

Gender Recognition Reform (Scotland) Bill consultation **Zero Tolerance response March 2020**

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?

Yes X

No

If yes, please outline these comments.

Zero Tolerance welcomes the Scottish Government's commitment to simplifying the process for obtaining legal gender recognition. As acknowledged in the consultation paper the current process provided for under the Gender Recognition Act 2004 is humiliating, physically intrusive and emotionally invasive. It is also financially expensive, complicated and time consuming, making it inaccessible to people from less privileged backgrounds. In moving to a self-declaratory system, Scotland is taking vital steps to break down the structural stigma and inequality that ultimately permits violence against trans women and non-binary people. This in turn will help to challenge the harmful notions of gender binary which perpetuate inequality and violence against all women.

We do not have a formal position on the proposal that applicants must live in their acquired gender for at least three months before applying for a GRC, though we would question the reasoning behind this specific time period and echo comments by LGBTI organisations that it appears arbitrary. We refer to the expertise of our partner organisations who are specialists in trans rights and emphasise our support for a system that is quick, transparent and accessible, as outlined in Article 31 of the Yogyakarta Principles. [1]

[1] http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf

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?

Yes X

No

If yes, please outline these comments.

We do not take a formal position on this issue and refer to the expertise of our partner LGBTI rights organisations. However, we note concerns that a reflection period would undermine the move to a self-declaratory system and reinforce some of the harmful assumptions implicit within the current GRA process – chiefly, that trans people are not the experts in their own lived reality and lack the capacity to make decisions about their identity. [2]

[2] Scottish Trans Alliance response to Gender Recognition Act 2004 consultation:
<https://webarchive.nrscotland.gov.uk/20190711105447/https://www2.gov.scot/Resource/0053/00539302.pdf>

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

Yes

No

Don't know

If you wish, please give reasons for your view.

As an organisation focusing on primary prevention of violence against women and girls (VAWG), we recognise that children are exposed from birth to gender-conforming stereotypes and binaries which contribute to gender inequality and VAWG – for instance, the notion that women should be submissive and men should be assertive and dominant. Breaking down these stereotypes with children at an early age and supporting gender non-conforming children and young people to be themselves is an essential part of ending the stigma and violence that trans women and non-binary people experience.

We are therefore supportive of enabling 16- and 17-year olds to apply for legal gender recognition and echo the comments from LGBT Youth Scotland that this is in line with all of the rights and responsibilities that young people acquire at the age of 16. [3]

We also echo concerns about no provision being made for children under 16 to obtain legal gender recognition. While there is positive work being done in Scotland to tackle gender stereotypes and gender-based violence in schools [4] and to make education LGBTI-inclusive, bullying and harassment of trans and non-binary young people continues. We note comments from Stonewall Scotland that some children suffer because of the discrepancy between their legal and social identities. [5] We support moves to normalise trans identities from an early age – as such, there should be a mechanism to enable those under 16 to obtain legal gender recognition. We refer to the responses from LGBT Youth Scotland and the Children and Young People's Commissioner for Scotland on this issue.

[3] <https://www.lgbtyouth.org.uk/media/1794/guide-to-responding-to-the-gra-consultation.pdf>

[4] <https://www.zerotolerance.org.uk/equally-safe-at-school/>

[5] <https://webarchive.nrscotland.gov.uk/20190711105724/https://www2.gov.scot/Resource/0053/00539455.pdf>

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

Yes X

No

If yes, please outline these comments.

Non-binary people

We support LGBTI rights organisations' calls [6] to include legal recognition for non-binary people in the bill. As these organisations make clear, non-binary people are included within the trans umbrella; it is counter-intuitive to exclude this group and undermines the intention of the bill to better uphold and protect trans people's rights. As a feminist organisation working to eradicate all forms of violence against women, we challenge the gender inequality that is at the root of men's violence against women. The underlying foundation of this inequality is the patriarchal notion of gender as binary (male and female). The gender binary perpetuates violence against women and gender non-conforming people by heavily policing what it means to be a man and a woman. The violence perpetrated against trans women and non-binary people is often justified on the grounds that they have trespassed from the gender binary and are therefore a danger to the patriarchal norm. Trans people and non-binary people are specifically targeted for hate crime, often in the form of sexual harassment or sexual assault. Excluding non-binary people from the bill will undermine efforts to challenge this violence and the patriarchal attitudes that underpin it.

The consultation paper notes that legal recognition of non-binary people would raise issues in relation to legislation change and service delivery. While the consultation paper does not go into the specifics of these, in relation to women's equality and rights the women's sector has previously raised concerns around any potential changes to the Equality Act 2010 and the subsequent implications for protecting women from discrimination and preserving women-only spaces [7]. As a result of these discussions, the Scottish Government has confirmed that it will not seek changes to the Equality Act 2010. We are confident that through the continuation of such discussions, non-binary people can be included in the bill in a way that does not have any unintended consequences for legislation protecting and promoting women's equality and rights.

[6] Including the Scottish Trans Alliance, LGBT Youth Scotland and Stonewall Scotland.

[7] <https://www.zerotolerance.org.uk/resources/Scottish-Womens-Sector-response-to-the-consultation-on-proposed-changes-to-the-Gender-Recognition-Act-February-2018.pdf>

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

Yes X

No

If yes, please outline these comments.

As the draft EQIA outlines, there have been concerns expressed throughout the review of gender recognition about the impact of any reform on women's equality and rights, including access to women-only spaces and women's safety. We wish to take the opportunity to reiterate our position on this issue.

Firstly, it is important to be clear that the proposed legislation will not give trans people additional rights, only improve the process by which they can achieve legal gender recognition on their birth certificate. This will not have an impact on women's safety, equality and rights; we refer to Engender's consultation response which affirms that the proposed reforms will not have any adverse effect on the capacity of the Equality Act 2010 and CEDAW to protect women from discrimination. In particular the proposed changes will not affect the provision of services for women experiencing violence. The women's rights sector has been closely involved in discussions throughout the review; our collective 2018 response [8] addressed misplaced concerns about proposed changes, including the assertion that they would undermine service delivery organisations' capacity to meet women's needs. All violence against women services that receive Scottish Government funding provide trans inclusive services and trans inclusion plans have been in place for the last six years. This inclusive approach has not given rise to any concern or challenges. We will continue to work collaboratively with Scottish Trans Alliance, other equality organisations and the Scottish Government with the aim of ensuring that new processes are appropriately designed and without unintended consequences.

Secondly, we wish to emphasise that women's rights and trans rights are not mutually exclusive but mutually reinforcing. For over a decade, we have engaged in constructive dialogue with our colleagues in the Scottish Trans Alliance, Equality Network, LGBT Youth Scotland and Stonewall Scotland. We have shared knowledge, explored complex practicalities and developed policy positions on trans inclusion. Trans women have added to our movements through their support, volunteering and as staff members of our organisations. We do not regard trans equality and women's equality to contradict or be in competition with each other; indeed, we share a common cause in relation to ending VAWG. The roots of VAWG are the same as those of violence against trans and non-binary people – transphobia and misogyny come from the same entrenched binary gender roles which place 'real' men as superior to women and those who do not conform to gender norms. Trans women experience sexist attitudes, discrimination and violence, as all women do, as well as experiencing an additional layer of discrimination for failing to conform to the gender norms expected of them. Policymakers have a responsibility to ensure that the additional discrimination faced by trans women is prevented. As we commented in our response to Question 1, improving the process for legal gender recognition will



contribute to the dismantling of structural inequalities which harm all women and non-binary people.

[8] <https://www.zerotolerance.org.uk/resources/Scottish-Womens-Sector-response-to-the-consultation-on-proposed-changes-to-the-Gender-Recognition-Act-February-2018.pdf>