

Family Education Trust

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.:

When the Gender Recognition Act was passed in 2004 safeguards were included in the legislation to ensure that gender recognition would 'remain a serious step that could not be undertaken lightly'. One of these safeguards was the requirement that applicants for a GRC must have lived in their acquired gender for at least two years.

This provision is an acknowledgment of the seriousness of the decision that the person is making. We are concerned that reducing this time period to a mere three months does not adequately reflect the serious nature of applying for a GRC and we do not accept the Scottish Government's claim that under its proposals 'obtaining legal gender recognition will remain a serious step which could not be undertaken lightly' (para 5.59).

We are also concerned that permitting applications for a GRC after such a short period of time could be harmful for young people who are confused about their gender identity. Gender dysphoric feelings, especially among the young and vulnerable, are often fleeting. Among young people who experience gender dysphoria only a minority persist with these feelings in to adulthood. According to the American Psychiatric Association, in biological males, persistence has ranged from 2.2 to 30 per cent, and in biological females, from 12 to 50 per cent.(1) NHS England cites research showing that only 12-27 per cent of children who experience gender dysphoric feelings continue with them into adulthood.(2)

Notes

1. American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, DSM-5, 5th edition, 2013, 302.85, Gender Dysphoria in Adolescents and Adults, p.455.

2. NHS England, 'NHS Standard Contract For Gender Identity Development Service For Children And Adolescents', 2015.

<https://www.england.nhs.uk/wp-content/uploads/2017/04/gender-development-service-children-adolescents.pdf>

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.:

When the Gender Recognition Act was passed in 2004 safeguards were included in the legislation to ensure that gender recognition would 'remain a serious step that could not be undertaken lightly'. One of these safeguards was the requirement that applicants for a GRC must have lived in their acquired gender for at least two years.

This provision is an acknowledgment of the seriousness of the decision that the person is making. We are concerned that reducing this time period to a mere three months does not adequately reflect the serious nature of applying for a GRC and we do not accept the Scottish Government's claim that under its proposals 'obtaining legal gender recognition will remain a serious step which could not be undertaken lightly' (para 5.59).

We are also concerned that permitting applications for a GRC after such a short period of time could be harmful for young people who are confused about their gender identity. Gender dysphoric feelings, especially among the young and vulnerable, are often fleeting. Among young people who experience gender dysphoria only a minority persist with these feelings into adulthood. According to the American Psychiatric Association, in biological males, persistence has ranged from 2.2 to 30 per cent, and in biological females, from 12 to 50 per cent. (1) NHS England cites research showing that only 12-27 per cent of children who experience gender dysphoric feelings continue with them into adulthood.(2)

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1. American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, DSM-5, 5th edition, 2013, 302.85, Gender Dysphoria in Adolescents and Adults, p.455.
2. NHS England, 'NHS Standard Contract For Gender Identity Development Service For Children And Adolescents', 2015.
<https://www.england.nhs.uk/wp-content/uploads/2017/04/gender-development-service-children-adolescents.pdf>

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.:

A study by two scholars from Johns Hopkins University School of Medicine found that only a minority of children who experience cross-gender identification will continue to do so into adolescence or adulthood. (1) According to the American Psychiatric Association, rates of persistence of gender dysphoria from childhood into adulthood vary. In biological males, persistence has ranged from 2 to 30 percent. In biological females, from 12 to 50 percent. (2)

The evidence shows gender dysphoria in the young to be a transitory phenomenon. The Gender Identity Development Service of the Portman clinic in London, for example, has reported that only 12-27 per cent of children who experience gender

dysphoric feelings continue with them into adulthood. (3) A Dutch study puts the number at 15 per cent. (4) A study from the University of Toronto of 139 boys with gender identity disorder found that only 17 of the boys (12.2 per cent) were found to have persistent gender dysphoria. (5) The data clearly demonstrates that young people who identify as a different gender to their birth sex are by no means guaranteed to persist in that identification.

The Draft Child Rights and Wellbeing Impact Assessment (Annex G) notes that the UK Government's LGBT Survey found that 16 and 17 year-olds were disproportionately represented among those identifying as transgender at 15.5 per cent of the 6,910 respondents. This suggests that teenagers are particularly vulnerable to confusion about their gender identity. It would therefore be irresponsible to reduce the minimum age at which a person can apply for legal recognition.

Notes

1. Lawrence S. Mayer and Paul R. McHugh, *Sexuality and Gender: Findings from the Biological, Psychological, and Social Sciences*, The New Atlantis, Number 50, Fall 2016.
2. American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders, DSM-5*, 5th edition, 2013, 302.85, Gender Dysphoria in Adolescents and Adults, p.455.
3. NHS England, 'NHS Standard Contract For Gender Identity Development Service For Children And Adolescents', 2015, <https://www.england.nhs.uk/wp-content/uploads/2017/04/gender-development-service-children-adolescents.pdf>
4. Thomas D. Steensma et al, 'Gender identity development in adolescence', *Hormones and Behavior* 64 (2013) 288–297.
5. Devita Singh, *A Follow-Up Study Of Boys With Gender Identity Disorder*, University of Toronto, 2012. https://tspace.library.utoronto.ca/bitstream/1807/34926/1/Singh_Devita_201211_PhD_Thesis.pdf

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

Yes

If yes, please outline these comments.:

We are deeply disturbed by the provisions in the draft Bill that remove the medical requirements mandated by the 2004 Act for obtaining a GRC and by the proposal to remove the need for the applicant to be assessed by a Gender Recognition Panel. These provide essential safeguards and are designed to prevent abuse of the process. Their removal would lead to unnecessary chaos and confusion.

While a small minority of individuals suffer from serious gender identity issues, removing the requirement to produce medical evidence of gender dysphoria opens the door to a person switching genders on little more than a personal whim. Such a prospect would be damaging and confusing for both the person involved and those

around them. It would also create an unnecessary bureaucratic burden in terms of the changes that would need to be made to birth certificates, driving licences and other identity documents. In some cases, it could endanger the health of those concerned, since genetic females registered as men may no longer be called for cervical smears or breast screening.

We are not persuaded that the government's plans would ultimately benefit those who suffer from gender dysphoria or are otherwise confused about their gender. A study by two scholars from Johns Hopkins University School of Medicine found that:

- The hypothesis that gender identity is an innate, fixed property of human beings that is independent of biological sex— that a person might be 'a man trapped in a woman's body' or 'a woman trapped in a man's body'—is not supported by scientific evidence.
- Members of the transgender population are also at higher risk of a variety of mental health problems compared to members of the non-transgender population. Among transgender individuals in the United States, the rate of lifetime suicide attempts across all ages is estimated at 41 per cent, compared to under 5 per cent in the overall US population. (1)

We are concerned that the Scottish Government's plans, if implemented, would only exacerbate serious mental health problems in the individuals concerned and cause harm to the very people the proposals are intended to help.

Note

1. Lawrence S. Mayer and Paul R. McHugh, *Sexuality and Gender: Findings from the Biological, Psychological, and Social Sciences*, The New Atlantis, Number 50, Fall 2016.

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

Yes

If yes, please outline these comments.:

Given the evidence we have provided above regarding the likely adverse consequences of the Scottish Government's plans, we question whether the significant costs involved are justified.

We also question the appeal made to the ECHR (in Annex J) and the UNCRC (in Annex G) to justify its proposals, as if either of these conventions requires legislation for gender recognition. It is particularly spurious to claim that one of the principal reasons for the proposed legislation is to comply with the European Convention on Human Rights. When the Convention was framed in the aftermath of the Second World War, no one would ever have conceived that it might be employed as a tool for the promotion of transgender ideology.

At various points during the impact assessments the Scottish Government itself acknowledges the health concerns experienced by trans people. For example, the Draft Child Rights and Wellbeing Impact Assessment (Annex G) states: 'There is

evidence that trans young people are more than twice as likely as non-trans people to be diagnosed with depression (50.6% compared to 20.6%) and with anxiety (26.7% compared to 10%).' And the Draft Equality Impact Assessment Record (Annex J) notes: 'In a survey of 889 trans people in 2011, 58% (of the sample) indicated that they had a disability or chronic health condition.'

We are therefore concerned that the proposed legislation would have the potential to contribute to the exploitation of vulnerable young people, especially those with disabilities.

We are additionally concerned by the Scottish Government's failure to take seriously the dangers posed to women by the transgender agenda and its denial of any risk to women-only spaces, especially women's prisons, presented by its proposed legislation.

For example, ██████████, a transgender double rapist who had been convicted under her previous male identity, was transferred to a female prison after a sex change but was subsequently segregated after making 'inappropriate advances' to female prisoners. ██████████, convicted of murder as a man, has twice been allowed to transfer to women's units before being moved out after having sex with female inmates. (1)

██████████, born male and retaining male genitalia but identifying as female, has confessed to sexually assaulting four women while serving time ██████████. Despite having a previous conviction for sex offences, prison authorities followed government recommendations that trans prisoners be housed in prisons that match their expressed gender. (2)

A study by the charity, Fair Play for Women, found that 'Half of all trans-identifying males (transwomen) in prison are convicted sex offenders or dangerous category A prisoners'. (3)

The British Psychological Society (BPS) has noted cases of male sex offenders identifying themselves as female in order to enter women's prisons. The BPS notes: '[P]sychologists working with forensic patients are aware of a number of cases where men convicted of sex crimes have falsely claimed to be transgender females for a number of reasons:

- As a means of demonstrating reduced risk and so gaining parole;
- As a means of explaining their sex offending aside from sexual gratification (e.g. wanting to 'examine' young females);
- Or as a means of separating their sex offending self (male) from their future self (female).
- In rare cases it has been thought that the person is seeking better access to females and young children through presenting in an apparently female way.' (4)

The Fair Play for Women study also notes 80-95 per cent of trans-identifying people in the UK have never undergone genital reconstruction surgery, making the infiltration of women's prisons by male sex offenders a very real risk if the obtaining of a GRC becomes as easy as the Scottish Government is proposing. The charity

states: 'If self-declaration of gender becomes law, any trans-identifying male prisoner will be able to obtain a GRC and will automatically become eligible for transfer to a women's prison.' (5) This, they conclude, 'represents a serious risk to the safety, privacy, and dignity of women in prison'. (6)

We also strongly dispute the Scottish Government's claim that its proposed legislation would have no impact on discrimination against people based on religion and belief. The experience of Dr David Mackereth provides an example of discrimination against someone with a religious belief that does not accommodate transgenderism. Dr Mackereth lost his job with the Department for Work and Pensions for his refusal in principle to use the preferred pronouns of a transgender person's assumed identity. An employment tribunal panel subsequently ruled against Dr Mackereth stating that: '[L]ack of belief in transgenderism and conscientious objection to transgenderism in our judgment are incompatible with human dignity and conflict with the fundamental rights of others.' (7)

We are concerned that if the Scottish Government proceeds with the plans outlined in the current consultation such cases of discrimination would increase.

Notes

1. Andrew Gilligan, 'Up to half of trans inmates may be sex offenders', Sunday Times, 19 November 2017, <https://www.thetimes.co.uk/article/up-to-half-of-trans-inmates-may-be-sex-offenders-26rz2crhs>
2. Janice Turner, 'Trans rapists are a danger in women's jails', The Times, 8 September 2018, <https://www.thetimes.co.uk/article/trans-rapists-are-a-danger-in-women-s-jails-5vhgh57pt>
3. Nicola Williams, Investigation into the number of trans-identifying males in prison in England and Wales and their offender profiles, Fair Play for Women, October 2017, <https://fairplayforwomen.com/transgender-prisoners/>
4. British Psychological Society response to the House of Commons Women and Equalities Committee, Transgender equality inquiry, August 2015, <https://www.bps.org.uk/sites/bps.org.uk/files/Policy/Policy%20-%20Files/BPS%20response%20to%20the%20Women%20and%20Equalities%20Committee%20inquiry%20into%5>. Nicola Williams, op. cit.
6. Ibid.
7. Mackereth v The Department for Work and Pensions, https://assets.publishing.service.gov.uk/media/5d9b0c8aed915d35cff2225d/Dr_David_Mackereth_v_The_Department_for_Work_and_Pensions_Advanced_Personnel_Management