

Scottish Child Law 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.:

We broadly support the move to shorten the timeframe applicants should live in their chosen gender. However, we would note for many children and young people, the ability to live in the acquired gender, for any period of time, will be linked to practicalities and to the support of those caring and looking after them. We would hope the legislation would recognise those young people may be very clear on their gender identity but be unable to fully actualise that due to their circumstances.

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.:

We welcome the reduction of the required period of two years. While we understand the reason for the suggested 3-month reflection period, the experience of groups we have consulted with indicates young people would have considered their gender identity very seriously, in all likelihood for much longer than the proposed three-month period. That said, the reduction from 2 years to (a total of) 6 months reflects the SG's acceptance that the current period is too long marks a substantial recognition of the views of those persons awaiting a GRC.

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

Don't know

If you wish, please give reasons for your view.:

the answers: yes , no, I don't know - do not reflect our views.

As a matter of law we don't believe the Bill should refer to a specific age at which a person should be able to apply for a gender recognition certificate.

The Age of Legal Capacity (Scotland) Act 1991 specifies that the relevant criteria for decision making is whether the individual has capacity.

Being granted a gender recognition certificate does not fall within section 2(4) of the Age of Legal Capacity (S) Act 1991 as it is not a "surgical, medical or dental

procedure or treatment”, so we cannot rely on the 1991 Act to substantiate our position. However, given that, generally, in Scots law, a child of 12 and over is presumed to have the capacity to make, or to have a say, in decisions that affect him, her or them, perhaps we should support the removal of age 16, but support a capacity assessment. We would support such a capacity test where the applicant is a child.

In the case of application for a gender recognition certificate, the question is therefore whether the applicant is competent to make the decision. They must be able to understand the consequences of the decision and be able to show relevant judgement.

As a general point, the desire to go through gender transition is not per se. an indication of any form of disorder. Whilst some transgender people may suffer from mental health conditions, including gender dysphoria, unless those conditions remove their capacity to make decisions we don't believe there should be further barriers in place – in line with any other statutory declaration.

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

Yes

If yes, please outline these comments.:

Whilst the Bill recognises some of the issues faced by the transgender community, the focus is still on binary definitions of gender. More and more young people don't necessarily identify as a single gender, preferring to be considered as non-binary, gender fluid, or a number of other definitions. These identities add complexity to the discourse, but are reflective that many people consider gender identity within a spectrum rather than two more clear cut poles. We would hope the final Bill will make better effort to reflect the needs of those who identify as non-binary to have equal recognition in the Bill.

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

No

If yes, please outline these comments.: