

Time for Inclusive Education (TIE)

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.:

There is no evidence to suggest that such a process would be necessary. This is not required when a trans person changes their name by statutory declaration, or any of their identification documents - such as a passport or driving licence. A birth certificate cannot be used as a legal form of identification and is only required in specific circumstances which have no impact on others: such as providing proof of the right to work in the UK where an individual does not have a valid passport, marriage, and recognition on death certificates.

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.:

There is no evidence to suggest that such a process would be necessary. This is not required when a trans person changes their name by statutory declaration, or any of their identification documents - such as a passport or driving licence. A birth certificate cannot be used as a legal form of identification and is only required in specific circumstances which have no impact on others: such as providing proof of the right to work in the UK where an individual does not have a valid passport, marriage, and recognition on death certificates.

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 proposal to instate the minimum age at 16 years old is in line with when young people acquire a number of other legal rights in Scotland; including to seek and gain legal employment, to be held legally responsible for their actions, to marry, to vote in Scottish elections, to sign a legal contract, to consent to their own medical treatment under specific criteria (Age of Legal Capacity (Scotland) Act, 1991), and to apply for their own passport.

For young people aged 16 and 17 who will be beginning to make efforts to live independently, from entering the workplace, to moving to a new home, or to study,

it is important for them that they are able to do this with the appropriate legal recognition of their acquired gender. Currently, trans 16 and 17 year olds in Scotland have the ability to change the sex marker on their passports, provisional driving licenses, medical records and, in some cases, their school records. They can also change their name by statutory declaration, without a gender recognition certificate. In principle, the proposals will streamline the process for trans 16 and 17 year olds who have already completed, or are in the process of completing, other such document changes.

Specifically for employment, a birth certificate is often listed as one document which can be used in conjunction with another (one which shows a permanent National Insurance number and name) as proof of an individual's right to work in the United Kingdom. In this circumstance, a valid birth certificate has particular importance for those 16 and 17 year olds who may not have a more common legal form of proof of right to work in the UK, such as a valid passport, but will have received their National Insurance card. A 16 or 17 year old applying for a job for the first time will also not have a P60 from a previous employer, and are more likely to have to use their birth certificate in these circumstances. For trans 16 and 17 year olds in this circumstance, this means that they may be placed in the position of unnecessarily revealing their trans status to their prospective employers. We know from our experience engaging with schools and the wider community, that some trans young people aged 16 and above specifically avoid entering the workplace for this precise reason, and we have heard first-hand accounts detailing this; where some do not have a passport and are unable to afford a passport application and, whilst they do have their National Insurance card, their birth certificate does not match their name and gender identity, and this causes stress and anxiety.

We understand that for many young people within this age range, employability and/or accessing higher or further education is often a foremost concern - externally of examinations and acquiring qualifications. For trans people aged 16 and 17, the current inability to engage a process of legal gender recognition means that their birth certificate can act as an outlier, in terms of not matching other forms of their private documentation which they have updated to reflect their name and gender identity. It is also the case that, as aforementioned, some 16 and 17 year olds are more likely to have a need for their birth certificate.

It should also be emphasised that the proposed reform of the GRA, were it to instate the minimum access age at 16, will not impact or affect any other aspect of an individual's transition - such as ongoing healthcare, or the availability of medical treatment. There has been considerable and widespread misrepresentation of the principles and practicalities of the proposed reforms of the GRA, and we are specifically concerned that some have interpreted the GRA as being about the whole process of an individual's gender transition, as opposed to being a part of the process for some. Specifically, instating the minimum age of acquiring a GRC to 16 (bringing this in line with aforementioned existing documentation and legal changes) will not impact upon any other facet of a 16 or 17 year old's (or any applicant of any age) transition process: including social presentation, accessing gender specialist clinics, the waiting period for any planned medical treatment, and so on.

In the event that the proposal to instate the minimum age at 16 is brought forward, we would recommend that it is particularly important for 16 and 17 years olds that National Records of Scotland (NRS) make accessible information available to applicants about what the process of legal gender recognition means, and also what the legal consequences of the statutory declaration are. Similarly, for registrars, justices of the peace, and notaries public; it will be particularly important that they explain the process of statutory declarations clearly to 16 and 17 years old making a declaration. We would also suggest that NRS make available accessible information about gender recognition and the legal consequences of the statutory declaration to all applicants, and also signpost applicants to avenues of additional support. Particularly for 16 and 17 year old applicants, signposting to areas of additional support (for both before and after the statutory declaration) is important to ensure that they can receive accurate and informative answers to any questions which they may have.

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

Yes

If yes, please outline these comments.:

We support the proposals to reform the GRA, and welcome the positive impact that they will have for many trans people in Scotland.

We would like to take this opportunity, however, to outline that we are specifically concerned by the current nature of the discourse which has grown around the proposals to reform the GRA, partially as a result of the lengthy delay in bringing the Bill to the Scottish Parliament. The specifics and practicalities of the proposals have been routinely misrepresented, and the detail of the Bill has been lost amidst a wider narrative - predominantly on social media and across several national news media platforms - which has become increasingly toxic and polarised.

In most instances, it would appear that this Bill is being used as a proxy to air aged grievances with the trans and wider lesbian, gay, and bisexual community. As a charity with a specific remit over education, we have witnessed increasing hostility towards the trans community, and are aware first hand of the impact that this has had on some of our peers and colleagues. We also recognise that a troubling climate has festered wherein many LGBT charities and organisations, women's charities and organisations, and frontline service providers have had to endure the misrepresentation of their work, online hostility, and sustained efforts to undermine charitable activities and life saving services. Having worked in this sector for five years, as a trans-inclusive and supporting charity, we have never witnessed or experienced such sustained hostility as we see now. This is not limited to trans people, and we are aware that those who would seek to undermine wider LGBT equality appear to be using the discussions around the reform of the GRA to subvert social and legal progress, and to heighten tensions amongst communities.

We are growing increasingly concerned about how this wider social climate may impact upon the health and wellbeing of trans young people. We are also

concerned about how this may impact their experiences at school, specifically for trans young people but also for lesbian, gay, bisexual young people, and young people who do not conform to gender stereotypes and norms. We understand that discourses which place a disproportionately negative spotlight upon a marginalised community of people may increase rates of bullying, prejudice, and other forms of social exclusion of those communities. Young people are not immune from this climate.

Research published in the United States in 2019 considered the public health consequences of media-driven public campaigns around minority rights issues which risk promoting stigma*. Their conclusions, drawn from a data sample of school students in California, found that reported instances of homophobic bullying had increased throughout the duration of the Proposition 8 public debate (a 2008 voter referendum which restricted marriage to mixed-sex couples in California), which was dominated by a public discourse that heavily stigmatised lesbian, gay, and bisexual people. Reported incidents of homophobic bullying in Californian schools then decreased after the public debate had concluded. Lead researcher Stephen Russell, Chair of the Human Development and Family Sciences Department at The University of Texas at Austin, said of the findings:

“We think that young people don’t hear what adults and lawmakers are talking about, but they do [...] Policies and campaigns related to Black Lives Matter, bathroom bills, immigration - these can be concerning in how they affect the health and well-being of youth [...] The public health consequences of these very contentious and media-driven discussions are more important than we knew.” †

Over the last year, we have noticed that more young people who have participated in our school based sessions have questions about the current hostile discourse around trans rights, and on several occasions we have heard accounts from trans young people who are concerned by the wider social climate. We believe that this is the result of the lengthy delay in bringing the Bill to the Scottish Parliament. Given that much of these conversations take place on public social media applications which are used by young people in Scotland, they are not isolated from the same discourse which we and many other organisations are alarmed by. We would urge that the Scottish Government takes measures to ensure that continuing discussions around the proposals to reform the GRA are conducted in a factual and informed manner, and shows leadership in addressing and reducing the toxicity of the wider discourse where possible.

We would also recommend that the Scottish Government liaise with the recently formed Working Group for non-binary people to consider how best to proceed with legal gender recognition for non-binary people in Scotland.

* Mark L. Hatzenbuehler, Yishan Shen, Elizabeth A. Vandewater and Stephen T. Russell (2019), Proposition 8 and Homophobic Bullying in California, <https://doi.org/10.1542/peds.2018-2116>

† <https://www.futurity.org/homophobic-bullying-prop-8-marginalized-groups-2061912-2/>

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

Yes

If yes, please outline these comments.:

We agree with the conclusions of the Scottish Government's Impact Assessments. This Bill, which only impacts on the birth certificates of trans people in Scotland, will have no impact on our service provision in schools and communities across Scotland, and we support the positive impact that this Bill will have for many trans people living in Scotland.

We do not believe that this Bill will negatively impact on those with the protected characteristic of sexual orientation, particularly lesbian, gay, and bisexual people. We recognise that there has been wider discourse, and suggestions from some who are opposed to this Bill, around whether young people who do not conform to rigid gender stereotypes in their presentation and expression are being "encouraged to transition" or to adopt a trans identity where they otherwise may be lesbian, gay, bisexual, or simply defying gender norms like many young people. In most cases, this scenario has been directly proposed through social media amidst online discourse around proposals to reform the GRA, sometimes referred to as "mass transing". This is not a phenomenon which we recognise or have experienced in our core work over five years; including in our work with schools, or in our work with a wide variety of educational stakeholders across the country, or in any single youth organisation we have engaged with. We have not heard this expressed as a concern from any teacher, member of school staff, educator, young person, or youth worker that we have engaged with. We are confident that there is no "mass transing" in our education sector, and we do not believe that this is a phenomenon which will emerge as a result of the proposed reform of the GRA.

Indeed, the argument that a young person would be "encouraged" to identify as trans, or "encouraged" or "forced" to take steps to socially or medically transition, would breach all basic safeguarding principles and practices, which are common use within schools and across educational organisations. We would certainly take such a scenario seriously. It is not the role of school staff, educational workers, or charity volunteers to suggest to a young person what their gender or sexual orientation is - rather, it is their role to provide a supportive ear where appropriate, and to signpost to relevant agencies if, and when, necessary. We emphasise this basic safeguarding principle with school staff and support workers whom we engage with in our service delivery and training.

A core element of our service delivery within schools includes identifying, addressing, challenging, and overcoming gender stereotypes which can often have a harmful or negative impact on young people. This careful work is focussed on empowering young people to feel confident in who they are, to understand that they are not defined nor limited by gender stereotypes, and to recognise the relationship between such stereotypes and wider social prejudices such as homophobia and sexism. Our approach in this area is centred around overarching principles of anti-bullying, anti-prejudice, and self-empowerment. It is not true that someone who defies societal gender expectations and norms in how they present or express themselves must be trans. To our knowledge, this is not a message which is

being provided to any young person in Scotland's schools. The responsibility for ensuring that this is understood by young people, and to ensure that guidance and content is consistent and clear in this respect, rests with educational stakeholders. The proposed reforms of the GRA will not impact on this separate body of work.

Similarly, there has been discourse which suggests that the proposed reforms of the GRA will erode legal provisions for single-sex spaces and services, and negatively impact on the rights of women and girls in this respect. The proposed reforms of the GRA will not impact on the rights of women and girls to form and access single-sex spaces and services, and/or whether trans people can share or access those spaces and services. This is covered within an entirely separate piece of law, The Equality Act (2010), which sets out four exceptions relevant to single-sex spaces (Schedule 3, paragraph 26, 27, and 28).

Specifically, the third exception (Schedule 3, paragraph 28) allows for providers of single-sex services to provide a different service to, or exclude, someone with the protected characteristic of gender reassignment in certain circumstances. This applies to individuals who have a Gender Recognition Certificate, as well as individuals who do not but otherwise meet the definition of the protected characteristic of gender reassignment. A service provider can apply this exception if it is objectively justified - that is, a proportionate means of achieving a legitimate aim. There is an absence of case law in this area, however the Equality and Human Rights Commission (EHRC) have a series of published statutory codes of practice which detail this for service providers in the public and private sectors. In 2019, the UK Parliament's Women and Equalities Committee concluded their inquiry into the enforcement of the Equality Act, and called on the EHRC to provide greater clarity to service providers by developing, and bringing before the UK Houses of Parliament, a dedicated statutory Code of Practice in this area. *

The proposed reforms of the GRA will not impact on the existing provisos and exceptions within the Equality Act, which have been in place since 2010. The women's sector in Scotland - those who provide frontline services, crisis response, and have decades of collective experience - have been clear on these specific circumstances, and we would encourage the Scottish Government to refer to their specific expertise in this area.

* Enforcing the Equality Act: the law and the role of the Equality and Human Rights Commission:

https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/1470/147010.htm#_idTextAnchor077