

Policy and Sustainability Committee

10am, Tuesday, 25 February 2020

Response to the Gender Recognition Reform (Scotland) Bill consultation

Executive/routine
Wards
Council Commitments

1. Recommendations

- 1.1 To note the closing date for responses is 17 March 2020.
- 1.2 To agree the proposed Council response to the consultation in Appendix 1.

Andrew Kerr

Chief Executive

Contact: Laurence Rockey, Head of Strategy and Communications

E-mail: Laurence.rockey@edinburgh.gov.uk | Tel: 0131 469 3493

Response to the Gender Recognition Reform (Scotland) Bill Consultation

2. Executive Summary

- 2.1 The Scottish Government are consulting on The Gender Recognition Reform (Scotland) Bill. The Bill amends the way in which transgender people can obtain a Gender Recognition Certificate (a “GRC”). The proposals aim to streamline and simplify the process. The proposals do not affect the way in which the Council undertakes business and provides services. The Council’s response supports transgender people’s rights and the rights of children and young people.

3. Background

- 3.1 The Gender Recognition Act 2004 allows transgender people to apply to the Gender Recognition Panel to obtain legal recognition of their acquired gender. In the Fairer Scotland Action Plan, the Scottish Government committed to 'review and reform gender recognition law so it is in line with international best practice for people who are transgender '. The 2004 Act extends across the United Kingdom. Gender recognition is a devolved matter and is an area within the competence of the Scottish Parliament.
- 3.2 A Scottish Government consultation between December 2017 and February 2018 proposed that the minimum age for applying for legal gender recognition should be reduced from 18 years old to 16 years old. It discussed what arrangements should be put in place in relation to applications by, or on behalf of, those aged under 16 years. It sought views on what recognition should be given to non-binary people, who do not identify as either male or female. The proposed reforms included removing requirements for applicants to provide medical evidence and to have lived in their required gender for two years before applying i.e. adopt a self-declaration system for legal gender recognition.
- 3.3 The Scottish Government have now considered these responses and drafted a Bill accordingly.
- 3.4 In summary, the Scottish Government’s proposals in this Bill are:
- 3.4.1 the removal of current medical requirements when applicants are seeking legal gender recognition;

- 3.4.2 for the Registrar General to issue the Certificate rather than the Gender Recognition Panel as per the current process,
- 3.4.3 to reduce the time where someone has to live in their acquired gender from 24 months to 6 months.
- 3.4.4 applicants must at least 16 and either (a) have been born or adopted in Scotland or (b) be ordinarily resident in Scotland;
- 3.4.5 applicants would have to confirm that they intend to live permanently in their acquired gender;
- 3.4.6 applicants would still be required to submit statutory declarations, made in front of a notary public or a justice of the peace;
- 3.4.7 it will be a criminal offence to make a false statutory declaration in relation to gender recognition and to make a false application for gender recognition;
and
- 3.4.8 provisions in circumstances where marriage or civil partnership is concerned.

4. Main report

- 4.1 The Council's response reflects its role both as an employer and in delivering services and fulfilling its statutory duties to citizens.
- 4.2 The Council response supports the streamlining and simplifying of the process to obtain a gender recognition certificate and lowering the minimum age for applying for a gender recognition certificate to 16 years. This is in line with other rights a young person has at this age. The Council notes that non-binary people are not included in the proposals but that these proposals provide significant improvement to the current process.
- 4.3 Currently the Council is working on guidance to support managers who have a colleague transitioning with the aim of launching this by the end of March. This will be adapted in light of any changes to the legislation, if needed.
- 4.4 In supporting the proposed changes, it is acknowledged that this is a sensitive issue. The Council already has policy and procedures in place to support all staff and are planning to launch a new campaign concerning the recording of prejudice based incidents. This will provide greater insight to help inform practice moving forwards, including the provision of targeted training and support where required.

5. Next Steps

- 5.1 Following the Committee report and, subject to approval, the response to the Bill including any changes if required, will be submitted to the consultation for consideration by the Scottish Parliament.

6. Financial impact

- 6.1 As these proposals do not affect the business or services of the Council, no financial impact is identified.

7. Stakeholder/Community Impact

- 7.1 Heads of Service across Directorates were consulted in creating this response.
- 7.2 The proposed Bill does not impact on Council services and therefore the Council has not carried out an Integrated Impact Assessment. The Scottish Government has carried out various impact assessments. The Council supports the proposals which improve the process by which to gain legal gender recognition. The Council agrees that the proposals do not impact on access to single sex spaces and facilities. Introducing a revised system for obtaining legal gender recognition will enable transgender people to obtain legal rights without having to go through an overly intrusive system established by the current Gender Recognition Act. The proposals also support the rights of young people.
- 7.3 No impacts have been identified in relation to carbon impacts, adaptation to climate change and sustainable development.

8. Background reading/external references

- 8.1 A Council response to the consultation leading up to this bill was developed with views gathered from across directorates. The [response](#) was submitted to the Corporate Policy and Strategy Committee meeting 27 February 2018.
- 8.2 For further background information on the current consultation please see [here](#).

9. Appendices

Appendix 1: The City of Edinburgh Council's draft response to the Gender Recognition Reform (Scotland) Bill consultation

Appendix 1: Gender Recognition Reform (Scotland) Bill Consultation Questions and Draft Response, January 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

No

If yes, please outline these comments.

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.

We note further consideration could be given as to whether any time period at all should be a requirement.

Improvements to streamlining and simplifying processes for citizens this effects and their interaction with council services is welcome.

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

No

If yes, please outline these comments.

The draft Bill currently proposes that applicants must wait for 3 months after their initial application before confirming that they wish to continue with their application. They would then be granted a gender recognition certificate.

Similarly to Question 1, this proposal would improve on the existing process for citizens where they access council services and employees.

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.

The draft Bill proposes to change the law so that 16 and 17 year olds will be able to apply for legal gender recognition. However, it does not propose a system to enable transgender children and young people under 16 to apply for legal gender recognition. This question is only about the age of legal recognition and does not affect medical treatment available to young people and children.

The Scottish Government's proposals to lower the age for gender recognition to 16 would be in line with the rights of 16 and 17 year olds in Scotland to marry, gain employment, vote, and be held legally responsible for their actions. The ability to change the birth certificate would be in keeping with this.

However, transgender children and young people under the age of 16 should similarly be able to update their birth certificates with the aid of parental or guardian support. This would match with their existing ability to change their sex on their school records, medical records and passport. Often children and young people under 16 need to use their birth certificate more than adults do in engaging with council services so being able to change it is beneficial.

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

Yes

~~No~~

If yes, please outline these comments.

Making legal gender recognition a more straightforward process will relieve a lot of stress for many transgender people, who will no longer need to gather evidence and medical reports to be recognised as who they are.

Although this Bill represents an improvement in transgender people's rights, there are gaps with regards to non-binary people (those who do not identify as exclusively male or female).

Organisationally, guidance is currently being developed for managers to support staff that are transitioning. This will be able to be adapted in light of any changes to the legislation. In supporting the proposed changes, the potential sensitivity of the issues raised are acknowledged. Whilst appropriate policy and procedures for staff are currently in place, additional planned work will support the ongoing development of practice, including the provision of additional training and support, where appropriate.

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

Yes

~~No~~

If yes, please outline these comments.

The Bill covers how transgender people's birth certificates are changed, which impacts the level of privacy they are entitled to, such as when getting a job or marrying, and how they are recognised after death. The Bill will not have a detrimental impact on the rights of other people.

Access to single-sex council run spaces and facilities, such as toilets, changing rooms, and women-only services will not be impacted. Nobody is required to show a birth certificate to prove their eligibility for these spaces or services now, and this will not change.

How someone applies for gender recognition – or whether their birth certificate matches who they are – does not impact on their access to single sex spaces, or anything else that does not require a birth certificate.