

June 3rd 2022

Supplementary Evidence on the Gender Recognition Reform (Scotland) Bill to the Equalities, Human Rights, and Civil Justice Committee

Scottish Trans/Equality Network, LGBT Youth Scotland and Stonewall Scotland

Thank you again to the Committee for inviting Scottish Trans, Stonewall Scotland and LGBT Youth Scotland to give evidence on 17th May 2022. We welcome the large amount of evidence from wide ranging viewpoints that the Committee has been hearing in order to robustly scrutinise the Gender Recognition Reform (Scotland) Bill.

We wanted to jointly submit this supplementary evidence, responding to some of the subsequent evidence heard by the Committee, which either referred to our organisations, or on which we think we are able to contribute useful additional information.

“Living in the acquired gender”

In the current Gender Recognition Act 2004, the core criterion for an application for gender recognition is given at section 1(1)(a) – it is “living in the other gender”. This is replicated in section 2 of the Gender Recognition Reform (Scotland) Bill, in new Section 8A(1). There is no requirement for the applicant to have had any medical treatment, either in the current Act, or as amended by the bill.

The Committee has heard evidence from a range of witnesses that some interpretations of “living in the other gender” (or “living in the acquired gender”) could lead to the reinforcing of gender stereotypes, by implying that there are specific ways to “live as a man” or “live as a woman”. This would be an unacceptable and sexist idea to enshrine in law. We agree that this is an important point. We note that this is what sometimes happens with the existing arrangements for gender recognition, for example the Gender Recognition Panel may demand information about details of the toys a person played with as a child, or their sexual orientation, as part of their psychiatric diagnosis report.

We appreciate that for the majority of the population, the idea of “living as” a woman or a man may seem strange, or as though it relies on gender stereotypes – most people do not consider that they “live as” men or women, they simply are them. Trans people, however, often have to take specific steps to ensure that we are able to live in line with our identity, steps that aren’t required to be taken by other people. But they are in fact central to navigating the world as a trans person, and being seen

and treated in line with our identity. Trans people tend to refer to these steps as “transition”.

These steps can include: changing name, asking people to use pronouns, titles, and other language that reflects our gender, updating day-to-day documents to reflect our gender, and coming out to friends, family, colleagues etc. about our identity.

As well as these social aspects of transition, some trans people may also undergo medical transition, such as taking hormones or undergoing gender reassignment surgeries. Not all trans people do this. This may be because they feel as though they are able to be treated respectfully and feel comfortable in their gender through social transition alone, or because they have medical conditions which mean they are unable to undergo medical transition, or because they are planning to, but have encountered years of delays or difficulties (unfortunately this is very common).

Although trans people transition in diverse, different, and individual ways, they all involve making material and concrete changes to our lives, in order for us to “live as” the gender we are. As a community, trans people are intimately familiar with the ways that sex and gender roles and assumptions can be harmful, and these are things that many of us struggle against for our entire lives in the same way that many other people do who are not trans. But without taking any of these steps, other people would have no way of knowing that our identity was different from the sex registered on our original birth certificate, and would assume that we were happy to be seen and treated in that way. None of these steps require performing, or reinforcing, gender stereotypes, which trans people do not do to any greater extent than anyone else.

We therefore think that it is entirely appropriate, and meaningful, for the statutory declaration for applying for a gender recognition certificate to continue to include the requirement that an applicant state that they are living in their acquired gender, and intend to do so permanently. This reflects the fact that legal gender recognition is intended for trans people who have already transitioned, and are confident that this will be permanent, to the extent that they are willing to sign a legal oath stating this.

“Widening the group eligible for a GRC”

We are also aware that some witnesses have referred to the “broader group”, “wider group”, or “larger, more diverse group” of people that may be able to obtain a gender recognition certificate under the provisions of the Bill. We would highlight that the Bill continues to require applicants to be living in their acquired gender, and to intend to do so permanently, in order to obtain a GRC, just as the law does currently. We think that understanding what this means, in the very specific context of trans people’s lives (see above), is central to understanding that the Bill intends the same type of people to be able to apply as currently, notwithstanding the barriers that exist to the current process that we have outlined in detail in our evidence to the Committee to date. Of course the removal of those barriers will mean that more of those people are likely to apply, and the overall numbers will increase. We agree with the Scottish Government’s estimates for likely future numbers.

The crucial difference is that in 2004, trans people were almost exclusively seen through a medical lens, and our identities were significantly more pathologised and stigmatised than they are now. Rather than the Bill intending to significantly widen the group who will be eligible to apply, it instead seeks to demedicalise, depathologise, and make more fair the process for those people who have transitioned and intend to do so permanently, to reflect modern understandings of, and international human rights developments around, trans people's lives and rights. The change is not that a different type of person will obtain a GRC, but that more of the same type of person will be able to do so.

Young people and puberty blockers

In the oral evidence session on May 31st, Malcolm Clarke, Head of Research of the LGB Alliance, claimed that organisations are “in fact encouraging young people at the age of 12 and 13 to take puberty blockers”. When asked which organisations he meant, he replied “any of the LGBT charities that are advocating for a conversion therapy ban” (Official Report, col. 31). All of our organisations are involved in that work (as the Committee will be aware through our written and oral evidence to the EHRCJ Committee on this topic, and through our role on the Expert Advisory Group on Ending Conversion Practices). All of our organisations refute, in the strongest terms, the claim that we encourage any young person (or any other person), to access specific medical interventions.

Of our organisations, LGBT Youth Scotland is the one which works with young people. It is a youth work organisation, and has no role in encouraging medical treatments, in general, or specifically related to trans healthcare. Its role is to support young people to make decisions for themselves, not to guide or lead them to predetermined outcomes. Not only would encouraging young people to access puberty blockers be unethical, it would also contradict the [Community Learning and Development](#) values that LGBT Youth ascribes to – namely self-determination and empowerment. The organisation's role is to support young people to have all of the information they need to make informed decisions.

To be prescribed puberty blockers, a young person requires a thorough psychological and endocrine assessment, as per clinical guidelines. There is also regular psychological review and support. LGBT Youth is not involved in any of these processes. The organisation would never seek to influence decisions about young people's medical treatments.