

EDI Scotland

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.:

EDI Scotland opposes the proposal that applicants must live in their acquired gender for at least three months before applying for a GRC.

For the majority of the population, the sex on their birth certificate will match their current sex. However, for some trans and non-binary people this will not be the case. The requirement to live as your acquired gender for three months raises questions as to how this will be assessed and by whom. It adds an additional layer of bureaucracy to the process and reduces a person's agency to self-identify. There is also the risk that this requirement will rely on normative ideas about masculine and feminine behaviours/traits, which may force trans people to falsely adopt gendered behaviours in order to apply 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?

Yes

If yes, please outline these comments.:

EDI Scotland opposes the proposal that applicants must go through a period of reflection for at least three months before obtaining a GRC.

This arbitrary three month reflection period lessens the seriousness of a person's decision to apply for a GRC and implies that those who wish to obtain a GRC have not given the decision serious consideration.

In Scotland, the vast majority of a person's official documents — including passports, driving licenses, bank cards and degree certificates — can be changed without the requirement of a GRC or change to a person's birth certificate. The scope of the government's proposed reform of the GRA is limited but will ensure this process is appropriately robust and inclusive, removing current barriers that are overly bureaucratic, invasive and humiliating for trans people.

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.:

EDI Scotland believes that trans people should be able to align how they live and how they are perceived by others with how they are represented in official documents, including their birth certificate. This should be made possible to people aged 16 to 18.

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

Yes

If yes, please outline these comments.:

EDI Scotland provides research and data consultancy on issues related to equality, diversity and inclusion in Scotland. Data, research and evidence are powerful tools in the fight against injustice and inequality - EDI Scotland therefore promotes robust research with a radical edge and works with organisations (big and small) to make Scotland a fairer place for everyone. EDI Scotland is directed by Dr Kevin Guyan, a mixed methods researcher based in Edinburgh with over nine years research experience across academia, higher education and the voluntary sector.

Following review of the provisions of the draft Bill, EDI Scotland wishes to note the following:

Robust and inclusive data

How we collect sex and gender data is vital to help address many of society's inequalities. Whether it's the use of transport networks, perceptions of crime or educational attainment, this data can inform the diagnosis of a problem and determine the best actions in response.

There are situations where information related to a person's 'biological sex' (categorisation as male or female according to a mixture of biological factors) is important, such as particular health screenings (cervical, prostate etc) and exposure to dangerous chemicals. However, in the vast majority of cases, the value of data lies in what it can tell us about how identity groups fit within wider structures that are most often gendered, racialised and in-built with heteronormative assumptions about ability, class, nationality and other identity characteristics.

Whether you are advantaged or disadvantaged by these structures often has little to do with biology but a lot to do with the meanings society has attached to markers of difference, whether this be skin colour, sex characteristics, physical or mental ability, language or a range of other reasons.

EDI Scotland possesses strong expertise in the collection, analysis and presentation of equality, diversity and inclusion data and has found no evidence to show that reform of the GRA will negatively impact the work of data users and analysts. In support of this position, 53 researchers, academics, practitioners and data users wrote to the Scottish Parliament's Culture, Tourism, Europe and External Affairs Committee on 20 September 2019 to support National Records of Scotland's recommendation that trans people should continue to answer the sex question in the 2021 census in line with how they live. Although this letter focused on the design of

the 2021 census, statements expressed related to data highlight how reform of the GRA will not negatively impact our ability to collect or use accurate, meaningful and robust data.

Self-identification

Self-identification is the assigning of a particular characteristic or categorisation to oneself. This differs from situations where a person assigns an identity to another person.

EDI Scotland wishes to address misinformation being circulated about self-identification. It is current practice for people to self-identify their identity characteristics in almost all areas of everyday life; this relates to a person's sex and gender, as well as all other identity characteristics including ethnicity, religion and sexual orientation.

For example, respondents currently self-identify for all questions in Scotland's census related to identity characteristics. In other words, there is no requirement to provide evidence of your identity nor does anyone check. It is assumed that the person completing the form will know best. Where one person completes the census on behalf of a household, they are requested to ask others in the household how they would answer these questions.

In fact, for many identities asked about in the census, it is not really possible to provide evidence that you belong to a particular identity group. For example, how would someone prove to a census official their religion, ethnicity or sexual orientation? The inability to provide proof doesn't make these identities any less meaningful than identities that come with legal documentation (for example, someone who is married or someone who has UK citizenship).

The current focus on self-identification and reform of the GRA is intended to whip-up fear about a practice that has always existed. Furthermore, the focus on self-identification for sex and gender is nonsensical when the same approach equally applies to all other identity characteristics, including ethnicity, religion and sexual orientation.

Non-binary identities

EDI Scotland's research engages with many participants that do not exclusively identify as male or female. Although not always the case, this is particularly true in research projects that involve younger people. EDI Scotland requests that the Bill includes non-binary people so that they are recognised and valued, and so that future work can be undertaken to address challenges they might face.

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

No

If yes, please outline these comments.: