

Haddington & Lammermuir SNP Branch

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.:

The term 'acquired gender' is not defined in the consultation and the proposal in the Bill does not ask the applicant to present evidence of this requirement which could be tested and assessed.

There is an accepted difference between 'sex' and 'gender' therefore 'living in the acquired gender' should not be used to gain a legal sex change.

The NHS say diagnosis of gender dysphoria is made from an in-depth assessment carried out by two or more specialists over a period of time, which takes longer than 3 months to complete thoroughly. The proposal therefore removes the medical analysis and gate-keeping designed to prevent abuse of a system that was originally intended to help a very small number of people with a rare medical condition. A full medical assessment should remain part of the process.

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.:

The length of time for reflection should be more than three months to allow enough time for a full medical assessment. The current process which requires a diagnosis of gender dysphoria and safeguarding provided by the Gender Recognition Panel should be retained.

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 combination of the lowering of the age to 16, the removal of the need for any medical assessment or report and the reduction of the waiting period, would consolidate the move from 'managing gender dysphoria' to a system of 'validating gender identity'. This would erode safeguarding and proper duty of care towards vulnerable young children and adolescents who express their distress or confusion around their gender by announcing a transgender. 'Affirmation' takes no account of complexity and confounding factors, it simply assures the child that they are right in their self-perception no matter how it was reached.

The bill's effect of broadening the definition of transgender beyond people with dysphoria to anyone who self identifies as the opposite sex sends out a damaging message to children and young people and confuses sex with the unscientific concept of 'gender identity' based on regressive stereotypes. There is a likelihood that this may result in more children embarking on a path towards medical transition. Increasing numbers of clinicians across the world are expressing concern about the practice of automatically 'affirming' children who present with gender identity concerns. The UK government has ordered an inquiry into the sharp and unexplained increase in young girls seeking to change sex.

In Scotland, a child legally becomes an adult when they turn 16, but statutory guidance which supports the Children and Young People (Scotland) Act 2014,

includes all children and young people up to the age of 18. The government has a moral obligation to put the welfare of children and young people front and centre in policy making.

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

Yes

If yes, please outline these comments.:

The Gender Recognition Reform Bill should be opposed since it makes 'sex' a matter of self declaration. The medical safeguards should remain in place for those requesting 'gender recognition' and the Gender Recognition Panel, or some equivalent should continue to have a role in assessing applications. The proposed system of self declaration may cause problems for people with mental health problems, autism and gender dysphoria, who will not get the treatment and support they need. It is also open to abuse by predatory men.

The Bill confuses sex with regressive gender stereotypes and sends a message which risks accelerating the current rise in children and young people seeking to medically and surgically transition. The language of the Bill and the consultation document accompanying it is misleading because it repeatedly refers to 'gender recognition' when its effect will be to change legal sex and afford the applicant a new birth certificate in that sex.

There are concerns that a far larger number of people will, if the bill becomes law, be able to take advantage of the Gender Recognition Act's privacy protections and conceal their past identity and history. This protection will be extended to a larger group of people – rising from 30 to 400 a year according to the government. These people will not have gone through medical diagnosis, assessment or treatment and will not be subject to any gate-keeping. This is of particular concern with male-to-female transitioners. While it is known that most transwomen are not offenders, male offending rates significantly far higher than those of women and there is no evidence that males who identify as female depart from male offending patterns.

The government fails to define 'international best practise' and we note that very few countries have introduced sex self identification, around the world. Those countries which do have sex self ID include some with a poor record on women's rights. No evaluation has been carried out by the Scottish Government on the effect of self ID in practise in any of these countries. The current gender recognition law in the UK and Scotland is fully compliant with the European Court of Human Rights so this change is not needed.

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

Yes

If yes, please outline these comments.:

The government's Equality Impact Assessment contained in the Bill consultation concludes mistakenly that women will not be affected negatively by the proposed changes.

The draft Equality Impact Assessment makes no reference at all to women's desire for privacy and dignity or their human right to consent to people with male anatomy seeing them in a state of undress, for example. Given that the Equality Act gives women this legal protection, the Scottish Government has failed to take account of it in the consultation. The Women' and Girls in Scotland survey asked 2000 women their views. An overwhelming majority said they would not feel

happy about sharing intimate spaces with people born male who self-identified as female.

The Bill consultation and its draft Equality Impact Assessment chose to ignore specific well publicised cases in Scotland, the UK and elsewhere in the world where self-identified transwomen who retain male anatomy have sought to abuse single sex spaces. These include attacks carried out by a sex offender in a women's prison in England and attacks on young girls in supermarket toilets in Fife. The EQIA takes no account of the sharp and unprecedented rise in girls transitioning. Respected clinicians, including from the Tavistock Gender Identity Service, have pointed out that children's other mental health issues and adverse childhood experiences can be ignored as clinicians are pressured to affirm in every case.

Many young girls feel uncomfortable in their bodies and this is particularly the case given the high levels of sexual harassment they face or the pressure to present in a highly feminised/sexualised way. Young girls should be able to reject these stereotypes without feeling they are the wrong sex. The growing number of detransitioners means these concerns should be taken seriously. The EQIA does not do this.

The Equality Impact Assessment fails to engage with the factual evidence provided through convictions in the Scottish Courts Service which show that males are responsible for 98.5% of all sexual crime (excluding prostitution associated offences). The draft Equality Impact Assessment offers no evidence to support the assertion that transwomen who have undergone no physical changes depart from male pattern offending. Ministry of Justice figures from England suggest that the proportion of male-to-female transgender prisoners incarcerated for sex offences is significantly higher than the prison population as a whole. Given that the Scottish Government and public authorities such as the NHS and the Scottish Prison Service already misinterpret the Equality Act to allow self identifying transwomen access to single sex spaces, there is no confidence the single sex exemptions in the Equality Act would be upheld should the Bill become law. Fact based examples of threats to women in single sex spaces have been ignored. The Scottish Government Equality Impact Assessment justifies its assertion that the proposed legal change is no threat to women by citing an academic paper by Peter Dunne of Bristol University who campaigns on gender identity issues. Dr Dunne's paper argues against all single sex provision and states that a woman who sees a transwoman's body in a changing room should be no more upset than if she sees a breast cancer survivor with a mastectomy in the changing room. This statement has caused considerable offence. The Cabinet Secretary Shirley-Anne Somerville distanced herself from this assertion in Dunne's paper when questioned in parliament. However the report is still used to justify the conclusion of the draft Equality Impact Assessment.

The draft Equality Impact Assessment also cites another paper from academics who support self identification of sex, (Eckes: The Journal of LGBT Youth 2017) which compares the uses of separate male and female toilets to segregation on the grounds of race. The use of such contentious arguments without empirical research, destroys the credibility of the draft Equality Impact Assessment.