evangelical Alliance is willing to engage with and assist the Scottish Government, as is appropriate.

There may also be free speech implications from any legislation that is forthcoming, and it will be important to monitor this as the process moves forward.

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

Yes

If yes, please outline these comments.:

Equality Impact Assessment

Faith and Belief

The Evangelical Alliance welcomes the recognition at of existing religious exemptions (Pg. 34, Scottish Government consultation paper). However, we are disappointed that fuller consideration within the Equality Impact Assessment has not been given as to the effect of self-declaration upon the evangelical community. Many of the contentious issues within wider society in relation to current proposals are particularly resonant within the church particularly on the grounds of conscience and strongly held religious beliefs. The Bible states that every individual is made in the image of God either male or female (Genesis 1:24).

Whilst recognising the fallen state of humanity, Christians believe that a person's sex is inherent to who they are and a person is a composite of mind, body, soul and spirit. Whereas Christians would recognise the rare incidents of individuals who have intersex conditions and pastorally support those who suffer from gender dysphoria, many evangelical Christians, as a core tenet of faith, would not recognise the term 'gender identity' as it is expressed in the Scottish Government's consultation. To most evangelicals, the concept of a 'gender spectrum' represents a form of Gnosticism or Dualism contrary to traditional Christian doctrine. This idea can lead to the heretical notion that the body is lesser, secondary and separate to the real inner person. Moreover, similar views are also held across the Catholic Church, whereby Pope Francis has been strongly critical of 'gender theory' on numerous occasions

(<https://www.ncronline.org/blogs/francis-chronicles/pope-francis-gender-theory-problem-not-solution>;

<http://www.catholicherald.co.uk/news/2016/10/03/pope-criticises-indoctrination-of-gender-theory/>). Furthermore, it is submitted that holding to a binary view of gender based on biology is dominant, if not highly prevalent, in the major Abrahamic religions. In addition, there are numerous constituencies of groups and

individuals who may disagree with aspects of gender theory and/or a gender spectrum approach for reasons beyond religious faith.

Therefore, in view of the above deep-seated theological views, it is disappointing that the Scottish Government's Equality Impact Assessment failed to recognise the potential impact of these proposals in respect of:

- Religious gatherings and meetings which currently segregate upon the basis of sex;
- Religious trips and holidays that segregate on the grounds of sex for the purposes of sleeping and sanitation;
- Ministers of religion and the administration of religious services and/or rites; and
- The potential impact of these proposals upon the efficacy of existing religious exemptions.

The Evangelical Alliance would welcome the opportunity to engage with the Scottish Government further upon these specific concerns.

Single-sex spaces

The framing of the equality impact assessment appears to minimise the wider impact on women, in particular in relation to single-sex spaces. Whilst at one level it is true that the provisions of the Equality Act (2010) will not be altered by this legislation, it ignores the societal signals which moving to a self-declaration system sends about the nature of sex and gender. If gender recognition becomes purely subjective, it naturally follows that practical policies follow this subjective definition. This not only leads to potential increased dangers for women from predatory males but also leads to potential legal conflict as rights are contested over single-sex spaces. We believe moving to a system of self-declaration is therefore not beneficial to what is already a difficult area of public policy and contested cultural conversation.

Minimising regret and detransition

The Evangelical Alliance is also concerned by what appears to be a minimising of regret and detransition within the impact assessment. Although numbers (and percentages) are currently relatively low, each case involves potentially having undergone irreversible treatment and it should thus be a paramount aspect of all public policy in this area to minimise such cases. As outlined previously, the Evangelical Alliance does not believe sufficient research has been done in this area in relation to changing to a self-declaration system and would encourage watchful waiting before changing the current system. Again, the Evangelical Alliance is concerned that a self-declaration system would hinder rather than help minimise these tragic situations in which everyone has great sympathy for those affected.

Further research

Further to the comments about research above, the impact assessment appears to lack information on research into current trends within those seeking to change gender identity and in particular the shift from mainly male to female transition in young people to one of predominantly female to male. There would

appear to be a large number of studies throughout the document that reference Scottish Trans Alliance and other groups very supportive of GRA reform without a similar weight being given to alternative studies offering additional perspectives such as British Journal of General Practice (2019: see https://www.medscape.com/viewarticle/909129#vp_1), a study on Rapid Onset of Gender Dysphoria (Littman 2018, <https://europepmc.org/article/MED/30114286#free-full-text>). We would encourage the Scottish Government to include the variety of academic research into this area within the final Equality Impact Assessment and where this is lacking to be more explicit that further research is needed.