

## South Edinburgh Against Misogyny

### **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.:**

The present system provides safeguards for everyone affected by this issue. The NHS says that a proper diagnosis of gender dysphoria should be conducted over a period of months, and consists of an in-depth assessment of the person's needs. This is essential, not least to ensure that the best / only course of action for them is to transition.

There are increasing numbers of people detransitioning now and this serves to highlight the importance of getting it right initially. At a recent meeting in the Scottish Parliament, the point was made by Dr David Bell that if an adult weighing little over 4-stone goes to the doctor to complain they are overweight and ask for help losing it, the correct response is not to unquestioningly affirm this but to examine with them the causes of their eating disorder. Yet this type of affirmation is exactly what this bill envisages. This fails to offer any protection to someone who has mental health problems, or has suffered say from prolonged sexual abuse in childhood, or who has autism. These are all groups who are overrepresented in the trans community. In all cases their underlying issues should be sensitively and professionally addressed prior to them changing their legal gender which in itself does nothing to change their circumstances.

A diagnosis should therefore support people whose presenting gender dysphoria is actually symptomatic of a different problem. Unfortunately we are already seeing evidence, through the emerging voices of detransitioners, that this process is not always conducted robustly enough. The solution to this is to do it better, not to abolish it.

The GRA as presently constituted was intended to provide help for the very small (around 5,000) number of people who suffer from a rare condition, gender dysphoria. It is not intended to allow a wide range of individuals without gender dysphoria to self-declare themselves a man or woman in defiance of their biology. The requirement for a diagnosis of gender dysphoria also guards against predatory males self declaring themselves as women in order to gain access to women's safe spaces, support networks and facilities.

The proposed reforms are very much more than a simple (and apparently much needed, especially the need to reduce the waiting times) attempt to make the process easier to navigate for that small group. Instead it abolishes the only safeguard that is included in the Act, and effectively redefines what it is to be a man or a woman.

And yet it fails to do that properly. One of the glaring omissions in the Bill is any attempt to define the key terms. What does it mean to be "trans" or "transgender" or a "man" or a "woman"? What does "gender" mean in this context, and in particular what does it mean to "live in an acquired gender"?

As it will be an offence to make a false declaration, it will be necessary to show that someone has followed the proscribed steps prior to self-declaring. How can anybody be sure that they have done this when no definitions are provided? And by the same token, how can it be shown that someone made a false declaration? At present the GR Panel provides a second level of safeguard, but that too would be abolished by this legislation.

Other than a diagnosis of gender dysphoria, the current protocol requires someone to obtain documents showing they have changed their name. With the abolition of the need for a diagnosis or the scrutiny of a Panel, all that is left is those documents. Are we seriously to believe that "living in an acquired gender" is merely to have a driving licence in a false name?

A law which depends on ephemera such as someone's "feeling of being a woman" is insupportable. It would never be possible to make a judgement on it as the only evidence would be that provided by the transperson themselves (or indeed sexual predator who wishes to take advantage of the legislation to obtain easier access to vulnerable women).

Although technically the Bill purports to be about GENDER recognition, the effect of obtaining a GRC is to enable someone to get a birth certificate and other ID showing them to be a member of the opposite SEX. This is of course a nonsense and has always been understood as a necessary legal fiction which would apply to a maximum of 5,000 people. It is impossible to change sex, whether by surgery, hormones, documentation or wishful thinking.

However, because of this the Bill will have a serious impact on others, especially women and girls. It will be impossible to maintain the sex-based exceptions in the 2010 Equality Act (it is already becoming increasingly difficult to do so) because there is no legal way of ensuring that someone who claims to be was in fact, born female. The Bill does not address, or even acknowledge, the interaction of this with the EA2010. There is therefore a danger that the rights of women and girls will be trampled on, in a rush to pander not so much to the very small number of individuals with gender dysphoria, but to the much wider group of people including sexual predators, violent men and misogynists.

The mantra "trans rights are women's rights" is patently untrue at least if trans rights are to be interpreted in the manner suggested by the draft Bill which goes way beyond Scotland's legal obligations and which moreover gives almost any man the right to call himself a woman if he is prepared to claim he intends to do so for the rest of his life. As there is no requirement in the proposed legislation to make any other changes to lifestyle of behaviour this is not exactly a barrier.

This Bill has been extremely badly thought through - it provides no definitions, removes safeguards for trans people, those who may wrongly think that changing their gender will solve other problems, and fails to take account of the impact on women and girls.

Self-declaration is not based on any actual fact, and for that reason alone (although there are many others too) should not be enshrined in Scottish law.

We believe the current draft Bill should be rejected in its entirety and a new approach developed that would take account of the full range of needs of those with gender dysphoria, without compromising the safety of the rest of the community.

## **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.:**

Nobody should be allowed to take the drastic step of legally changing their gender without a full and objective assessment combined with appropriate supports to ensure that it is what the person genuinely needs to do to address their discomfort. Nor without being fully aware of all the consequences - legal, social etc - of such a change.

We would question whether there is in fact any need for a GRC in the present legal climate, which now allows for same-sex marriage. The absence of this was a key driver for the original legislation. It is difficult to see what possible urgency there can be, when this consultation demonstrates that someone is able to fully "live in their acquired gender" without a GRC (in fact, doing so will be the only mandatory requirement prior to the issue of a GRC).

This consultation has failed to address questions such as these, and is fatally flawed as a result. But the fact remains that there is little objective need for a GRC and certainly no case has been made for doing so in a very short space of time. In keeping with the rest of the Bill, there is no definition of "reflection" or suggestion of how someone can demonstrate that they have, in fact, reflected. So it is in fact no more than an administrative delay. A real period of reflection might need, for example, to include regular support from appropriate professionals / counsellors to help the person understand the implications of this step.

### **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.:**

NO.

There is ample evidence that a young person's brain is not nearly fully-developed or mature enough to make such a momentous decision which will have serious ramifications for their whole lives. At 16 children are in the midst of puberty, and many youngsters feel embarrassed or uncomfortable with the changes their body is going through. They are also under a lot of stress academically with the onset of exams, and are simultaneously beginning to explore an increased level of independence. All of these make many children emotionally vulnerable, and there is also evidence (again mentioned by Dr David Bell) that there are clusters of young transitioners, showing a similar pattern to a cult, or at least implying a "fashion". This is unproblematic so long as no irrevocable changes are made during this period. It is well evidenced that a period of watchful waiting is best practice for youngsters considering transition, as some 80% or more settle happily and voluntarily into their own gender post puberty. Young people in this position should be offered suitable supports but not allowed to transition at such a young age. The Scottish Sentencing Council is currently consulting on a new policy which is designed to take account of this continuing brain development until the person is 25 years old.

We believe that this should be taken into account when sentencing a young person. But it should equally apply to people who are considering making such a drastic change with all the permanent implications for their well-being. We would, therefore, support increasing to 25 the age at which a GRC can be obtained. However, we recognise that this is not realistic at present, but strongly support the retention of the current age of 18.

There is currently a huge (4000%) increase in the numbers of young women seeking to transition. This unparalleled phenomenon of sudden onset gender dysphoria is not understood - there has been no meaningful research into the drivers of it. There is at least anecdotal evidence that transitioning is becoming a form of conversion therapy, with young lesbians somehow becoming convinced that they are, instead, men. It is essential that we fully understand what are the

influences that are leading to this, and to ensure that youngsters feel confident in coming out as gay, before we make it even easier for adolescents to go down this route.

Although this proposed legislation does not directly impact on medical transitioning, we do know that obtaining a GRC is the first step on a path and makes it much more likely that the person will go on to have hormonal interventions or surgery. Both of these medical pathways have lifelong health-affecting implications and often lead to loss of sexual function and infertility. Before healthy young bodies are started on a lifelong course of dangerous medication there should be no doubt about the value of doing this, or that in each individual case there are identifiable benefits which cannot be obtained through another route, and which outweigh any resulting problems.

This is relevant to this consultation because it will be more difficult to refuse medical interventions for those who have obtained a GRC. This is another aspect of the ripple effect of these proposals, which have not been considered in drawing up the proposals.

In the absence of proper, unbiased research into the incidence of young transitioners, there should be no question of increasing the ease with which a GRC can be obtained by this vulnerable group.

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

Yes

##### **If yes, please outline these comments.:**

This Bill should be rejected in full, and a new process undertaken which properly and fully acknowledges and considers the implications of self-ID for those with gender dysphoria, would-be transitioners without such a condition, and especially the impact on women and girls.

The existing legislation currently meets European legal requirements in full. and there is no legal reason for this change. Any move to alter irrevocably the effective definitions of "women" and "men" should only take place after a full, frank and thorough discussion with the population as a whole, not merely the tiny section of the population.

As a group, SEAM has spoken to a random selection of ordinary people in our constituency, and it has been a consistent pattern that a very large majority disagree with these proposals. "Frightening" and "ridiculous" were just a couple of the words we heard in the last few days. We came across maybe 1 in 40 people who were to some extent in favour of this change. Everyone else opposed it and many had personal examples. One woman, for example, said she no longer felt able to let her young daughter go to the toilet unaccompanied in several Edinburgh venues, because they are "gender neutral" and she is concerned at the possible presence of men. The legislation as it is proposed will greatly exacerbate this type of concern because regardless of the labelling on toilet doors, large numbers of males will be able to claim access to women's facilities. Although at present in most situations it is possible for women to challenge a man who goes into them, it will become increasingly difficult as the proposals will allow a male with no hormonal or surgical interventions to enter. And it will be impossible for women to identify those males with and without a GRC so as to know who they are even allowed to query.

No legislation should be approved until it is able to maintain women and girls' rights to privacy, dignity and safety, along with those who suffer from gender

dysphoria.

There is no need for anyone without such a diagnosis to ever change their legal gender, and no attempt has been made in this consultation to justify that.

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

Yes

### **If yes, please outline these comments.:**

The EQIAs fail to take full account of the impact this legislation would have on women and girls. As such, they do not even meet the Scottish Government's own standards and are not fit for purpose.

The Government has taken an extremely narrow view of the proposals, insisting without any evidence, that they will only impact transpeople. We believe there has been undue influence by a narrow range of lobby groups, but whether or not this is the case, there is no objective reason to refuse to take account of the impacts on the 50+% of the population who will be adversely affected by this. We already have evidence of the damage being done to women and girls as a result of a move by some organisations to act as though self-ID already existed. Thus it is unusually easy to obtain evidence of how these proposals would affect women. The omission of this from the EQIAs is unacceptable.

There are particular and additional impacts on women from some minority communities, where women are prohibited from some types of activities in the presence of males. Allowing males access to women's swimming sessions, for example, means that some women are forced to self-exclude from them.

We note that the EQIA references the Dunne report. This is a matter of some concern, as the Dunne paper's comments on intersex women are inaccurate and offensive, claiming that they have "non normative" or "abnormal bodies". By referencing this paper Scot Gov is legitimising documents that include infertile women with DSD conditions as males. Scot Gov should take guidance from organisations such as DSD Families and not lobby groups who do not have the necessary expertise to comment.

This failure of Scot Gov to interact with DSD/Intersex organisations was noted in the recent report to the UN:

"Intersex Genital Mutilations - Human Rights Violations of Children with Variations of Sex Anatomy - NGO Report for Session to the initial report of the United Kingdom on the Convention on the Rights of Persons with Disabilities" - Marcus Bauer, Daniela Truffer

This states:

. "For example in Scotland (UK), LGBT organisations have so far collected at least £ 135,000.– public intersex funding, while actual intersex organisations received ZERO public funding, see 2017 CRPD UK NGO Report, p. 14, <http://intersex.shadowreport.org/public/2017-CRPD-UK-NGO-Coalition-Intersex-IGM.pdf>

. "Typically, during the interactive dialogue with CRPD, the UK delegation nonetheless tried to sell this glaring misappropriation as "supporting intersex people", but fortunately got called out on this by the Committee, see transcript (Session 2, 10:53h + 11:47h),

<http://stop.genitalmutilation.org/post/UK-Questioned-over-Intersex-Genital-Mutilations-by-UN-Committee-on-the-Rights-of-Persons-with-Disabilities-CRPD>"

DATA COLLECTION

The EQIAs do not acknowledge that it is essential to collect sex-specific data for a wide range of purposes, all in some ways related to the need to develop policies and procedures which will help overcome the barriers faced by females as a result of our sex. If pay, health, career, academic, carers, life-expectancy etc data is contaminated by the inclusion of males in the figures for "women" it will be impossible to know how much progress is being won or lost in the battle for sexual equality. There are particular issues in relation to crime and prisoners. So we are now already seeing an upsurge in the number of "women" reported to have committed sexual assault or to have used pornography. The vast majority of these women are actually males.

If you can't see it, you can't count it. And if you can't count it you can't address with it. The type of society (and therefore equality) you get depends on what you count.