

## **The Educational Institute of Scotland**

EIS response to the Scottish Government Consultation on the Gender Recognition Reform (Scotland) Bill

The Educational Institute of Scotland (EIS), the largest teaching union in Scotland, representing more than 60,000 members across all sectors of Education, welcomes the opportunity to offer comment on the second iteration of the Gender Recognition (Reform) Bill. Our comments respond to the five questions as outlined below.

**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?**

**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?**

Consistent with existing EIS policy as reflected in our original consultation response to the proposed changes to the GRC process, we believe these timeframes of delay are unnecessary. Changing registered gender is nothing that people do lightly, and this provision would imply that applicants are likely to treat it as less of a considered and difficult decision and process than is the case. We would have concerns that introducing such a delay sends a signal of distrust towards trans people.

A person seeking recognition for their acquired gender is not something done on a whim, and the decision to make such an application, will, in many cases have been arrived at after significant mental and emotional struggle, both with self and others. Some individuals may be happy to commit to this stipulation in terms of delay, but other individuals might find it problematic.

If the intention of introducing such a delay is intended to be supportive of applicants, we would suggest that support could be provided differently and without impeding a person's application for a GRC. In particular, the EIS would wish to see young people who are students in schools, colleges and universities and who are considering making an application for a GRC, have access to all of the supports that they may need from Third Sector organisations who are committed to trans equality and which specialise in transgender issues. With this in mind, it is important that the Scottish Government provides adequate funding to such organisations to enable such provision of support to transgender young people at what is likely to be a very difficult time in which their mental and emotional health may be under significant strain.

Extensive support for educational institutions and professionals is also required. It could cause difficulties for teachers if someone is in the process of changing their gender expression and applying for GRA, and teaching staff are not made aware of this and inadvertently offend them, for example by using the wrong name or pronoun.

Schools, colleges and universities will need to have robust policy and practice on this, which is compliant with the Equality Act and the Public Sector Equality Duty, in

particular supporting young people to live within their acquired gender, and responding appropriately to any issues around bullying and harassment, etc.

Teachers and lecturers should be informed of new pronouns to be used as soon as the young person feels comfortable with this and be aware that they should use the designated pronouns regardless of whether the learner has a GRC. This, rather than a matter of discretion, is a key way in which schools, colleges and universities can realise their duty of care towards transgender learners.

Indeed, at present, many young transgender people, including those below the age of 16, are being well supported within their places of learning, for example, in relation to making changes to their names and gender in records and documentation associated with presentation for SQA qualifications. The SQA provides clear guidance to candidates in terms of the process in registering a change of candidate details relating to gender identity with them.

It is crucial for teachers and lecturers to have access to meaningful professional learning in all of these areas. Scottish Government and Local Authorities must ensure that this is made available as soon as possible in advance of the legislation as proposed coming into force and ongoing thereafter, in order to ensure that teachers and lecturers, and thereby transgender learners, are firmly supported in all related matters.

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

We agree that this change should be made.

The EIS has policy that recognises children and young people's capacity to be involved in decisions about their lives, in line with a children's rights approach and the 'Included' element of the SHANARRI principles. We support, for example, children being involved in decisions about their ASN provision, or about taking part in religious observance, from about the age 12 and sometimes younger. We also recognise that young people aged 16 and 17 can get married and vote in some elections. In those circumstances, it seems that young people aged 16/17 with capacity should be supported to have their gender identity registered, if that is important to them. It is important also to be mindful of the different stages of cognitive and emotional development that individual 16 and 17 year olds will reach by the time they acquire these ages.

With this in mind, it is essential that transgender young people in seeking to make an application for a GRC are supported as necessary to understand their rights and how to realise them in this regard, as well as being provided the emotional support that may be needed in the course of reaching such a significant decision, making the application and thereafter managing the impacts of the outcome of the application. The role of specialist Third Sector organisations will be crucial in giving this support, which is why Scottish Government must commit to long-term funding to them for this purpose.

We believe that there will be serious mental health implications for young transgender people if they are denied this right. In schools, young people will still identify as transgender whether or not they have a GRC, and we believe it is critical not to leave the acknowledgement of their gender identity to the discretion of Head teachers.

A discretionary system is less likely to ensure that the gender expressions of all young transgender people are acknowledged and respected in practice universally. It would create grey areas, and indeed would place significant and inappropriate responsibility on Head Teachers to make decisions which will impact fundamentally on a young person's self-sense of self, self-esteem, and their mental and emotional health. In order to avoid the significant stress and risk to young people and their families that is likely to emerge in some cases if the matter is left to discretion, for example, young people having to change schools (most likely during their senior phase, with all the implications this brings for assessments and qualifications) or leaving school prematurely in order to protect their wellbeing, we believe it would be preferable to create a right which will then mean our members, being legally obliged to support young trans people, would expect the appropriate level of support, training and investment in pastoral care from their local authority, college or university to enable them to provide the best possible educational experience and pastoral care for transgender learners.

The need for professional learning among teachers and college lecturers is substantial. A 2018 EIS member survey found that:

- opportunities to take part in LGBT+ specific training offered by a local authority or college are provided 'regularly' (i.e. at least once a year) for only 8% of members.
- such training was offered 'rarely' (16%) or 'never' (26%)
- 68% of members had not accessed any training on LGBT+ issues in the previous 5 years; and of those who had been to training, only a fifth (21%) had covered challenging transphobia.

Barriers to essential professional learning in this area such as budget cuts, teacher shortages and the cover crisis will need to be overcome. An extensive program of training before the reform becomes law is necessary. If the resources to implement an effective programme of relevant professional learning are not forthcoming on a scale that practitioners deem sufficient, then there is a danger that the experience of some young people could be harmful.

Our members would also expect local authority support where a young transgender person needed additional support and multi-agency involvement, e.g. a Child's Plan meeting. Currently these meetings, whilst important in ensuring young people's wellbeing needs are addressed, and being so require a large amount of time to be dedicated to them, and are significant generators of workload in the context of the teaching staff who are involved in these meetings habitually working beyond the hours of their contracts in order to fulfil the full range of their duties.

The EIS is fully supportive of transgender rights and equality. The EIS is also fully supportive of the rights of women and girls and is committed to campaigning for

gender equality for women and girls as learners, as workers and as members of our society more widely.

We would wish to point out that Scotland is a patriarchal society in which there is still persistent sex stereotyping, and sex discrimination. Non-conformity with gender roles is still perceived as problematic by some, and children are still mocked for non-conformity, as we point out in our 'Get it Right for Girls' guidance. In this climate it will be important for educational establishments to continue making concerted efforts to challenge sex stereotypes, sexist attitudes and harmful gendered norms, to ensure that children and young people never feel pressured into legally changing their gender because they do not conform with societal expectations of them.

Children who do experience severe gender dysphoria will need appropriate support. Teachers who work with these children will need professional learning about gender dysphoria, and support to meet their needs, as discussed above. Teachers are worried about doing or saying 'the wrong thing'. The continuation of efforts to tackle sexism needs to sit alongside the extension of rights and support for transgender young people. We think there needs to be further discussion, deliberation and consultation around how this will be achieved, with a view to clear guidance being provided to schools, colleges and universities on the associated matters. Additionally, teachers supporting under 16s who identify as transgender at present, need more help to meet those children's needs, including appropriate professional learning.

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

The EIS supports extension of recognition to non-binary people, taking an incremental approach. People who do not identify as men or women should have their gender identity recognised. The possible implications for young people's mental health if they are not allowed to be legally recognised as non-binary should be taken into account, particularly at a time when there is growing awareness of the importance of mental health and wellbeing, when the number of children with mental health needs is rising and the service provision to meet those needs is inadequate.

We welcome the intention of the Scottish Government to set up a working group to consider possible changes to procedures and practice in relation to non-binary people. There will be wider implications for schools of moving towards a culture of recognising different gender identities. Schools in particular have for many years been used to gendered language along binary lines such as 'boys and girls' and teachers being referred to as 'Miss' and 'Sir'. Professional learning about the issues this can give rise to is very much needed and wanted by EIS members.

There are substantial challenges, also, facing non-binary teachers; and schools, colleges and universities need to have clear policies to support all LGBT+ staff. It will remain important for organisations, including schools, colleges and universities, to keep records based on sex, as women and girls in particular still experience sex based oppressions, deriving from their biological functions such as being able to menstruate, become pregnant, give birth, and experience the menopause. It is important, also, that such organisations regularly analyse, act upon and report on the

data that they gather in relation to sex, in line with the requirements of the Public Sector Equality Duty and in the interests of ensuring equality for all within education.

The EIS disagrees that the application process should not be open to everyone. In line with the EIS position on welcoming refugees to Scotland, people who have become refugees or asylum seekers because of having experienced persecution on the grounds of their sexual orientation or gender identity in their home country should be able to use the Scottish system to enable them to move forward in their chosen identity. A system which was based on country of birth would exclude such people, potentially further traumatising them. Opening this system to everybody would recognise the importance of international solidarity with people who don't have these rights.

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

The EIS supports the proposed changes to the GRA, to improve the process of application for a GRC for trans people. We are concerned that the Impact Assessments do not reflect that during the delay in taking forward the changes, a debate has flourished which may have created a hostile environment for many young trans people who are exploring their identities and coming out for the first time, and for women and girls who continue to experience oppressions and inequalities.

It is essential that in seeking to take forward the legislation that the Scottish Government and the Scottish Parliament takes steps to remove the toxicity which has surrounded much of the associated debate thus far and to prevent future hostilities. Unless there is equality for all, none will have it.