Bishops' Conference of 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.:

Please refer to answer to question 4.

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.:

Please refer to answer to question 4.

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.:

This is a very troubling aspect of the proposed changes. Allowing those under 18 years of age to legally change gender puts children and young people on a dangerous path towards irreversible medical experimentation.

The UN Convention on the Rights of the Child defines children as those under the age of 18 years.

There are good reasons for not allowing those under 18 years to have sex reassignment surgery or other irreversible elective interventions; given their level of maturity they need special protection, especially in a very important formative phase in their life. And for the same reason those under 18 should not be encouraged to make ostensibly permanent legal declarations on their gender. The Church is deeply concerned for the health and wellbeing of young people and is particularly troubled about the potential negative impact of permanent legal declarations which could lead to irreversible surgery in future or, at the very least, non-surgical interventions the long-term effects of which remain unclear.

Individuals under 18 years of age cannot buy cigarettes, buy alcohol in licensed premises or get a tattoo. Yet the Scottish Government is open to the possibility that these same young people have the maturity to make a permanent legal declaration on their gender which, as set out above, could lead to a decision to

undergo irreversible surgery or non-surgical interventions, with scant knowledge of what this means for their long-term health and wellbeing.

There are also concerns about the safety of puberty blockers: drugs given to young people in order to suppress their natural hormones. According to Michael Biggs, of the Department of Sociology at the University of Oxford (Tavistock's Experimentation with Puberty Blockers: Scrutinising the Evidence (2 March 2019)), the use of puberty blockers remains an "experimental treatment." Biggs also cites a NHS Health Research Authority research protocol (Early Pubertal Suppression in a Carefully Selected Group of Adolescents with Gender Identity Disorder, 4 November 2010, Research Ethics Committee number 10/H0713/79)) where it states: "it is not clear what the long term effects of early suppression may be on bone development, height, sex organ development, and body shape and their reversibility if treatment is stopped during pubertal development." Biggs goes on to quote Russell Viner, a paediatrician on the study team, who admitted: "if you suppress puberty for three years the bones do not get any stronger at a time when they should be, and we don't really know what suppressing puberty does to your brain development. We are dealing with unknowns." (Daily Mail, 25 February, 2016) Commenting on a more recent study in 2018 from the University College London Hospitals Paediatric Endocrine Clinic, [redacted], an endocrinologist in Idaho said: "puberty blockers profoundly inhibit normal bone density development and this should be of great concern to any practitioner using this medication." It is important to note that the term 'puberty blockers' though used here for ease of reference is actually an inaccurate term. The drugs used are 'off label' which means that they have not been officially approved for use as puberty blockers.

Evidence supports that most young people will not persist in gender dysphoria and will reconcile with their biological sex beyond adolescence. The Diagnostic and Statistical Manual of Mental Disorders states that "in natal males, persistence has ranged from 2.2% to 30%. In natal females, persistence has ranged from 12% to 50%." It is fair to say that rates of persistence are relatively low.

A paper in the British Journal of General Practice (Gender Incongruence in children, adolescents, and adults by Susan Bewley, Damian Clifford, Margaret McCartney and Richard Byng, Br J Gen Pract 2019; 69 (681): 170-171) admitted that the majority of people presenting with gender dysphoria before puberty will "desist", and that some will "seek interventions with uncertain long-term outcomes."

The authors also suggest that the rise in those presenting with Gender Dysphoria is multi-factorial but admit that "35% of those seen in the Tavistock service have autism traits." The paper concludes with a call for "well-funded, independent, long-term research" to "ensure doctors meet their ethical duties to 'first do no harm' and fulfil good medical practice."

In response to the growing demand for GPs to prescribe cross-sex hormones before specialist assessments the authors of the paper say that "more definitive knowledge is needed about: the causes of rapid increased referrals, especially girls and young females; the outcomes of interventions and 'wait and see' policies in this new demographic; and how to practice and organise services, especially anticipating long-term health implications."

[redacted], a 29 year old who transitioned to male in her early 20's, and who is now attempting to de-transition, declared: "the idea that a 16-year-old can sign statutory declarations saying that they intend to permanently live in their acquired gender….they're not old enough to smoke, they're not old enough to drink…I find it really concerning that they would deem a 16-year-old emotionally mature and developed enough to have the foresight to say they are going to identify this way for the rest of their lives."
[redacted] adds: "I can't undo what the testosterone has done to me, I can't undo the double mastectomy."

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

Yes

If yes, please outline these comments.:

The Catholic Church teaches respect for the male and female person made in the image and likeness of God and believes that sex or gender cannot be reduced to a mere construct of society that is fluid and changeable. At the same time, the Church is concerned for those who suffer discrimination and prejudice and those who experience gender dysphoria and expects those in authority to ensure an appropriate framework of support is available.

Pope Francis said: "Valuing one's own body in its femininity or masculinity is necessary if I am going to be able to recognise myself in an encounter with someone who is different. In this way we can joyfully accept the specific gifts of another man or woman, the work of God the Creator, and find mutual enrichment."
The pope added: "It is not a healthy attitude which would seek to 'cancel out sexual difference' because it no longer knows how to confront it."

Denying the biological reality of sexual difference and redefining something as fundamental as male and female is not within the purview of government or parliamentarians. Like marriage, it is part of the natural law: an unchanging principle of human existence. Redefining what it means to be male or female will create confusion, upsetting the equilibrium of society and our natural instinct toward the marriage of man and woman and the flourishing of family life. If it is possible to legally change from being a man to a woman and vice versa it presupposes that there is nothing naturally distinctive about womanhood or manhood.

Government, in the pursuit of ideologies, must be conscious of the potential for the destruction of natural principles and traditional social habits of people. The bedrock of society that is marriage between one man and one woman and their openness to new life, the family they create, the right to life of unborn children, and the right to free speech and freedom of thought, conscience and religion have all been undermined by this pursuit.

Sex is constituted by biological organisation and reproductive functioning, and is recognised at birth, not assigned. Nor can surgery change sex. As Dr David Bell,

Consultant Psychiatrist in the Adult Department of the Tavistock and Portman Centre in London, points out: “Surgery does not change biological sex. It is a given, it is not socially constructed.” (Seminar on Gender dysphoria/confusion in children and young people, Scottish Parliament, 5th March 2020.)

Sherif Girgis, author and philosophy student, said “Male and female are not just any two sexes, as black and white are just two races. Maleness and femaleness, and a certain social purpose, are necessarily inter-defined: one cannot fully explain either maleness or femaleness without reference to the other and to a certain social good. The reason is that what differentiates them are not just different anatomical or genetic features, but – at a deeper level of explanation – their joint (basic) physical potential for a biological task: reproduction. And this task, its social value, and its link to sexual composition are certainly not mere social inventions.” (Windsor Lochnerizing on Marriage? Case Western Reserve Law Review 64 (2014), 988)

Lawrence Mayer and Paul McHugh also refer to the distinction on the grounds of reproductive organisation: “The underlying basis of maleness and femaleness is the distinction between the reproductive roles of the sexes; in mammals such as humans, the female gestates offspring and the male impregnates the female. More universally, the male of the species fertilises the egg cells provided by the female of the species. This conceptual basis for sex roles is binary and stable, and allows us to distinguish males from females on the grounds of their reproductive systems, even when these individuals exhibit behaviours that are not typical of males and females.” (Sexuality and Gender Findings from the Biological, Psychological, and Social Sciences, Special Report, New Atlantis, 50 (Autumn 2016), 89)

There are biological differences between men and women. Scientists have found that male and female bodies react differently to diseases and to treatment. Therefore, the difference between male and female is “an important basic human variable that should be considered when designing and analysing studies in all areas and at all levels of biomedical and health-related research.” (Institute of Medicine, Committee on Understanding the Biology of Sex and Gender Differences, Exploring the Biological Contributions to Human Health: Does Sex Matter? Theresa M Wizeman and Mary-Lou Pardue (Washington DC: National Academies Press, 2001), Executive Summary)

Gender dysphoria, the feeling that one’s biological sex does not correspond with one’s lived or experienced gender, is a condition that can cause significant distress and anxiety. The Diagnostic and Statistical Manual of Mental Disorders, 5th Edition: DSM-5, of the American Psychiatric Association continues to recognise gender dysphoria as a genuine, troubling medical condition.

By moving to a self-declaratory model, as proposed in the consultation, and de-medicalising legal transition, society may fail to provide the necessary support for those affected by gender dysphoria in the form of contact with health professionals. De-medicalisation removes a vital protection and safeguard for vulnerable individuals. [redacted], a 29 year old who transitioned to male in her early 20’s, and who is now attempting to de-transition, described the removal of the

need for a medical diagnosis as “mind blowing” and that doing so would be “monumentally harmful” (Seminar on Gender dysphoria/confusion in children and young people, Scottish Parliament, 5th March 2020).

This is further exacerbated by the proposal to reduce the time a person is required to live in their acquired gender from two years to just three months. The Scottish Government - by supporting these changes – risks failing vulnerable people. Gender dysphoria in individuals is associated with an increased rate of comorbid mental illness, especially mood disorders, anxiety disorders, and suicidality (Zucker KJ et al, Gender Dysphoria in Adults, Annual Review Clinical Psychology 2016; 12: 217-247).

There is also a danger that speeding up the process of changing gender legally will increase the possibility of people making choices and commitments they will later regret.

Without a clearer understanding of causes, government should not proceed with radical legal reforms or expose children to radical treatments. Caution and sensitivity is required.

It is worth noting that the European Court of Human Rights (Garcon and Nicot v France [2017] ECHR 338 (06 April 2017)), in a judgement which is legally binding, held that an ‘assessment model’, which is the existing model in Scotland, is compatible with human rights.

There is also considerable confusion as to the definition of ‘sex’ and ‘gender’. For example, some argue that gender is simply the subjective choice of the individual. This position is often complicated by interchangeable use of the terms sex and gender, suggesting that sex might also be a subjective choice. This leads to a situation where any person could at any time change their sex. Others argue that gender is innate i.e. has a biological component and is thus unchangeable. Both propositions cannot be true.

Gender dysphoria should not be politicised to the point where science is side-lined. Science is key to understanding gender dysphoria.

There are other consequences of the proposed reform such as an increased risk to the safety of women. Could a man who self-declares as female be given access to a women’s refuge or safe house? Could a male prisoner self-identify as female and gain access to a women-only prison?

The Scottish Prison Service policy on transgender prisoners has, to some degree, anticipated the government’s proposals. The guidance declares that, with regard to transgender inmates, “the person in custody’s gender identity and corresponding name and pronouns must be respected” so that the accommodation chosen “should reflect the gender in which the person in custody is currently living.”

[redacted], a former prison governor, recently stated that, prior to this policy coming into force, there were only two prisoners who identified as

transgender—this rose to 22 male to female transgender prisoners in custody in 2018. [redacted] stated that none had self-identified as female prior to their conviction.

This represents around 7 per cent of the numbers of women in Scottish prisons; significantly higher than the percentage of transgender people found in the wider population, which is estimated at around 0.02per cent. This means that the incidence rate of men identifying as women is 350 times higher amongst the prison population than it is in the general population.

The dangers posed to women are highlighted by the case of [redacted], a biological male and convicted rapist who, following his incarceration, self-identified as female and applied to be moved to a women's prison. [redacted]'s application was successful and he would later sexually assault female inmates at the prison.

In March 2019, Justice Secretary Humza Yousaf admitted that criminal incidents are tracked according to the self-identified gender of victims. Such a system could easily distort crime statistics and also result in biological male offenders being placed in women-only spaces. [redacted], 18, a transgender sex offender who preyed on girls in public toilets [redacted] and was housed in women only accommodation after being convicted.

[redacted], [redacted] of the Centre for Crime and Justice Studies, told The Times, "women who end up in custody are individuals who've often experienced quite grotesque and traumatic male violence so being asked to share their places of safety and refuge with individuals who they not unreasonably consider to be male and a threat to them – regardless of whether they are or not – is deeply problematic."

There are also concerns regarding the safety and wellbeing of female schoolchildren if natal males are to be allowed to occupy female only changing facilities and toilets in schools. The importance of single-sex spaces and services, which is an exemption under the Equality Act 2010 and which provides a vital protection for women and girls, cannot be overstated.

Irrespective of the outcome of the consultation, free speech and freedom of thought, conscience and religion must be upheld for those who do not subscribe to the idea that gender is fluid and/or that gender may be wholly divorced from biological sex. This is particularly important for, among others, those who work in education, for healthcare workers, marriage celebrants, prison staff, and religious representatives.

The Catholic Church understands that marriage is a union between one man and one woman. The determination of sex for this purpose is based on biology. The Church must be able to marry in accordance with her teaching.

The proposed changes risk creating medical, social and legal complications which will be difficult to resolve and damaging to those involved. There are particular risks for children and women.

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

No

If yes, please outline these comments.: