

LGBT Health and Wellbeing

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.:

We recognise the current system for obtaining a GRC is demeaning, distressing, pathologising and intrusive, as well as lengthy, complex and expensive. We therefore warmly welcome the Scottish Government's commitment to advancing trans rights by significantly reduce the time someone has to live in their acquired gender before having the right to apply for a certificate.

We also support the removal of the requirement for a psychiatric diagnosis and medical evidence. These positive changes we hope will serve to signal support for self-ID and greater societal acceptance, and will thus undoubtedly have a positive impact on the mental and emotional wellbeing of trans people.

However we consider the requirement to live in ones acquired gender for 3 months prior to the date of application to be arbitrary and unnecessary. This feels very much at odds with the important principle of self-declaration of gender, and not in line with the process for amending other government documents.

Whilst recognising the current proposal constitutes a major improvement, a significant number of trans people expressed the view that the time period should be scrapped altogether:

"There is already evidence in favour of self-ID without timescale. 3 month proposal is however much better than the current 2 years."

"There should be no specific time before you can apply – why is time 'proof'? Why do we need to supply proof?"

"Arbitrary and seems to be there to be there to satisfy politicians and not to help us."

"My feeling is that any time period is not for the interests of trans people, but for the satisfaction of others."

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 proposal is to remove the use of the Gender Recognition Panels and requirements for medical evidence and move instead to a statutory declaration made under oath. We are hugely supportive of the proposal to enable the Registrar General, rather than the Gender Recognition Panel, to issue Gender Recognition Certificates. However, obtaining a Gender Recognition Certificate is, and with the proposed reforms will remain, a serious declaration of intent and lifelong commitment.

We therefore do not support the 3 month period of reflection after application.

Most participants in our consultation events questioned the rationale for this. Trans people expressed the view that social transition should in itself provide enough evidence of intent, and that a reflection period felt arbitrary, bureaucratic and reinforced the sense that “maybe you were doing something wrong”.

Like the 3 months wait, the further reflection period was felt to further be very much at odds with the important principle of self-declaration of gender, which is already used when amending other government documents, which is done without the need for a reflection period.

It should also be considered that for a trans man or trans woman with only a short time left to live, this period of reflection could be particularly problematic. This is crucially important as it is only through obtaining a GRC that a trans man or trans woman can ensure that they are recorded accurately in death in line with how they have lived their life.

Trans people told us:

“I’ve [already] thought about this for ages! I’m not going to change my mind!”

“People already know their gender – I knew mine when I was 6.”

“The whole world makes us question our decision to transition / our genders, and it is not something we do on a whim.”

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.:

The current minimum age for applying for legal gender recognition is 18. We welcome and support the Scottish Government’s proposal to lower the age of gender recognition to 16. This is in line with the Government’s move to provide more rights at an earlier age. There are a number of existing areas in Scotland where people obtain rights at 16, such as voting in Scottish elections, marrying or entering into a civil partnership, apply for a passport and record a change of name.

This proposal thus brings obtaining a GRC in line with other rights and recognises that at 16 and 17 young people have the capacity and understanding to make their own choices and decisions.

We would also stress that being able to obtain a GRC would help young people in moving into adulthood, and could have a significant positive impact on their mental and emotional wellbeing. Conversely, not being able to obtain legal recognition of their gender could have a very significant and detrimental effect on the mental health of the young people affected.

As some trans people pointed out, this was felt to be particularly important if trans young people aged 16 and 17 are at a stage of their life where they are making new starts, such as getting a job or starting college. If they aren't able to have their gender legally recognised, they will often have to out themselves (disclose that they are trans) when starting these new opportunities. This can mean that events that are supposed to be exciting and positive can be much more stressful for trans young people.

“At 16 we gain many rights that are life - changing, so ridiculous we would not know our own gender.”

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

Yes

If yes, please outline these comments.:

LGBT Health and Wellbeing is the key agency providing support for trans adults in Scotland. We do this through a range of LGBT and trans-specific services, social and peer support programmes delivered in Glasgow and Edinburgh, as well as through our national LGBT Helpline. Given our key role in promoting the health, wellbeing and equality of trans people, we have been one of the agencies the government has met with subsequent to the 2018 consultation.

Following the publication of the Gender Recognition Reform (Scotland) Bill consultation, we held 4 events, attended by 45 trans and non-binary people, to get their views on the proposals. Their views have informed our consultation response.

We warmly welcome the Scottish Government's commitment to advancing trans rights by making legal gender recognition a more straightforward process, and have no doubt this will have a positive impact for many trans people.

Disappointingly, the Bill does not address the need for legal recognition of non-binary people, who face particular issues and inequalities. It is crucial that this is addressed, to ensure this section of the trans community receives equal recognition and respect.

“There are extensive social problems with non-binary inclusion. Legal recognition may help progress / change the tone elsewhere?”

Whilst we agree that knowingly making a false statutory declaration to obtain a GRC should be a criminal offence, we don't think that this new offence is necessary. As the Scottish Government acknowledges in its consultation paper, it is already an offence in Scots law to knowingly make a false statutory declaration. Creating a specific offence for making a false declaration in order to obtain a GRC feels unnecessary and stigmatising, as any false statutory declaration would be covered by this existing offence.

"There should be no new legislation on statutory declarations. There is simply no evidence that false declarations will be an issue. The proposed new legal penalty seems to be against imaginary transgender people."

It is also crucial to acknowledge that the tone of the public debate around trans rights has been exceedingly problematic, and that trans people have increasingly found that their rights, and often their very existence, is being debated, questioned and scrutinised. The rise in intolerance we've witnessed has inevitably impacted negatively on the mental and emotional wellbeing of trans people. Many trans people are increasingly fearful for their safety and simply do not feel welcome and accepted.

"I feel less safe because of the current climate. Disclosure to anyone is risky. I cannot be open in my workplace about who I am."

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

Yes

If yes, please outline these comments.:

We concur with the Scottish Government's carefully considered position that the move to a statutory declaration-based system for obtaining a GRC, as outlined in the draft Bill, would not impact adversely on the rights of women.

We recognise that it is important that work continues in this area to assist policy makers and service providers to understand better how to ensure that the rights of women and trans people can be collectively realised.

We look to the Government to remain publicly committed to challenging discrimination and progressing work to protect the rights of women and girls, as well as those of trans and non-binary people, in order for greater equality to be achieved for all.

"I'm hoping the bill will pass and remove some barriers."

"No competing rights of women and trans people"