

# **Equalities, Human Rights and Civil Justice Committee**

## **Gender Recognition Reform (Scotland) Bill**

### **Written submission from NUS Scotland**

#### **1. Do you agree with the overall purpose of the Bill?**

Yes, NUS Scotland strongly supports the overall purpose of the Bill. Reform of the Gender Recognition Act is long overdue, despite two consultations showing clear majorities in favour of bringing the GRA into line with international best practice. We are pleased that it is now being taken forward.

#### **2. Should applicants for a GRC require a medical diagnosis of gender dysphoria or supporting documentation?**

No, we do not believe that GRC applicants should require a diagnosis of gender dysphoria and support the provisions in the Bill which would remove this requirement.

According to LGBT Youth Scotland, waiting times for Gender Identity Clinics are anything between six months and four years and their *Life in Scotland for LGBT Young People 2022* report detailed the worry and pain this can cause. This unacceptable delay currently means that trans people cannot begin their medical transition or apply for a GRC. As some forms of ID are easier and quicker to update, this can put them in vulnerable situations as some of their documentation will conflict.

Removing the requirement for a diagnosis of gender dysphoria would bring Scotland into line with international best practice on gender recognition, as well as World Health Organization ICD-11 which no longer categorises 'gender incongruence' in the 'mental disorders' chapter.

#### **3. Should the period of living in an acquired gender be reduced from 2 years to 3 months (with an additional 3-month reflection period)?**

We do not support the inclusion of these arbitrary time periods, which are neither necessary nor supported by evidence. We believe these should be removed from the Bill.

This delay in receiving a GRC puts the safety and wellbeing of trans people at risk, as they will have to begin their social transition with conflicting legal documentation. This could particularly impact young people going to university or college for the first time who may have to use their birth certificate as a form of identification.

**5. Do you agree with the introduction of a 3-month reflection period before a GRC is granted?**

We do not support the introduction of a 3-month 'reflection period', which should be removed from the Bill. We are not aware of a reflection period being common practice in Scottish law for statutory declarations and to include one in this Bill suggests trans people are somehow less competent to make these decisions.

We also believe that a three-month 'reflection period' ignores the lived experience of trans people who have often undertaken significant reflection before applying for legal recognition of their true gender. No individual better understands their own gendered experiences than themselves – this Bill should reflect that.

Any delay to a trans person receiving a GRC after they have decided they are ready to do so denies trans people dignity and respect, risking their mental health and wellbeing.

**6. Do you agree with the removal of the Gender Recognition Panel from the Process, with applications instead being made to the Registrar General?**

Yes. We agree with other stakeholders that it is far preferable to have the Registrar General make an administrative check of the application rather than requiring trans people to submit arbitrary evidence to a panel who can decide if they are 'trans enough'.

**7. Should the minimum age for applicants be reduced from 18 to 16?**

Yes. We support the provisions in the Bill to reduce to minimum age for applicants to 16.

Many of the students NUS Scotland represents will be 16 or 17 at the start of their studies at college or university and research conducted by NUS LGBT+ in 2014 found that young trans students can often face specific difficulties as a result of the lack of legal recognition of their identity. This can include difficulties in updating records, which can cause distress for the student as well as difficulties in accessing campus facilities. Without lowering the age for legal recognition many trans students may have to register with their institution in the wrong gender, creating additional barriers to learning and significant distress.

This is further backed up by the *TransEdu Scotland* study (Dr Stephanie Mckendry and Dr Matson Lawrence, 2017) found that 86 per cent of respondents across further and higher education in Scotland experienced barriers to their learning or work as a result of their trans or gender identity.

Reducing the age of gender recognition would bring the Act into line with the age at which a person can marry, vote or join the army in Scotland – forcing individuals to wait an additional two years is likely to have significant detriment to their wellbeing.

While NUS Scotland does not represent students under 16, we agree with other stakeholders (including Stonewall, the Scottish Trans Alliance and LGBT Youth Scotland) that there should be a process of gender recognition available for young people aged under 16.

**8. Do you anticipate any negative impacts from the provisions in the Bill?**

**9. Please provide any further comments you have about the provisions in the Bill**

We continue to be disappointed that the Scottish Government has chosen not to progress with their plans for the recognition of non-binary people. We are pleased that the Working Group on Non-Binary Equality has been established and hope that it's work can be concluded quickly and lead to legal recognition for non-binary people in a similar manner to the self-identification process set out in this Bill.

A failure to recognise non-binary people will deny many trans young people from the process of legal recognition. This is borne out by the UK Government's 2018 National LGBT Survey, which found that more than half (50.8%) of trans respondents aged 16-17 identified as non-binary, rising to 58% amongst 18–24 year olds.