

LEAP Sports Scotland

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.:

LEAP Sports is Scotland's LGBTI sports charity, working to ensure that lesbian, gay, bisexual, transgender and intersex people can access, participate and excel in sport. Our response to this consultation is based upon our ongoing work with LGBTI people and communities in sport, on specific research and community consultation work specifically around trans people's experiences, and from specific consultation events carried out for the purpose of completing this response.

LEAP Sports is fully in support of making the gender recognition process simpler and fairer for trans people and wholly welcome the change from the current 2 year system. However, we do not believe that this arbitrary 3-month time period is necessary. The situation of a trans person being forced to reveal their status if their personal documents are inconsistent or do not match the gender presented would still exist but for 3 months instead of 2 years. There is currently no such requirement to do this for any other form of ID. We believe that the Scottish Government should remove this requirement.

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 welcome and appreciate that the suggested reforms of the Gender Recognition Act make the overall process of obtaining a Gender Recognition Certificate more straightforward for trans people but we can find no evidence to suggest that a 3-month reflective period after applying for the Certificate is necessary or useful in doing anything but elongating the process. We believe that a person who has already reached the stage where they are applying for a Gender Recognition Certificate and has gone through a process of changing all their other forms of ID would have already considered their decision and should not have to go through a period of reflection.

It is not common practice for a period of reflection to be required alongside any other statutory declaration and there is also no requirement to do this for any other form of ID. Having a period of reflection specifically within this process for trans people suggests that applications may be more frivolous, or ill-thought through and perpetuates the myth that trans people don't understand their identities or that they may change their mind - something which is very rare in reality. Overall we do not

believe the evidence supports a period of reflection. In addition, intentionally making a false statutory declaration would already be a crime and therefore no period of reflection seems necessary to prevent fraudulent applications.

We therefore do not support this requirement and would like to see it removed.

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 strongly support the Scottish Government's proposals to lower the age for gender recognition to 16 and we believe that this would bring it into line with the legal capacity and wider framework of rights that 16- and 17-year olds in Scotland have such as to marry, gain employment, vote, attend university, and be held legally responsible for their actions. We also believe that 16- and 17-year olds should be able to change their birth certificate to match their gender identity. Most grassroots LGBTI sports clubs in Scotland have a membership of 18 and over and LEAP Sports programmes are mainly open to aged 16 and over – however it is clear to us that many trans members have experiences of gender dysphoria from a young age, often way before age 16, and are therefore already in a position of having to wait for a number of years to be able to obtain a Gender Recognition Certificate or change their birth certificate. We can see no sensible reason to treat gender recognition differently from many of the aforementioned rights and decisions.

LEAP Sports also supports the need to put a gender recognition process in place for those under 16 and we recognise the importance for trans young people, and their families, of having their identity recognised. Trans young people under 16 are already able, with their parent's consent, to change their gender on their school records, medical records and passport. Often under 16s need to use their birth certificate more than adults do so it is important to look at this provision in order to protect their privacy. We would encourage the Scottish Government to extend their plans and to look at this area.

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

Yes

If yes, please outline these comments.:

LEAP Sports Scotland would like to express our support for the Bill and the measures that it would put in place to improve the lives of trans people in Scotland. We fully agree with the proposal to reform the gender recognition system to remove the need for medical evidence. Trans people will still be able to access medical care and social and psychological support as part of their transition, but that will be separate from their application to update their gender recognition and birth certificates.

The current system is overly medicalised, excessively intrusive, expensive and time consuming. Removing the need for a psychiatric diagnosis where we do not pathologise trans people's identities and by respecting the dignity and privacy of trans people, will provide validation and strong acceptance of trans people, and in turn can help to reduce experiences of gender dysphoria. We believe the changes that are being proposed improve the processes that support many already existing current lived experiences and realities of trans people, but that taking the opportunity to make these improvements can have a significant impact in reducing stress and anxiety for many.

Section 19 of the Gender Recognition Act 2004 concerned the area of sport and made provision for specific exemptions regarding transgender people participating in particular sports and at particular levels. These provisions were replaced by section 195 of the Equality Act 2010. Despite a great deal of public discussion on the GRA consultation concerning sport, none of the proposed reforms to the Gender Recognition Act will have an impact upon these provisions which will remain. We would also like to take the time to point out that despite those provisions, there are already trans people participating in sport using self-identification where their experience is inclusive and successful.

There are many governing bodies whose policies already support a self-identification position. For example: Scottish Hockey (non-contact sport) allow trans women to self-id up to and including domestic competition level; Lawn Tennis Association (non-contact sport) allow trans people to self-id up to and including the player performance pathway (outside of the top 500); the UK Roller Derby Association (contact sport) allows women to self-id at all levels.

At a grassroots sports level there are many different models of trans inclusion and where we can find trans people playing sport. There are women's groups which are explicitly trans inclusive. For example, Ladies Recreational Football and Sport, groups which exist in both Glasgow and Edinburgh, have a policy of trans women self-identifying into their clubs. There are mixed sports offerings such as MMV Volleyball Club and the Rainbow Glasgaroos Basketball Club where teams are all-gender inclusive and have trans men and trans women playing alongside cis men and cis women and non-binary people too. There are also examples of exclusively trans sports spaces such as Trans Active and Seahorses swimming club.

Despite these examples of spaces and pathways for trans people to participate in sport, it is overall still significantly more likely that trans people will be excluded than included and the most recent research we have in this area highlights this point strongly (1).

We are saddened and disappointed that the Bill misses the opportunity to address the current lack of legal recognition for non-binary people, and the opportunity to come into line with other countries who have already taken steps to introduce legal recognition of non-binary (or third gender) people. There will still not be any legal recognition for non-binary people if this Bill passes, and this leaves inconsistencies in their personal documentation, as well as a lack of recognition in people's day to day lives.

Individual's real experiences in communities and within sport is already that there are many places where non-binary identities are being recognised and supported. Some sports governing bodies (including Scottish Football Association and Scottish Athletics) have updated their policies to recognise non-binary participants and players, and sportscotland have started to include a third gender option on their annual returns from sports governing bodies.

One such example is that Scottish Athletics changed rules to allow a new category of non-binary runners to participate in running events. This acted as a catalyst for UK Athletics to change rules to allow non-binary categories. As a result, there are many running races in Scotland where non-binary people can now enter in the category that matches their gender identity.

Feedback from non-binary people who have their identities recognised through policy and practice tell us how validating and empowering that this is to them. This has a direct impact on improved mental health and wellbeing of individuals and there is strong evidence to support this through running clubs such as Edinburgh Frontrunners and Glasgow Frontrunners, and from sports beyond running such as the aforementioned Rainbow Glasgaroos Basketball Club. We can also tangibly see how in those circumstances non-binary people are more likely to become engaged with sport, thus in also making strong physical health improvements in addition to the aforementioned mental health improvements. We believe that non-binary people deserve be recognised and treated with respect.

This Bill is not a success for the whole trans community if it leaves non-binary people out.

Central to the legal recognition process is the key principle of privacy for trans people. We are concerned by the suggestion in the consultation document that additional exceptions could be introduced to Section 22 of the Gender Recognition Act that could widen the scope of how information is shared and disclosed concerning someone's trans status. The existing exceptions already seem to be sensible and we do not believe that there is any need for additional exceptions. We therefore do not support the proposal to introduce new exceptions.

We have concerns about the scope of the provision concerning "a person who has an interest in a gender recognition certificate" and feel that more clarity is required on what the Government means by this. Detail is required concerning who could apply to the sheriff to have a Gender Recognition Certificate revoked on the grounds of a fraudulent application. We are concerned that a system such as this could be used to abuse and oppress trans people. We do not want individuals to be able to make frivolous applications to the sheriff to revoke a trans person's Gender Recognition Certificate as this process could be used by an unsupportive family member, or ex-spouse, to cause greater difficulty and extreme stress for a trans person by someone who prefers they had not obtained a Gender Recognition Certificate.

We are concerned that the requirement for someone to be "ordinarily resident" in Scotland may prevent some people from being able to apply for a Gender Recognition Certificate. We want to ensure no one, such as asylum seekers, refugees or others without current, valid leave to remain in Scotland, are unfairly blocked from being able to apply.

Finally, we wish to express concern about the way that public debate has developed around this consultation and the impact which this has had upon trans people's lives. We have seen a huge increase in the number of people looking for support or advice from us, and we know this to be especially true of support organisations. This extends to concerns about how this process has been used to oppose many issues including current existing rights of trans people which exist far beyond the remit of this consultation. We don't have to look any further than our own area of work, sport, to see examples of this. Many of the cited policies and practices have been in place for several years now – the UKRDA policy has been in place since 2015 for example – yet it is only with recent public debate accompanying this consultation that policies such as this are being challenged.

(1) Outsport <https://leapsports.org/files/1741-Outsport%20Scotland%20Report.pdf>

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

Yes

If yes, please outline these comments.:

We do not consider that this Bill will have a detrimental impact on anyone else's rights. The scope of this Bill is limited in remit and extends only to individual impacts such as how trans people's birth certificates are changed, at what age you might be able to change them, the consequent level of privacy people are entitled to, such as when getting a job or marrying, and how they are recognised after death.

Access to single-sex spaces and facilities, such as toilets, changing rooms, and women-only services will not be impacted. Nobody is required to show a birth certificate to prove their eligibility for these spaces or services now, and this will not change. In our answer to Question 4, we highlighted many areas in sport where self-identification of trans people is already considered the 'norm' and how this will not be impacted or changed in any way by this current Bill.

As noted in our answer to Question 4, this Bill will have no impact upon how sport is organised or experienced, nor will it affect who has access to sport. As such, this Bill will have no impact on how we deliver our work or run our services, or our work with the sports sector, and there will be no change in how we provide support to trans people.