

## Consortium's Trans Organisation Network

### 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.:**

Consortium and its Trans Organisations Network support a system of demedicalised and streamlined process of legal recognition, replacing the current system (which requires medical evidence, including a psychiatric diagnosis). Reducing the two year time period in which a trans person must show they've lived in their true gender is welcome.

In view of the proposal that applicants must live in their acquired gender for at least 3 months before applying for a GRC, there is no evidence to suggest this arbitrary time period is necessary, and we do not support it. We are calling on the Scottish Government to remove this requirement.

For the great majority of trans people, they say understanding or realising their gender is a lifelong process. Many applicants will have identified as their affirmed gender for many years prior to engaging with the legal process of transitioning. The initial figure of 2 years before one could apply for a Gender Recognition Certificate was derived solely from the NHS's practice of waiting for 2 years from an individual's initial appointment with a gender specialist before that individual was eligible for surgery. Medical evidence at the time was that, after 3 months, there was hardly any change in the desistance from transition – the NHS's timescales were completely arbitrary.

In line with many of our members including Mermaids, we note the outdated notion of 'acquired' gender within the question and only uses this term in reference to current legislation. Any future legislation should refer either simply to one's 'gender' or 'affirmed gender'.

Consortium and its Trans Organisations Network recommend a model of self-determination. This is supported by the fact that it has already been successfully implemented in Norway, Malta, Belgium, Denmark, France, Portugal and Ireland. The following report shows that the UK is the only country of those reviewed without a model of self-determination <http://www.trust.org/contentAsset/raw-data/8cf56139-c7bb-447c-babf-dd5ae56cd177/file>.

**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?**

Not Answered

**If yes, please outline these comments.:**

Similarly to Question 1, there is no evidence to suggest this arbitrary 3 month reflection period is necessary, and we do not support it. We are calling on the Scottish Government to remove this requirement.

A simple administrative process based on self-determination does not need a 'period of reflection', in fact it contravenes the principle of self-determination. A reflection period requirement reinforces wrongly the myth that trans people don't understand their identities or know what's best for them. Moreover, a state-imposed period of reflection also unnecessarily elongates the legal recognition process.

The requirement of a reflection period is often justified with reference to the concept of 'desistence'. This ignores the lived experience of trans people and is not appropriate within this discourse. We recommend a cautionary approach to evidence around desistence. Attention should be directed towards research which focuses on how to support trans people, for instance [Dr B Vincent, PhD, 'Transgender Health: A Practitioners Guide to Binary and Non-Binary Trans Patient Care' (2018) Jessica Kingsley Publishers pp.121-124].

In line with evidence collated from our trans-specific membership, we recommend that any procedure is made accessible enough to allow for a quick reversion if necessary in acknowledgement that one's gender identity may indeed change in time, for people of any age or background.

### **3 Should the minimum age at which a person can apply for legal gender recognition be reduced from 18 to 16?**

Not Answered

#### **If you wish, please give reasons for your view.:**

We welcome the reduction in age. This would be in line with the rights of 16- and 17 year olds in Scotland to marry, gain employment, vote, and be held legally responsible for their actions.

Consortium and its membership think that 16- and 17-year olds should also be able to change their birth certificate to match who they are.

However, as our member Scottish Trans Alliance states, it does not propose a system to enable trans children and young people under 16 to apply for legal gender recognition. This question is only about the age of legal recognition and does not affect medical treatment available to young people and children.

We would like the Scottish Government to go further and include trans children and young people under the age of 16. They should be able to update their birth certificates with aid of parental or guardian support.

As our members at Stonewall and Mermaids stress: not allowing a trans young person to correct their Birth Certificate is also incompatible with other systems that allow trans people to change their gender marker. For example, trans young people

can change their gender marker on all other forms of ID including passports, education and NHS records without age-based restrictions.

Often children and young people under 16 need to use their birth certificate more than adults do, so being able to change it is particularly important to protect their privacy.

Denying a young person gender recognition on the ground that they are too young may violate non-discrimination provisions in the Convention on the Rights of the Child (UNCRC) [Art 3.1; Art 8.1; Art 12.1; Art 24 and Art 6.2] - to respect the right of a child to be heard and to take into account their views. The UN Committee on the Rights of the Child has highlighted that the identity of the child includes characteristics such as gender identity, and the right of the child to preserve his or her identity is guaranteed by the UNCRC [Article 8] and must take into consideration in the assessment of the child's best interests.

Our members at Stonewall have evidence that shows that forcing an assigned gender on a young person can be extremely damaging. The Stonewall School Report (2017) [<https://www.stonewall.org.uk/school-report-2017>], conducted with the University of Cambridge, found that more than four in five Trans young people (84 per cent) have self-harmed; more than two in five Trans young people (45 per cent) have attempted to take their own life.

We appeal to the Scottish government to recognise trans young people for who they are and support them in being themselves.

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

Yes

##### **If yes, please outline these comments.:**

Overall, Consortium and its Trans Organisations Network welcome the GRA Draft Bill. Making legal gender recognition a more straightforward and accessible process will relieve a lot of stress for many trans people, who will no longer need to gather evidence and medical reports to be recognised as who they are. 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 birth certificate.

##### **Inclusion of Non-binary people**

The Draft Bill does not include provision for legal recognition of non-binary people, who do not identify as exclusively male or female. This will leave them with inconsistencies in their records and documents and a lack of recognition in daily life. Consortium and its Trans Organisation Network (TON) believes that legal recognition of non-binary people should be included so they can be recognised in the law, have equal rights and be regarded with respect.

Section 22

With great concern we take note of the Scottish Government's suggestion to introduce additional exceptions to Section 22 of the Gender Recognition Act. In particular, the example given of a potential additional exception – for HR staff to be able to out trans applicants for jobs to other colleagues in their workplace – would seriously undermine trans people's human right to privacy, enshrined in Article 8 of the European Convention on Human Rights. Therefore, we strongly urge the Scottish Government not to include any additional exceptions to Section 22, and to ensure that trans people's privacy is protected.

False declaration

Further, we have concerns about the Scottish Government's proposal to create a new criminal offence of making a false declaration in order to obtain a GRC. This new offence is unnecessary, given that the existing offence of making a false statutory declaration would fully cover any fraudulent applications. We ask that the Scottish Government not to create this unnecessary and stigmatising criminal offence.

We would like the Scottish Government to provide more clarity on its proposal that "a person who has an interest in a gender recognition certificate" could apply to the sheriff to have a GRC revoked on grounds of fraudulent application. The process of applying to have an individual's Gender Recognition Certificate revoked could potentially be open to abuse, for example by an unsupportive family member. This is very concerning.

Criteria

We call on the Scottish Government to ensure that no one is unfairly blocked from being able to apply for a Gender Recognition Certificate. For example, refugees and asylum seekers. We would ask the Scottish Government to provide assurances that these criteria will not unfairly prevent people in Scotland without current leave to remain from applying for a GRC.

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

Not Answered

**If yes, please outline these comments.:**

Consortium and its Trans Organisation Network (TON) support conclusions of the Impact Assessments, including the Equality Impact Assessment, concluding that proposed changes to GRA would have no significant impact on those with protected characteristics under the Equality Act 2010. This includes women and girls under the protected characteristic 'sex'.

We understand reforms would not change the current right of trans people to use single-sex facilities related to their lived sex (e.g. toilets, changing rooms, support services).

Further, we are aware through our members in Scotland (including Scottish Trans Alliance) that leading Scottish feminist charities already implement policies that are inclusive of trans women and that they agree with the joint declaration of support for GRA reform issued by several Scottish women's charities.

Consortium and TON support GRA reform. We understand that GRA reform is only about how trans people are able to update their birth certificates to reflect who they are; impacting the level of privacy they are entitled to, such as when they are getting a job or marrying, and how they are recognised after death. There is no evidence of a conflict between the rights of trans people and other groups.