

UCU Scotland submission to the Scottish Government consultation on Gender Recognition Reform (Scotland) Bill

The University and College Union (UCU) is the largest trade union in the post-16 education sector in the UK, representing over 120,000 academic and related members across the UK, and is the largest union in the higher education sector in Scotland.

UCU welcomes the Scottish Government proposed reform of the current Gender Recognition Act (GRA) and the commitment to trans equality that this bill demonstrates. This proposal would replace a medicalised process of obtaining a Gender Recognition certificate (GRC) with one based on self-determination. Several countries, including Ireland, have already moved to processes based on self-determination with positive increase in uptake. It is likely that the move to a self-determination model in Scotland is going to be equally successful.

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

The reduction from 2 years to 3 months is a step forward however evidence of living in the acquired gender is problematic.

Firstly the term acquired is challenged by many trans people who see the process as one of confirming gender rather than conforming to the one that corresponds with the sex assigned at birth. The term confirmed gender is often used by trans people.

Many trans people will have already given a lot of thought to living in the confirmed gender so any period of further waiting appears arbitrary.

Evidence of living in the 'acquired' gender may give power to organisations to define what is legitimate evidence. During the time of living in the 'acquired' gender some trans people may feel it is safer for them to choose a certain clothing option at work to prevent transphobia from colleagues or members of the public. This may be particularly the case when a workplace stipulates clear binary gendered clothing

instructions. What constitutes evidence of living in a gender is open to personal choice and preference. It is also culturally, socially and historically specific. This is one barrier, amongst many, for non-binary people whose gender may not be recognised.

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

Reaching the point of making the application may be difficult enough from some trans people. Mental health issues for trans people, particularly in relation to not having gender recognised, are noted in the impact assessments contained within the consultation document. Mental health may be further negatively impacted by there being an enforced waiting time after the application has been considered by the Registrar General.

This waiting adds to the amount of waiting that trans people have to do including for gender identity clinics which is not an issue addressed by this bill but does need serious review and action.

Question 3

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

Yes.

Parity with other areas where self-determination is allowed at 16 is a good starting point. The needs of young people do need addressing. Whilst this bill does not affect young trans people accessing medical services the absence of social recognition can mean that young trans people will continue to suffer bullying and discrimination. There are successful models for younger people to gain a gender recognition certificate in other countries with parental consent.

Question 4

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

Reducing the bureaucracy involved in the process of obtaining a gender recognition certificate is welcome. This is achieved by removing the gender recognition panel and by providing for applications to be made to the Registrar General. The UK LGBT survey (2017) found that 48% of trans women and 33% of trans men who did not apply for a gender recognition certificate were put off by the bureaucracy involved.

The binary framework of the bill is demonstrated by 8A1 'a person of either gender may apply ... for a gender recognition certificate on the basis of living in the other gender'. This framework excludes non-binary people from getting a gender recognition certificate. This is a missed opportunity to recognise the increasing number of people who are not identifying with binary gender categorisation.

8C1iv provides for an applicant who 'intends to continue to live in the acquired gender permanently' this is again limited as it is set within a binary framework and provides a barrier for those for whom gender is not regarded as static.

The bill keeps in place the 2014 amendments that removed spousal veto. This is achieved by providing a mechanism for changing an interim recognition certificate to a full one through application to the sheriff's court where granting of the full certificate is not dependent on spousal consent. This is welcome. Also noted positively is the possible continued recognition of civil partnerships where one person is transitioning to opposite sex by the extension of civil partnerships to opposite sex couples.

Question 5

Do you have any comments on the draft Impact Assessments?

Yes

UCU positively notes the Scottish Government's view that a change in the system for gender recognition would not impact negatively on women's rights. UCU agrees that women's rights to safety and safe spaces are supported by the Equality Act 2010. Non-statutory guidance could be useful on ensuring and promoting equality at the intersection of trans and women's rights, at least, until such a time as a Code of Practice can be developed.

Safe spaces for trans, non-binary and other LGBT+ people are also important. Scottish Government recognition of this and ideas about how to protect and encourage such spaces would be welcome.

Various studies report that trans people have disproportionately poor mental health and that there is lower trans engagement and / or lower retention of trans people in work and study. These studies include Pride and Prejudice in Education (2016), of which UCU was co-author. Measures to enable self-determination and gender recognition are welcome not least because it has been demonstrated that the mental health of trans people improves when self-identified gender is recognised. This bill is a step in the right direction but more needs to be done to support trans and non-binary people in work and study.

The absence of recognition for non-binary people in this bill is something that needs to be addressed. Ideally by an amendment that results in inclusion. However the establishment

of a working group on non-binary people is welcome and UCU would seek participation in / engagement with this group.

Consideration of the cost of getting a gender recognition certificate is most welcome as this is seen as a barrier at present. Further consultation before any fees are laid down (p 130 in the consultation document) is positive but should not cause delay to implementation of the self-determination process.

Several countries, including Ireland, have already moved to processes based on self-determination with positive increase in uptake. It is likely that the move to a self-determination model in Scotland is going to be equally successful. The projected increase from 30 applications per annum to 250, based on similar countries that have already adopted a self-determination approach, is a very strong argument for change and also quantifies the barriers posed by the current medicalised model. The benefit to trans people of implementing a system for gender recognition based on self-determination in Scotland is potentially huge and the intent of the Scottish Government to implement such a system with this bill is welcome.

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