

Audacious Women Festival

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.:

Three months is far too short a time for a careful diagnosis of gender dysphoria, and NHS services need to be put in place before this would be practical.

Removing the requirement for such a diagnosis takes all safeguards away from vulnerable people. Making life-changing decision in as little as 3 months, could lead to or exacerbate mental health problems at a later stage. Young people especially experience many identity issues, and making irrevocable decisions too quickly could lead to life-long problems. It also suggests that diversity in gender identity is unacceptable, and has to be rapidly resolved by a binary decision which embraces gender stereotypes rather than challenges them.

The proposed removal of the need for a diagnosis of gender dysphoria means that the only criterion for eligibility to apply for a GRC is having 'live[d] in their acquired gender for at least 3 months.' This makes it essential that the legislation describes and proscribes what living in an acquired gender means. There is no mention of this in the current proposals. There needs to be a clear, specific, evidence-based definition that states exactly what steps someone must take in order to fully demonstrate a person has lived in an acquired gender,

It is unclear why there needs to be such a short timescale for someone to legally transition. The proposal itself states that it is possible to 'live in an acquired gender' without a GRC (indeed it is mandatory for making the application.) It is already possible to obtain a passport and driving licence in any name and gender someone chooses. It is possible to wear whatever clothes and call oneself whatever name someone chooses. It is possible to obtain gender reassignment surgery and hormonal treatment without a GRC.

It appears that the only additional right conferred by the existence of a GRC is the right to access single-sex spaces. This is a concern for us as a provider of women-only safe space.

Our concerns in this area are compounded by the lack of clarity in this proposal in regard to the Equality Act single-sex provisions. , we believe the rights of women (and when appropriate men) to single-sex spaces need to be strengthened or reinforced through this legislation.

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.:

As above, the period is too short for real reflection, but also, how would this be evidenced and monitored? To prevent abuse of the system and ensure that sound professional advice is available a much longer period is needed . The current provisions for a GRA provide a suitable time scale for reflection and experience of living in an acquired gender and should not be devalued by a short timescale.

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.:

We note that the concurrent Scottish Sentencing Council's consultation on sentencing for young people is predicated on the ability of young people (under the age of 25) to make appropriate decisions. It states

“ The maturity of the young person.

Research has demonstrated that young people are not fully developed and may not have attained full maturity. They are generally more vulnerable to negative influences, such as peer pressure and exploitative relationships. They may therefore be less likely to make appropriate decisions and could find it more difficult to think about what may happen as the result of their actions..... They may take more risks. It is important for the judge to take this into account when deciding how much a young person should be held responsible for their actions....

- The capacity for change of the young person.

The character of a young person is not as fixed as the character of an older person. A young person who has committed a crime may have greater potential to change

- The best interests of the young person.

These should be considered in every case, and must be a primary consideration when the young person is under the age of 18, in accordance with the provisions of UNCRC. This requires the judge to take into account, for example, the young person's living environment; any adverse childhood experiences; and any physical and mental health issues.”

These comments are based on the most up to date research about maturity, brain development and the resulting capacity to make appropriate decisions. If they are, rightly, to be applied to young people who have committed a criminal offence, they must also surely be applied to anybody wishing to make a decision that will have a lifelong impact on their social and physical relationships, socialisation, vulnerability etc.

Early transition is potentially problematic, even more so with the short timescale allowed by this proposed change. Education is needed that encourages all young people to look beyond gender stereotypes, and consider the complex relationships between sex, gender, sexuality, power, inequality and discrimination.

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

Not Answered

If yes, please outline these comments.:

Gender is a social construct, and as such does not rely solely upon self-perception, but also on the views and experiences of wider society. Self-declaration of gender in its proposed form in fact allows individuals to determine their legal sex. A small, but nevertheless significant, minority may exploit this situation. The proposals make no acknowledgement of this nor do they provide safeguards for women's current rights.

Overall the proposals undermine rights relating to the protected characteristic of sex. This is particularly problematic in the provision of single-sex services, and adversely affects the rights of those who wish to receive services from someone of their own sex.

As an organisation working to empower women the AWF aims to create a safe single-sex space to enable women to start to overcome some of the issues we face because of the constraints, expectations, socialisation and limitations imposed on us as a result of being brought up female. We know we need room to

explore our own self-development and power away from the male gaze and unaffected by the pervasive sense of male-entitlement that is always a factor in mixed spaces.

Given the continued existence of power imbalances between men and women in society, women are likely to be particularly affected by a loss of trust in same-sex provisions and facilities. At its lowest level of impact, self-declaration means a loss of choice and opportunities for women; at worst, it puts women at risk of sex-based violence.

There needs to be clear provision and guidance to ensure that males are not allowed to access spaces where women's safety is potentially going to be compromised by their presence, especially when they continue to have male bodies even if they are legal recognised as a woman – eg in women's prisons, domestic violence refuges, rape crisis centres, (all of which are disproportionately inhabited by extremely vulnerable women) public or school toilets, dormitory accommodation for example. Anything less than this will fail to address the concerns that some dangerous and predatory males might exploit the provisions to gain unsupervised and unrestricted access to women and girls.

Without such provision and guidance women only spaces and services, including medical provision, intimate services, sport and leisure activities and employment services may no longer offer an effective service to women. This will have an adverse impact on a range of clients and services such as:

- Women and men who seek same-sex only spaces for religious reasons
- Women survivors of abuse who seek women-only safe spaces
- Lesbians and other women who feel unsafe socializing in mixed spaces
- Employment services which seek to promote gender equality for women in male-dominated sectors and vice-versa
- Women (and men) who seek same-sex providers of intimate or medical services

It is difficult to see how the current rights of people seeking same-sex services can be maintained if access to same-sex services can be gained by self-identification alone. These issues need to be addressed, and the provision of single-sex services clarified and guaranteed before any change in legislation.

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

Yes

If yes, please outline these comments.:

The impact assessments seem to ignore the tension between sex as a protected characteristic under the Equality Act 2010, and equality issues for trans people as expressed in the proposed Bill. Clear guidance is needed that preserves the rights given by sex as a protected characteristic. An effective way to do this is to retain the current legislative framework and improve the guidance on the provision of same sex services and rights.

However, this is not to say that trans people should be denied fair and equal treatment, and the impacts covered in annex H are important to consider. They can be moved forward without adversely affecting the rights of others. The provisions of the proposed legislation are not needed to provide a safer and fairer environment for trans people and at the same time protect other's rights.

Allowing people to self-define their gender and having that used in all categorisations makes it impossible to collect sex-disaggregated data. The provisions in the draft Bill will make it extremely easy to change the way someone's gender is recorded. Therefore if this legislation is enacted there needs to be a clear legal

distinction made between the concepts of biological sex, and gender, and an explicit provision for the accurate recording of sex as well as gender in any data collection exercises.