

# Equalities, Human Rights and Civil Justice Committee

## Gender Recognition Reform (Scotland) Bill

### Written submission from Children in Scotland

#### Our response to this call for views

Children in Scotland is pleased to be able to respond to the Equalities, Human Rights and Civil Justice Committee's call for views on the Gender Recognition Reform (Scotland) Bill. We submitted responses to previous Scottish Government consultations on gender recognition reform, in 2018 and 2020, which outlined our support for reforms to the system for acquiring a Gender Recognition Certificate.

Children in Scotland's Manifesto for 2021-2026<sup>1</sup>, which received support from a wide range of organisations across the children's sector, called upon the Scottish Government to "bring forward legislation to reform the Gender Recognition Act to ensure a rights-based approach to obtaining a gender recognition certificate", so we are pleased to see this Bill has now been reintroduced to the Scottish Parliament. This has been one of the most widely consulted pieces of legislation in recent years and we the hope this Bill will lead to positive change in the lives of many members of the trans community.

Children in Scotland is a rights-based organisation and all our work is rooted in children's rights as articulated in the United Nations Convention on the Rights of the Child (UNCRC)<sup>2</sup>. Representing and advocating for the views of young people, and working to advance their rights, is fundamental to our remit. We have consistently supported the rights of transgender young people through our policy work, our campaigns and our communications<sup>3</sup>. We believe that reform of the Gender Recognition Act to make it easier for trans young people to legally be able to live in their true gender is essential to upholding their rights.

Children in Scotland does not see this as being in opposition to the rights of any other groups. In this, we are in alignment with many other equalities organisations, including Close the Gap, Engender, Rape Crisis Scotland, Scottish Women's Aid and Zero Tolerance who collectively have stated:

*"We do not regard trans equality and women's equality to be in competition or contradiction with each other. We support the Equal Recognition campaign and welcome the reform of the Gender Recognition Act. Rape Crisis and Women's Aid in Scotland provide trans inclusive services on the basis of self-identification."*<sup>4</sup>

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<sup>1</sup> [https://childreninscotland.org.uk/wp-content/uploads/2021/03/Manifesto\\_V2.1\\_March-21.pdf](https://childreninscotland.org.uk/wp-content/uploads/2021/03/Manifesto_V2.1_March-21.pdf)

<sup>2</sup> <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

<sup>3</sup> <https://childreninscotland.org.uk/call-8-reform-the-gender-recognition-act-and-give-trans-young-people-the-chance-to-live-full-happy-lives/>

<sup>4</sup> <https://www.scotsman.com/news/politics/changing-gender-be-made-easier-under-scottish-government-plans-1436994>

Our policy and project activity and the work of our members has highlighted the challenges and discrimination faced by the LGBT+ community today in Scotland. This is echoed in recently published research by LGBT Youth Scotland<sup>5</sup> which identifies continuing homophobia, biphobia, and transphobia, young people's experiences of hate crime and young people's experiences of prejudice and discrimination within education settings.

As a national charity working to improve the lives of children, young people and families, one of our key organisational priorities is challenging inequalities. This includes those experienced by LGBT+ young people and their families.

Children in Scotland has engaged with partners such as LGBT Youth Scotland and Scottish Trans, as well as members of the Trans Rights Youth Commission in developing our response to this call for views and our previous consultation responses. Our submission considers new evidence from trans young people about their experiences.

We also draw evidence from other children's rights and youth sector organisations in Scotland, including the Children and Young People's Commissioner Scotland, Clan Child Law, the Scottish Child Law Centre and Scottish Youth Parliament.

Finally, we also consider international evidence from Europe and beyond.

Children in Scotland is firmly committed to equality within all our work. We aim to make all our work inclusive for LGBT+ children and young people, staff members and other adults that we work with. We are proud to hold a LGBT Youth Scotland Silver Charter Mark<sup>6</sup>.

## Consultation Questions

### **The removal of the requirement for a medical diagnosis of gender dysphoria and supporting medical evidence. Please share your thoughts on this issue**

Children in Scotland is pleased that the Scottish Government has brought forward proposals to simplify the process of acquiring a Gender Recognition Certificate. The removal of medical assessments will have a positive impact for many trans young people.

We know that the current system for acquiring a Gender Recognition Certificate is problematic for several reasons. The requirement to provide a range of medical assessments is intrusive, distressing and inappropriate. We have heard directly from trans young people how this process can have a detrimental effect on their health and wellbeing.

*"Not every trans person wishes to go through this but, for those that do, attaining a gender recognition certificate involves an arduous journey"*<sup>7</sup>

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<sup>5</sup> <https://www.lgbtyouth.org.uk/media/2712/life-in-scotland-for-lgbt-young-people-2022-e-use.pdf>

<sup>6</sup> <https://www.lgbtyouth.org.uk/charter>

<sup>7</sup> <https://childreninscotland.org.uk/call-8-reform-the-gender-recognition-act-and-give-trans-young-people-the-chance-to-live-full-happy-lives/>

We do not believe that medical certificates are required to support someone to identify their own gender. This move to a self-declaration model provides greater autonomy for trans young people over when and how they wish to come out. At present individuals can self-identify their gender for documents such as passports and driving licences. However, this system is not currently reflected in the process of applying for a Gender Recognition Certificate.

This removal of the requirement for a medical diagnosis also reflects changing international approaches to gender identity issues. In 2019, the World Health Organisation revised the International Classification of Diseases, removing gender incongruence from the 'mental health disorders' chapter. This step was taken to reflect evidence that trans-related identities are not conditions of mental ill health and will hopefully be a positive step for trans people in terms of reducing stigma around gender dysphoria.

International support for self-declaration has strengthened in recent years. The Yogyakarta Principles<sup>8</sup> were created to inform the application of international human rights law in relation to sexual orientation and gender identity. Principle 31 calls on states to "ensure that no eligibility criteria, such as medial or psychological interventions, a psycho-medical diagnosis...or any third party opinion, shall be a prerequisite to change one's name, legal sex or gender".<sup>9</sup>

The European Commission's recent report on legal gender recognition in the EU endorses the Yogyakarta Principles and recommends that member states should strive to move towards self-declaration models.<sup>10</sup> It highlights a number of countries, including Denmark, Malta, Belgium and Portugal, where self-declaration has already been successfully introduced.

The Scottish Government has repeatedly stated its commitment to become a world leader in the field of human rights. If this is the case, it must ensure its gender identity policies and legislation intersects with both the UN Convention on the Rights of the Child (see more below) and the Yogyakarta Principles<sup>11</sup>.

**Provisions enabling applicants to make a statutory declaration that they have lived in the acquired gender for a minimum of three months (rather than the current period of two years) and that they intend to live permanently in their acquired gender. Please share your thoughts on these provisions.**

We believe the requirement for applicants to have lived in their acquired gender for three months should be removed from the Bill. Whilst we note that the Bill proposes a significant improvement on the current two-year process, we believe the three-month period is an arbitrary and unnecessary requirement.

Children in Scotland believes the three-month requirement creates a needless time barrier. While less than the current two years, it would still have a negative effect on trans young people's lives and wellbeing. Trans people can change their sex or

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<sup>8</sup> <http://yogyakartaprinciples.org/>

<sup>9</sup> [http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5\\_yogyakartaWEB-2.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf)

<sup>10</sup>

[https://ec.europa.eu/info/sites/default/files/legal\\_gender\\_recognition\\_in\\_the\\_eu\\_the\\_journeys\\_of\\_trans\\_people\\_towards\\_full\\_equality\\_sept\\_en.pdf](https://ec.europa.eu/info/sites/default/files/legal_gender_recognition_in_the_eu_the_journeys_of_trans_people_towards_full_equality_sept_en.pdf)

<sup>11</sup> <http://yogyakartaprinciples.org/>

gender on other key documents including their passports and medical records much more easily as soon as they start living as who they are.

We understand from evidence from LGBT Youth Scotland that this three-month timeframe could result in a period where their documentation has conflicting information. This could present challenges for young people using their identification when applying for jobs, starting at a new education setting or opening a bank account. It also puts trans people at risk of being 'outed' (having their trans status disclosed without their permission), which could impact on young people's mental health and – in a country where transphobia and abuse is worryingly high – their safety.

Recent research from LGBT Youth Scotland found the average age of young people for coming out as trans was 15<sup>12</sup>. Children in Scotland understands from our work with LGBT Youth Scotland and directly engaging with trans young people that many trans young people are likely to have lived in their true gender for a significant time before applying for a Gender Recognition Certificate and are at a point when they are quite certain of their decision. Applicants will also be required to sign a statutory declaration to confirm that the change is permanent and that they intend to 'live in their gender until death'. We believe that together this gives enough weight to the seriousness of the decision and removes the need for the three-month requirement.

Again, Yogyakarta Principle 31, 'The Right to Legal Recognition', calls on states to "Ensure a quick, transparent, and accessible mechanism that legally recognises and affirms each person's self-defined gender identity". This principle is also supported by the European Commission<sup>13</sup>. We believe the complete removal of the two-year time period aligns best with Principle 31.

**Whether applications should be made to the Registrar General for Scotland instead of the Gender Recognition Panel, a UK Tribunal. Please share your thoughts on this issue.**

Children in Scotland believes applications for a GRC should be made to the Registrar General for Scotland. The self-declaration model means the Registrar General for Scotland would be providing an administrative function rather than making an assessment on an individual's life circumstances (as in the case of the Gender Recognition Panel).

The Registrar General for Scotland would ensure that paperwork is completed accurately and meets the requirements of the legislation.

**Proposals that applications are to be determined by the Registrar General after a further period of reflection of at least three months. Please share your thoughts on these proposals.**

Whilst we are pleased with the progress this proposed legislation would bring, we believe that for Scotland to be seen as an example of international best practice the three-month reflection period should be removed.

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<sup>12</sup> <https://www.lgbtyouth.org.uk/media/2712/life-in-scotland-for-lgbt-young-people-2022-e-use.pdf>

<sup>13</sup> [https://ec.europa.eu/info/sites/default/files/legal\\_gender\\_recognition\\_in\\_the\\_eu\\_the\\_journeys\\_of\\_trans\\_people\\_towards\\_full\\_equality\\_sept\\_en.pdf](https://ec.europa.eu/info/sites/default/files/legal_gender_recognition_in_the_eu_the_journeys_of_trans_people_towards_full_equality_sept_en.pdf)

Including a period of reflection implies that trans people have not already fully considered their decision before applying for a Gender Recognition Certificate. Our experience of engaging with trans young people and our members about this topic is that acquiring a GRC is likely to be one of the final steps in their journey to living in their true identity.

Young people's views about the period of reflection are highlighted in LGBT Youth Scotland's Trans Youth Commission's statement about the Bill:

"There is no evidence given for the necessity or benefit of a reflection period. Basic knowledge of how transgender individuals take steps to affirm their own gender identities through social transition, following extremely thorough introspection, should inform the Scottish Government that there are many personal actions taken before changing legal documents is ever considered."<sup>14</sup>

Children in Scotland believes that the requirement to undertake a statutory declaration, and the penalties for making a fraudulent application, will ensure that anyone completing this process will have fully considered the seriousness of their actions and reflected on its implications.

We also believe the Registrar General for Scotland could have a role to play in helping people who apply for a Gender Recognition Certificate to fully understand the implications of the process and signposting organisations who can provide additional practical and emotional support for LGBT+ young people and their families.

**Whether the minimum age for applicants for obtaining a GRC should be reduced from 18 to 16. Please share your thoughts on this issue.**

Children in Scotland believes that the minimum age that people can apply to legally change their recognised gender should be reduced from 18. Our position on this has remained consistent across our 2018, 2020 and 2022 consultation responses.<sup>1516</sup> This has been informed and reinforced by evidence that has come from our work and findings by LGBT Youth Scotland.

We are in favour of lowering the age at which you can apply for a GRC to 16. At 16 years old, young people are able vote in national elections and work and live independently, so it seems inconsistent that young people are unable to apply for a Gender Recognition Certificate to legally change their gender.

At 16, young people are already able to change their gender on their driving licence, passports and on their medical records. We believe that it should also be possible for them to change their gender on their birth certificates at this age. We do not anticipate that this change in legislation will lead to a significant increase in applications. However, the benefit for trans people who wish to apply is potentially life-changing. It will give them more autonomy and control over their lives and

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<sup>14</sup> <https://www.lgbtyouth.org.uk/support-us/trans-youth-commission-statement/>

<sup>15</sup> [https://childreninscotland.org.uk/wp-content/uploads/2018/03/Gender-Recognition\\_Final.pdf](https://childreninscotland.org.uk/wp-content/uploads/2018/03/Gender-Recognition_Final.pdf)

<sup>16</sup> <https://childreninscotland.org.uk/wp-content/uploads/2020/03/Gender-Recognition-Reform-Scotland-Bill-Consultation-response.pdf>

provide legal recognition of their lived gender. We are aware that many trans young people believe this would have a positive effect on other aspects of their life such as their wellbeing.

As highlighted above, for many children and young people, considerations about their gender identity begin before the age of 16. This is also confirmed by international evidence. The European Commission study considered evidence from more than 1000 trans people from 28 states and found that the most common age group for study respondents to realise that 'their feelings about their gender did not match their assigned gender' was 10-14 years<sup>17</sup>.

There is evidence to suggest that future consideration should be given to the rights of children under 16 in this area. There is an interaction between gender recognition processes and existing legislation around children and young people's views, their decision-making abilities and their legal capacity. These include the Age of Legal Capacity (Scotland) Act 1991 and the Children (Scotland) Act 2020. Careful and sensitive conversations must take place about how younger children might have their gender formally identified.

Children and young people's views and experiences must be at the centre of these discussions. This dialogue must also include child rights experts and parents and carers of trans young people, in recognition of their vital role as upholders of their children's rights. However, it is important to recognise that not all trans young people have supportive families around them.

We hope that positive and sensitive discussions can continue around how the Scottish Government can support trans young people under the age of 16 to realise their rights under the UNCRC. In particular, the following UNCRC articles are particularly relevant. These apply to all children and young people under the age of 18 (including transgender young people):

Article 2 - The Convention applies to every child without discrimination, whatever their ethnicity, sex, religion, language, abilities or any other status, whatever they think or say, whatever their family background.

Article 6 - Every child and young person has the right to life. Governments must do all they can to ensure that children survive and develop to their full potential.

Article 12 - Every child has the right to express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously.

Article 8 - Every child and young person has the right to an identity and for this to be respected.

Article 16 - Every child and young person has the right to privacy.

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[https://ec.europa.eu/info/sites/default/files/legal\\_gender\\_recognition\\_in\\_the\\_eu\\_the\\_journeys\\_of\\_trans\\_people\\_towards\\_full\\_equality\\_sept\\_en.pdf](https://ec.europa.eu/info/sites/default/files/legal_gender_recognition_in_the_eu_the_journeys_of_trans_people_towards_full_equality_sept_en.pdf)

**If you have any comments on the provisions for interim GRCs. Please share your thoughts on the provisions.**

N/A

**If you have any comments on the provisions for confirmatory GRCs for applicants who have overseas gender recognition. Please share your thoughts on the provisions.**

N/A

**If you have any comments on the offences of knowingly making a false application or including false information. Please share your thoughts on the offences.**

N/A

**If you have any comments on the removal of powers to introduce a fee. Please share your thoughts on this.**

We are pleased that the power to introduce a fee has been removed from the Bill. Children in Scotland believes that a cost could be prohibitive for some trans young people accessing their right to an identity, as enshrined in Article 8 of the United Nations Convention on the Rights of the Child.

**If the Bill's intended policy outcomes could be delivered through other means such as using existing legislation or in another way? Please share your thoughts on this.**

We do not believe it would be possible for the intended policy outcomes to be delivered in any other way.

**If you have any suggestions for how this Bill could be amended. If so, please provide details. Please share your suggestions.**

N/A

**Any other comments on the Bill. Please share any other comments.**

### **Non-binary people**

As highlighted in our previous consultation responses, Children in Scotland believes that the Scottish Government should bring forward measures to ensure legal recognition for non-binary people. We know this proposition has received support from the Children and Young People's Commissioner Scotland and the Scottish Youth Parliament and is a key call in the '@LGBTI Equality Manifesto 2021-2026'.<sup>18</sup>

We have heard from Trans Youth Commissioners who have expressed their disappointment and upset that the current gender recognition reform Bill does not

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<sup>18</sup> <https://www.lgbtyouth.org.uk/media/2310/lgbti-equality-manifesto-2021-26.pdf>

extend to non-binary people. The proposed reforms miss out a significant portion of the trans community. Although detailed figures are not available in Scotland, in the UK Government's 2018 National LGBT Survey<sup>19</sup>, the majority of trans young people completing the survey identified as non-binary (50.8% of trans respondents aged 16-17 and 58% of trans respondents aged 18-24).<sup>20</sup>

Children in Scotland believes it is essential that non-binary people are legally recognised members of the trans community, and that non-binary people have the opportunity for legal recognition of their lived gender. For Scotland to be seen a world leader in terms of human rights, it must recognise non-binary identities. The Yogyakarta Principles<sup>21</sup> affirm existing human rights in the context of sexual orientation and gender identity. These clearly recommend that states should "make available a multiplicity of gender marker options" in relation to formal gender recognition. It is also important that Scotland looks towards the international community, where a growing number of countries (including Canada, Australia and Denmark) provide legal recognition of non-binary people.

The exclusion of a non-binary option from the proposed reforms could exacerbate many of the health and wellbeing issues that non-binary individuals face.<sup>22 23</sup> A lack of legal recognition can also contribute to the stigmatisation of non-binary people and sends a message to non-binary children and young people that their identities are not valid.

We believe the legislation should include a requirement for Ministers to review recommendations from the non-binary working group and investigate how to ensure non-binary people can receive legal recognition.

## **Wider considerations**

While not specific only to this Bill, we want to restate the importance of informed, constructive and respectful consideration of policymaking in relation to equalities groups, to make sure the rights of all can be fulfilled. Key to that process from our perspective is an acknowledgment of the prejudice and discrimination experienced by those with protected characteristics, in this case trans young people, and an expression of empathy with them.

We understand that there has been significant public debate about how a move to self-declaration may impact on women-only services and women's rights. We do not believe the Bill will negatively impact women's rights and understand that the Bill is supported by many women's rights and human rights organisations. There is no reason why simplifying the process for obtaining a Gender Recognition Certificate should impact on single-sex spaces and services, for example, which are covered separately under provision contained within the Equality Act 2010.

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<sup>19</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/722314/GEO-LGBT-Survey-Report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/722314/GEO-LGBT-Survey-Report.pdf)

<sup>20</sup> <https://www.gov.uk/government/publications/national-lgbt-survey-summary-report> (see Annex 3: Characteristics)

<sup>21</sup> [http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5\\_yogyakartaWEB-2.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf)

<sup>22</sup> <https://www.lgbtyouth.org.uk/media/1354/life-in-scotland-for-lgbt-young-people.pdf>

<sup>23</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/721704/LGBT-survey-research-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721704/LGBT-survey-research-report.pdf)

The Scottish Government must consider both legislative and non-legislative measures to improve the lives of trans children and young people in Scotland. A positive example of this was the introduction of the Scottish Government's 'Supporting transgender young people in schools'<sup>24</sup> guidance, which launched in August 2021.

More widely, we would welcome clearer information about equalities legislation and policy for service providers and the general public to clarify legal rights and provisions and to help combat the spread of disinformation.

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<sup>24</sup> <https://www.gov.scot/publications/supporting-transgender-young-people-schools-guidance-scottish-schools/pages/2/>