

UNISON SCOTLAND

Question 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?

It is important that the new provisions reflect the accepted rationale behind the need for reform. Not only is the two year process arbitrarily long, complex and medicalised, it stigmatises trans people and acts as a disincentive to applications.

Reform enables Scotland to move to a simple administrative process based on self-determination in line with best practice in other countries.

The draft Bill currently proposes that a gender recognition certificate will only be granted if the applicant states that they have been living in their acquired gender for 3 months prior to the date of application and intend to continue to live in their acquired gender permanently. This risks replicating the difficulties of the existing system, albeit at a lower level of intrusion.

It is quite common for employers to seek to make possession of a GRC a condition of change of name and records at work. This is of course not only wrong in law but creates an impossible circular situation for the worker concerned given the requirement to prove that they have lived and worked in line with their gender identity for any period of time before applying for GRC.

In effect the proposal carries a contradiction – acquire a GRC to adopt a trans identity at work, but risk being declined that GRC by not adopting a trans identity at work.

The issue of paperwork not matching up can lead to unnecessary and frustrating problems at work, particularly where managers are not fully supportive, including a heightened risk of breaches of privacy.

There is no evidence to suggest this arbitrary 3 month time period is necessary, and we do not support it. On the contrary the international evidence supports the case for simplicity.

Rather than retain an arbitrary ‘qualifying period’ UNISON supports an evidenced based approach that looks to the positive international experience of countries such as Ireland, Malta, Argentina and Norway. With self-determination, a trans person should not face unjustified pre-conditions to prove themselves as ‘trans enough’.

Question 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?

Our members tell us that they have spent a considerable amount of their life reflecting on their gender identity. As with any qualifying period, a period of reflection undermines self-determination and risks fuelling transphobia by institutionalising doubt about the right of trans people to be who they are, and live as they are.

The process of waiting for self-determination has avoidable negative consequences – waiting to come out, waiting for medical services, waiting for legal recognition. The new arrangements should always seek to avoid unnecessary and unjustifiable emotional, psychological or other adverse health impacts.

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

Yes

UNISON has long raised concerns over the lack of consistency in relation to the legal rights for young people when they reach the age of 16 and called for full adult rights and responsibilities. We welcome steps taken to date by the Scottish Government to address this, including the right to vote in Scottish elections at 16

Trans young people and their parents say the 18 year old qualifying age can be incredibly damaging, leading to young people being outed or mis-gendered. We believe 16 and 17 year-olds should have the same access to recognition as 18 year olds, helping those starting full-time work or further education to live in their true gender.

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

UNISON is acutely aware of the need to acknowledge non-binary gender identities. This is being raised by increasing numbers of our members. Non-binary UNISON members are slowly gaining the confidence to speak about how the failure to recognise their identities impacts on their work, their well-being and their lives. We very much welcome the ground breaking research conducted by Scottish Trans 'Non-binary people's experiences in the UK' (2015), which included a section on people's experiences at work. We conducted a smaller scale survey of UNISON non-binary members in the autumn of 2017, which very much reinforced the findings of the Scottish Trans survey.

UNISON would wish to see that the bill gave full legal recognition of non-binary identity, using the same system of self-declaration as for binary gender identities.

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

No