

Gender Recognition Youth Commission

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.:

We, the Gender Recognition Youth Commission, support the Bill overall. However, we disagree that trans people should be required to live in their gender for three months in order to apply for a GRC.

We believe that this three-month period quantifies trans identities in an unnecessary way. Firstly, as trans people we know that the vast majority of people applying for a GRC have known that they are trans for a long time. Applying for a GRC is not a decision made on impulse; trans people know themselves well enough to be ready to apply for a GRC. In our experience, trans people have often been out for a prolonged period of time before getting to the stage where they want to apply for a GRC.

The reason some of us have not applied for a GRC yet is because of the waiting period which currently exists. The three-month period before application and three months after still enforces this barrier.

Furthermore, since the main uses of the GRC are for changing birth, marriage and death certificates, this three-month period inconveniences people with time-sensitive needs. Many trans people get a GRC so that their death will be recorded accurately; we worry that the three-month period would particularly negatively impact trans people who are terminally ill and are in the process of acquiring a GRC so their death certificate can reflect the way they lived. This period also impacts trans people who would like to get married and recognised as their gender.

Additionally, by signing a solemn declaration to apply for a GRC, this implies an informed consent process whereby a trans person knows what they are doing, they understand the risks and they are committing to this decision. Trans people understand that this application is a legal undertaking which is very serious, and that signing a false statutory declaration is a criminal offence. Additionally, this three-month model does not exist under other informed consent models. For these reasons, the three-month period is unnecessary.

Moreover, there is not a country which has this model of three months of lived experience before application and three months of reflection after. Therefore, this model does not reflect international best practice. We believe that there is no solid argument for this six-month period. The entire point of reform was to challenge the principle of a mandatory waiting period.

In light of the fact that no other existing informed consent models with statutory declaration include this three-month period before and after application, and that these proposals do not reflect international best practice, we ask the Scottish Government to evaluate why they feel that a waiting period is necessary only for trans-specific legislation.

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.:

We, the Gender Recognition Youth Commission, support the bill overall.

However, we disagree that trans people should be required to have a three-month reflection period after applying for a GRC. We find this proposal insulting; the entire point of GRA reform is to say, “We trust trans people to know who they really are.” In contrast, this reflection period says “Get back in touch with us to let us know if you are still trans.” The reflection period reflects a lack of trust in trans people and defeats the spirit of the bill.

Similarly, we feel that the aim of GRA reform is to make applying for a GRC more accessible and less of a burden to trans people. The reflection period contradicts this. By requiring trans people to get back in touch after three months to confirm that they are still trans, a burden is placed on them. The aim of reform should be to remove this burden completely.

The reason some of us have not applied for a GRC yet is because of the waiting period which exists currently. The three-month reflection period still enforces this barrier. The process of making a big decision like applying for a GRC already takes a long time; the three-month reflection period merely prolongs this process.

Being able to apply for a GRC efficiently, without this reflection period, would be a more efficient process.

Furthermore, we know that trans people are more likely to be unemployed, homeless, and/or struggling with mental ill health. If you are in a difficult situation like this, you may forget to get back in touch. This would make the waiting process for a GRC even longer.

Again, the reflection period is a barrier to trans people who have time-sensitive needs - for example, trans people who would like to get married or who are terminally ill. One of the members on the Gender Recognition Youth Commission is currently engaged and they need a GRC to get a marriage certificate that reflects their gender identity. We believe that making a trans person wait for a total period of six months during their application impedes on their rights under the Equality Act – if they were not trans then they would not have to wait to get married. Statutory declarations are based on an informed consent model and this principle should apply to the application process for a GRC. When applying for a GRC, a trans person is making a commitment and understands that it is a serious and legal undertaking. This three-month model does not exist under other informed consent models. For these reasons, the three-month period is unnecessary.

Again, there is not a country which has this model of three months of lived experience before application and three months of reflection after. Therefore, this model does not reflect international best practice. We believe that there is no solid argument for this six-month period.

In light of the fact that no other existing informed consent models like statutory declaration include this reflection period, and it does not exist in any of the models of international best practice, we ask the Scottish Government to evaluate why they feel that the reflection period is necessary only for trans-specific legislation.

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, the Gender Recognition Youth Commission, support the bill, and we agree that people ages 16 and 17 should be able to apply for a GRC. We know this as a group of trans 16-25 year olds.

When you are 16 years old in Scotland, you can get married. You should, therefore, be able to get married and recognised in your gender. At the age of 16, you can also vote in Scotland. If you have the right to vote, why can you not have the right to be recognised in your gender on your birth certificate?

Similarly, the age of legal capacity is 16 in Scottish Law. If someone is informed and they have capacity to give consent, they should be able to make the decision to apply for a GRC themselves. Applying for a GRC should be in line with the age of legal capacity.

We know from our experiences that extending the age to 16 would positively impact many young people's lives. As trans young people, we know that having a GRC at 16 and 17 would make it much easier when filling out forms and proving identity. At 16 years old, the document that many 16-year-olds have for identification is their birth certificate. If a young person does have other documentation such as a passport, this can be inconsistent with their birth certificate. When we are applying for jobs, for example, it is humiliating and intrusive to be outed to an employer by having inconsistent documents. Likewise, when we are applying to higher education we do not want to be outed as trans. These important milestones are already difficult for young people; extending the GRC process to 16 and 17-year-olds would make them easier for trans young people. The importance of having consistent documents at the age of 16 cannot be underestimated.

Furthermore, we know that 66% of Scottish respondents were in favour of this process being extended to 16 and 17-year-olds. It would be undemocratic of the Scottish Government to disregard the first consultation and not extend this process to 16 and 17-year-olds.

If we cannot trust the Scottish Government to take this very small step to reform the GRA, how can we trust them to reform trans healthcare?

UNDER 16s :

In Scotland, most young people from the age of 12 have capacity to make decisions which affect them. Why should this decision be any different? We, the Gender Recognition Youth Commission, believe that young people from the age of 12 should have agency to apply for a GRC too. The bill should be in line with child law which gives most 12-year-olds capacity.

We know from experience how invasive and humiliating it can be to have inconsistent documents as a young person. The earlier young people can apply for a GRC, the more streamlined their documents will be. Having a GRC, and therefore consistent documentation, 'future-proofs' your life – it enables you to have documents which will be consistent and correct for the rest of your life.

When you are a young teenager, and you have known that you are trans for years, it is a very long time to wait to apply for a GRC.

We know that the Scottish Government will be incorporating the UNCRC into Scots law. Under the UNCRC, children and young people have the right to life, non-discrimination, freedom of expression, to have their best interests taken into consideration, and a right to an adequate standard of living. We know that being recognised and recorded in your gender is a vital to all these rights. If the Scottish Government aims to safeguard the rights of children and young people, this must be inclusive of trans young people.

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

Yes

If yes, please outline these comments.:

We, the Gender Recognition Youth Commission, fully support the reform of the Gender Recognition Act. Nonetheless, we feel that this Bill has major gaps.

NON-BINARY RECOGNITION:

We are trans and non-binary young people. We are extremely disappointed that the Bill excludes non-binary people. Non-binary people exist, and this cannot be denied. Excluding non-binary people from the draft Bill sends the message that the Scottish Government does not care about us.

We find it hypocritical of the Scottish Government to use the words “non-binary people” in the draft Bill document, but to deny them legal recognition. This is a deliberate and conscious denial of non-binary people existing.

If you are a trans man or trans woman, you can live a lot of your life by self-declaration – non-binary people are unable to do that because there is not a legal option to be recognised as their gender. This impedes our right to privacy under the Human Rights Act and Scots law. Furthermore, the lack of legal recognition for non-binary people gives people veto power over non-binary people’s human rights.

Some of us are non-binary people who cannot get married or listed as a parent in our gender. These are rights which we are supposed to be entitled to.

Again, it is contradictory that the Scottish Government will be incorporating the UNCRC into Scots law, ostensibly recognising the rights of children and young people, whilst simultaneously denying the rights of non-binary children and young people.

Furthermore, we ask the Scottish Government what will happen if people from other countries that have a third recognised gender come to Scotland? Are they no longer recognised in their gender once they come to Scotland? Scotland is supposedly a progressive country for LGBT people – but this is apparently not the case for non-binary people, who are recognised in multiple other countries with no issue. By not recognising the existence of non-binary people, Scotland is falling behind in terms of being one of the best countries for LGBTQIA+ rights.

Non-binary recognition is vital to meeting standards of international best practice. We ask: does the Scottish Government want to meet this standard or not?

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We know from experience how invasive and humiliating it can be to have inconsistent documents as a young person. The earlier young people can apply for a GRC, the more streamlined their documents will be. Having a GRC, and therefore consistent documentation, ‘future-proofs’ your life – it enables you to have documents which will be consistent and correct for the rest of your life.

When you are a young teenager, and you have known that you are trans for years, it is a very long time to wait to apply for a GRC.

We know that the Scottish Government will be incorporating the UNCRC into Scots law. Under the UNCRC, children and young people have the right to life, non-discrimination, freedom of expression, to have their best interests taken into consideration, and a right to an adequate standard of living. We know that being

recognised and recorded in your gender is a vital to all these rights. If the Scottish Government aims to safeguard the rights of children and young people, this must be inclusive of trans young people.

TOXICITY OF THE "DEBATE":

100% of the Youth Commission have felt that the toxicity of the "debate" surrounding this issue has negatively impacted their mental health and that of their close friends and/or relatives.

This "debate" on trans people's lives has extended into issues such as changing rooms and toilets; we now face the fear of being angrily confronted just for using the bathroom. There has also been a targeting of services for their choice of policy (for example self-identification in women-only spaces). As the Gender Recognition Youth Commission, we call on the Scottish Government to take action against this conflation between GRA reform and 80's gay panic-style scare stories about trans people. Merely publishing a web page about the Equality Act and GRA is not good enough. Furthermore, we were concerned by the tone of Shirley-Anne Somerville's letter published with the draft bill, in which she refers to "women-only spaces" as if trans women are not included in this category, and do not already access these spaces without issue. The Scottish Government should be doing more to publicly say "the GRA doesn't affect the Equality Act; trans people can access spaces through self-identification already."

REFUGEES, ASYLUM SEEKERS AND TRAVELLER COMMUNITIES:

Moreover, there seriously needs to be provisions for refugees, asylum seekers and traveller communities and this is not referenced at all in the draft bill. We ask the Scottish Government: what provisions will be made for these communities?

COST OF THE GRC:

We are concerned that there will continue to be a cost to apply for a GRC. The GRA application process currently costs £140 and there is often the additional cost of medical reports. If you are a cisgender person (not transgender), you can pay £40 to change the forename and/or surname on your birth certificate with National Records Scotland - no questions asked, and no evidence required. Whilst we know that the draft Bill proposes a lower application cost, having to pay at all to apply for a GRC is restrictive. We know that trans people are more likely to be on a low income, unemployed and/or homeless. Having an application fee frames gender recognition as 'pay to play', which is not what any progressive government should be continuing.

Therefore, the Gender Recognition Youth Commission believe that there should be no application fee.

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

Yes

If yes, please outline these comments.:

We, the Gender Recognition Youth Commission, welcome the findings of the draft Impact Assessments. We know that the Bill will not have a detrimental impact on anyone else's rights.

However, the Gender Recognition Youth Commission feel that the Scottish Government needs to be more vocal that GRA reform will have no impact on the Equality Act. This "debate" on GRA reform has extended into issues such as changing rooms and toilets; we now face the fear of being angrily confronted just for using the bathroom. There has also been a targeting of services for their choice of policy (for example self-identification in women-only spaces).

As the Gender Recognition Youth Commission, we call on the Scottish Government to take action against this conflation between GRA reform and 80's gay panic-style scare stories about trans people. Merely publishing a web page about the Equality Act and GRA is not good enough. Furthermore, we were concerned by the tone of Shirley-Anne Somerville's letter published with the draft bill, in which she refers to "women-only spaces" as if trans women are not included in this category, and do not already access these spaces without issue. The Scottish Government should be doing more to publicly say "the GRA doesn't affect the Equality Act; trans people can access spaces through self-identification already."