



## Equality, Human Rights and Social Justice Committee Briefing

### Stage 3 Consideration of Amendments

#### Gender Recognition Reform

LGBT Health and Wellbeing

19/12/2022

*\*All forthcoming comments on proposed amendments have been directly influenced by the experiences and opinions of service users of LGBT Health and Wellbeing. We'd draw the Committee's attention to briefings submitted by Scottish Trans and Stonewall Scotland for guidance on amendments not addressed within this briefing. We support briefings submitted by Scottish Trans, Stonewall Scotland, LGBT Youth Scotland and Leap Sports, and believe that guidance they offer are in the best interests of our trans community members at LGBT Health and Wellbeing.*

#### **Group 1: Applications by 16- and 17-year olds**

The Age of Legal Capacity (Scotland) Act 1991 states that young people should have the capacity to take decisions on their own behalf. We'd also highlight that lowering the age of which a person can apply for a Gender Recognition Certificate (GRC) to 16 is supported by the Children and Young People's commissioner for Scotland.

Our community members at LGBT Health and Wellbeing have made it explicitly clear that they are in support of the Gender Recognition Reform (Scotland) Bill bringing the age of which a person can apply for a GRC in line with the age of legal capacity (age 16) here in Scotland. Below are comments from trans community members when asked how they feel about the Bill lowering the age one can apply for a GRC to 16:

*"At 16 we gain many rights that are life-changing, [it is] so ridiculous we would not know our own gender."*

*"I've [already] thought about this for ages. I'm not going to change my mind!"*

*"People already know their gender – I've known mine since I was 6."*

*“The whole world makes us constantly question our decision to transition / our genders, it is not something we do on a whim.”*

Taking the positions of our community members into account, LGBT Health and Wellbeing would urge the Committee to **support amendment 99**, which will require applicants who are aged 16 or 17 to provide details of the role of, or their relationship with, the person whom they discussed their application, to the Registrar General when making the application. We believe that this amendment offers the best chance for young people and young adults applying for a GRC to discuss their application with someone, without creating any unnecessary barriers which might prevent some 16- and 17-year olds from being able to meet the criteria to apply for a GRC.

### **Group 3: Meaning of “ordinarily resident in Scotland”**

We draw the Committee’s attention to Shona Robinson’s letter which addresses the legality of the term “ordinarily resident” [here](#) and highlight we are in **support of amendment 19** as we believe not supporting it could risk jeopardising the Bill as it stands.

We at LGBT Health and Wellbeing, and our community members from our LGBT Refugee Project, are disappointed that the inclusion of all asylum seekers as “ordinarily resident in Scotland” is outwith the legislative competence of the Scottish Parliament. We do recognise that asylum seekers who are (in legal terms) “ordinarily resident” in Scotland will in fact meet the criteria and will be able to apply for a GRC, and we welcome this.

### **Group 4: Support and information for applicants and potential applicants**

We recommend MSPs **oppose** amendments in this group. We support these amendments in principle, and highlight that our [Trans Support Programme](#) (which runs in-person in both Edinburgh and Glasgow, as well as online) already offers practical support, advice and guidance for those looking to apply for a GRC. Taking this into account, we’d welcome increased support and information for trans people, as well as a commitment from the Scottish Government to support the work of organisations already providing such services.

### **Group 5: Grounds on which the application is to be granted: medical evidence and time living in the acquired gender**

Taking into account the well documented position of our community members, we recommend MSPs **oppose amendments in this group**. We have provided comment on amendments 10, 11, 16, 95, 96, 97 and 102, 107 and 137.

**Amendment 10** would require applicants who are 16 or 17 to have been living in their acquired gender for two years before application. **Amendment 11** would apply the same

two-year waiting period to those over 18. Below are some comments from our community members when they were consulted on the Bill and the issue of waiting periods:

*“My feeling is that any time period is not for the interests of trans people, but for the satisfaction of others.”*

*“There should be no specific time before you can apply – why is time ‘proof’? Why do we need to supply proof?”*

*“There is already evidence in favour of self-ID without timescale.”*

*“This [waiting period] is arbitrary and seems to be there to be there to satisfy politicians and not to help us.”*

It is clear that our community members **do not support** the implementation of unnecessary or arbitrary waiting times, which prevent trans people from obtaining a GRC.

**Amendment 16** would require a trans person to provide a report from a medical practitioner which states the applicant has discussed the application with them. We believe this amendment undermines a key principle of the Bill – demedicalisation.

**Amendments 95, 96, 97** and **102** also undermine this principle by remedicalising the process. The introduction of a requirement which requires an applicant to have “discussed the intention to obtain a gender recognition certificate with a medical professional and received any mental health support that was considered by that professional to be necessary.” Being trans is not a mental illness. As a provider of trans affirmative mental health support (via our LGBT+ counselling service), we are vehemently opposed to this amendment and believe it to be based upon harmful assumptions which surround LGBT+ people and their identities - e.g. the assumption that one does not know themselves, or is mentally unstable, rather than simply being happily LGBT+.

We do not support the reintroduction of medical evidence currently required under the Gender Recognition Act (2004), taking this into account we recommend MSPs vote against amendment **107 and 137** and remind them of a key principle of the Gender Recognition Reform (Scotland) Act – demedicalising the process to make it less demeaning and difficult for trans people.

#### **Group 10: Certificates obtained by fraud**

We take this opportunity to highlight that alongside other organisations within the LGBT+ sector, we do not believe that a statutory aggravation of fraudulently obtaining a GRC is necessary.

#### **Group 12: Manifestly unfounded application to sheriff to revoke certificate**

We are in **support of amendment 51**. At LGBT Health and Wellbeing, we are acutely aware that not all trans people have fully supportive families, friends, workplaces etcetera. Moreover, there are those in the current climate who might wish to challenge applications for a GRC out of malice or ill intent, a challenge which's basis has nothing to do with the trans person's eligibility for a GRC. The introduction of an amendment which would allow a person with a malicious interest to challenge an applicant's application for a GRC, and possibly prevent them from obtaining one, leaves us with serious concerns for the accessibility of the rights of our community members, and prevent the Bill from delivering "empty rights" for some.

We recommend that MSPs **oppose amendment 116** as we know a GRC does not give a person access to single-sex services. See Schedule 3 Paragraph 28 of the Equality Act 2010 for accurate information on access to single-sex services.

### **Group 17: Gender identity Healthcare**

Taking into account the issues currently experienced by our community members in gender identity healthcare in Scotland, such as extremely long waiting times, lack of access to specific treatments based on region and lack of staffing, we feel the introduction of these amendments might complicate things further, and might potentially divert much needed economic resources which are being undertaken under the [Strategic Action Framework](#). On this basis, we recommend MSPs **do not support** amendments within this grouping.

### **Group 18: Reporting**

We recommend MSPs **support amendments 63, 64, 65 and 66** as they will allow for monitoring of the impact of the Bill, and the number of trans people who are applying for GRCs, as well as those who have obtained one, were denied one or withdrew their application.

To discuss the contents of this briefing further please contact:

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