

Edinburgh Rape Crisis Centre

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.:

Edinburgh Rape Crisis Centre (ERCC) views this proposed 3 month time period as arbitrary and unnecessary: there is no evidence to suggest it is required or that it either enhances the rights of trans people or limits the rights of any other group. Having to provide evidence of this 3 month period prior to applying for a GRC puts an unnecessary burden on trans people, and potentially puts them at risk: having to live in their acquired gender without legal recognition for that gender could jeopardise employment, housing and other access to other services. It also runs contrary to the Council of Europe Resolution 2048 that calls for the development of “quick, transparent and accessible procedures, based on self-determination, for changing the name and registered sex of transgender people on birth 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.:

Similarly to Question 1, ERCC does not support the implementation of a 3 month reflection period: this delay is arbitrary and there is no evidence to suggest it is necessary. We are of the view that trans people do a significant amount of reflection and soul searching before starting any transition process, so further reflection after application for a GRC is unnecessarily burdensome. The legal, social and personal implications of the legal change in status are well expressed and experienced in the GRC application process (including the role of the Registrar), so no further reflection is required.

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.:

ERCC supports the proposal to reduce the age at which people can apply for a gender recognition certificate from 18 to 16 to allow younger people to benefit from these reforms. This would bring gender recognition in line with other legislation: 16 and 17 year olds have the right to marry, gain employment, vote and be held

legally responsible for their actions. We consider that 16 and 17 year olds should also have the right to change their birth certificate to match who they are. This proposal would contribute positively to the ongoing work to further the rights of young people.

We also believe that trans children and young people under the age of 16 should be able to update their birth certificates with parental or guardian support. This would align with their existing ability to change their sex on school records, medical records, and passports. Being able to change their birth certificates would contribute to the protection of their privacy.

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

Yes

If yes, please outline these comments.:

ERCC strongly supports a system of statutory declaration whereby a trans person makes a formal and legally binding declaration confirming that they are living in their acquired gender and intend to do so for the rest of their life. The de-medicalisation of the process is very much welcomed, as is the removal of the Gender Recognition Panels. Making the process of legal gender recognition more straightforward will relieve a lot of stress for many trans people, thus improving their overall wellbeing. It will also reduce the risks that trans people currently face when living in their acquired gender without legal recognition, especially those around accessing appropriate services (housing, healthcare, etc.) and employment.

Although this Bill represents an improvement in trans people's rights, it does not make any provisions to offer legal gender recognition to non-binary people. This means that non-binary will still not be legally recognised, which will leave them with inconsistencies in important documents as well as a lack of recognition in day to day life. ERCC calls on the Scottish Government to include provisions for non-binary people so that every part of the trans community can benefit from this legislative change, and that all LGBTQI+ people are legally recognised and treated with dignity and respect.

ERCC does not support the introduction of additional exceptions to Section 22 of the Gender Recognition Act. Trans people should have the same rights as others to ensure their privacy is respected, and additional exceptions could undermine the upholding of their privacy. There is no justification to give, for example, HR staff the ability to out trans applicants in a recruitment process: this, in our view, would be a fundamental breach of the right to privacy, but could also enable unchecked discrimination against trans applicants.

ERCC is of the view that greater clarity is required around the 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. It must not be possible for people to make frivolous applications to the sheriff to revoke a trans person's GRC. Such a proposal means that an unsupportive family member or an ex-partner, for example, could use the process to undermine, distress and

bully a trans person. So, any process by which an individual could apply to have another person's GRC revoked must be sensible and limited in who would be considered "a person who has an interest in a gender recognition certificate".

ERCC welcomes the Scottish Government's position that anyone with a birth or adoption certificate from Scotland, or anyone who is ordinarily resident in Scotland, will be able to apply for a Gender Recognition Certificate. However, we are of the view that asylum seekers and refugees and others without current/valid leave to remain who are in Scotland might also benefit from having this provision. We urge the Scottish Government to ensure that no one is unfairly blocked from being able to apply for a GRC.

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

Yes

If yes, please outline these comments.:

ERCC is of the view that the Gender Recognition Reform (Scotland) Bill will not have a detrimental impact on anyone else's rights. It is clear to us that the Bill is restricted to the process by which trans people's birth certificates are changed, what impacts the level of privacy they are entitled to, and how they are recognised after death. There is no change to the Equality Act 2010, and the proposed Bill does not affect access to single-sex spaces and facilities, such as toilets, changing rooms, and women-only services.

ERCC has been trans-inclusive – on the basis of self-identification – for more than 10 years, and we have never experienced any issues as a result of this, other than abuse, harassment and transphobic attacks because of our trans-inclusive status. In our experience, our self-declaration practice has never been misused or exploited and we have no concerns that it will begin to be with the introduction of self-declaration legislation. Our centre currently have women's only times and spaces and we recognise that trans women - and trans women on the basis of self-declaration - are women, and are therefore included in those spaces. The safety of our spaces is dependent on our routine risk assessment, practice and policy, and not on the identities of the people who are in them.

The changes proposed in this Bill will have no negative impact on our ability to support the survivors of rape and sexual assault. Indeed, they will likely make it easier for trans people to seek support for sexual violence, as they will reduce the burden on trans people, thus reducing one area of complexity that trans survivors will have to deal with.

Recognising trans people on a self-declaration basis is key to our feminist principles in which we support people of marginalised gender identity to have full autonomy over their rights, identities and bodies. We believe recognising trans people with a simple, timely self-declaration process will increase their safety, privacy and dignity and fully support this.