

# **Equalities, Human Rights and Civil Justice Committee of the Scottish Parliament**

## **Call for Views: *Gender Recognition Reform (Scotland) Bill***

### **Response on behalf of the Free Church of Scotland**

#### **Information about your organisation**

The Free Church of Scotland is a Christian church with a network of around 100 congregations across Scotland and over 13,000 of us gather at services every week to worship God, but our Christian faith affects all of our life, not just a Sunday at church. The Free Church of Scotland is glad to have this opportunity to respond to the Scottish Government's proposed change in legislation relating to Gender Recognition.

#### **Question 1: Views relating to the removal of the requirement for a medical diagnosis of gender dysphoria and supporting medical evidence**

The Free Church of Scotland recognises that discussions relating to gender are very sensitive in nature, and necessitate compassion and understanding. As Christians, we believe that all people are made in the image of God with inherent dignity and worth. The Bible clearly teaches we are all made in God's image, male and female. This means we believe that sex cannot be reduced to a mere social construct but is a core part of our humanity. Accordingly, we believe proposals to allow changes to sex or gender have a major impact on what it means to be human.

We urge the Parliament to think seriously before changing these definitions which will have widespread implications across society. At the same time, we are concerned for those who are experiencing gender dysphoria. Jesus told us that we should love our neighbour as ourselves and made clear that everyone is our neighbour. We love and care for those impacted by these issues and we recognise that the Scottish Government also wants to do what is best for those experiencing gender dysphoria. However, we are not convinced that always affirming someone's understanding of themselves is the appropriate way to care for them. In particular we are concerned that a move away from requiring a medical diagnosis and supporting medical evidence will result in less support being given to those who are wrestling with their identity.

Undergoing a change of gender has potentially life changing consequences in a range of areas. We believe that issues relating to changing gender are inseparably linked to medical treatments. There is a culture of medical intervention around changing gender, Various medical interventions are employed in treating gender dysphoria including puberty suppression drugs and artificial cross-sex hormones and gender dysphoria is therefore a complex biomedical condition which cannot be de-medicalised. We also note that those suffering from gender dysphoria often also suffer from a variety of mental health issues, indicating that medical help may be necessary. Medical staff will seek to treat the person in a holistic manner and so their involvement is essential.

Proposals to de-medicalise the process carry with them the risk that those applying for a gender recognition certificate will not receive the support they need. The lack of medical involvement may lead to those considering a change of gender not getting access to appropriate information on all of the issues that are associated with changing gender – including issues relating to de-transitioning.

We are now beginning to see a number of cases emerge in the public square where people have regretted a change in gender and some have begun the difficult process of de-transitioning. A common complaint is a lack of support or counselling when they first presented with gender dysphoria. It is vital we get this right given that some gender reassignment medical procedures are irreversible. As such there are positive reasons for people to be offered counselling and other medical support before making this life changing decision. Moreover, moves to de-medicalise the process downplay the seriousness of the decision to change gender.

We also think removing medical intervention at the stage of applying for a GRC will have other unintended consequences. For example, if someone only consults a doctor about possible surgical or hormonal intervention after they have already received a GRC will the doctor be able to give unbiased advice on the

patient's options which might include challenging the patient's belief that they are in the wrong gender? Or will the doctor be forced to affirm the GRC and offer major medical interventions despite any professional misgivings.

It is not easy, nor do we think it desirable, to separate gender dysphoria from other medical conditions and a holistic approach is needed. Proper counselling and support should be offered to those struggling with gender issues.

**Question 2: Relating to 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**

A requirement that someone must only live in their acquired gender for 3 months before applying for a GRC doesn't reflect the magnitude and seriousness with which a decision to change gender should be taken.

Undergoing a change of gender has potentially life changing consequences in a whole range of areas. Certain medical interventions will lead to infertility and there has been insufficient research into the long-term effects of medical intervention.

Now that we are seeing people beginning the difficult process of de-transitioning we have to take seriously the long term consequences of making a decision to change gender. Proper support and counselling is required at an early stage so that someone does not fall into a cascade of intervention without time to properly reflect on the decision. A 3 month period is insufficient time for access and use of counselling services. A referral, initial consultation, and further treatment will take a lot longer than 3 months.

Moreover, 3 months seems to be an arbitrary period and is too short a time to allow for a genuine understanding of what it means to live as a different gender. As an example, it is far less time than the average engagement before people get married. There is no information put forward as to why 3 months has been chosen.

There are also issues as to what people believe it means to live in an acquired gender for 3 months. It is probable that living in conformity to gender stereotypes is what people will point to as evidence they have lived in a particular gender. Gender stereotypes can be incredibly harmful to people and should not be encouraged like this.

We also believe that reducing the time period to 3 months will increase the number of people undergoing the process. Given we are now seeing more examples of regrets and de-transitioning it is likely that increasing the number of people who transition will increase the number who de-transition with associated costs and difficulties.

There has not been enough research into this area and we believe changes to this area of law should be put on hold until more research is available.

**Question 3: Views relating to whether applications should be made to the Registrar General for Scotland instead of the Gender Recognition Panel, a UK Tribunal**

The Registrar General for Scotland does not possess the expertise to oversee this process and accept applications. The Registrar General for Scotland essentially fulfils an administrative role which does not recognise the many complex issues connected to gender identity. They do not have sufficient expertise to assess applications.

We believe some form of Gender Recognition Panel which incorporates people with appropriate training and experience of supporting those experiencing from gender dysphoria would serve as a much better body to assess applications for a gender recognition certificate. Given the inseparable connection between medicine, psychology and gender identity we would want such a panel to include doctors and mental health practitioners.

**Question 4: Views relating to proposals that applications are to be determined by the Registrar General after a further period of reflection of at least three months**

We do not believe a three month reflection period is sufficient for similar reasons we do believe that someone only living in the acquired gender for three months prior to making the application is insufficient (see our answer to question 2).

A three-month reflection period is arbitrary and too short to allow genuine reflection on such a serious and significant life changing decision. Given we are seeing the emergence of de-transitioners, under the current two year process, who wish they had given greater consideration to their decisions we believe reducing the period of reflection to three months will result in even more people coming to a decision that they later regret.

We also note that this is essentially a self-reflection period and we do not think that is helpful. Many of those suffering from gender dysphoria also suffer from a variety of mental health issues, indicating that medical help may be necessary. Medical staff will seek to treat the person in a holistic manner and so their involvement is essential in any period of reflection.

**Question 5: Views relating to whether the minimum age for applicants for obtaining a Gender Recognition Certificate should be reduced from 18 to 16**

This is the most troubling and sensitive aspect of the proposed changes. Allowing under 18s to legally change gender potentially opens them up to irreversible medical intervention when we do not know the long term consequences of such intervention, especially on the developing person.

There are concerns about the safety of puberty blockers, drugs given to young people in order to suppress their natural hormones and what the effect truly is if someone stops taking them in terms of bone density and other irreversible changes.

Teenagers are already impacted by hormonal changes and are primed to take risks and not consider the long term consequences. This is why in other areas such as smoking and alcohol consumption the Scottish Government rightly takes steps to protect young people.

Peer pressure, social contagion and a desire to belong to a community also pushes young people to explore gender issues as the source of other problems. Particularly when young people are also experiencing other mental health issues, the idea of finally finding people within the Trans-community who understand you is appealing but it may not be the best help for the young person in the long run.

Rates of persistence of gender dysphoria from childhood into adolescence or adulthood vary but it seems to be the case that for the majority of young people, gender dysphoria desists over time as they enter and progress through adolescence<sup>1</sup>.

Proposals to allow those under 18 to change their gender also has the possibility of bringing young people into conflict with their parents and could undermine this vital relationship.

16-18 year olds are treated as vulnerable people in a number of areas. For example, under the Age of Legal Capacity (Scotland) Act 1991 a 16 year old can enter a contract but only of the type typically entered into by those their age and providing the terms are not unreasonable. And until they are 21 they are entitled to apply for a contract made between 16 and 18 to be set aside as a prejudicial transaction. All of this shows we do consider additional protections in law for those under 18 to be reasonable. Therefore, to allow a 16 year old to make a potentially life changing decision to change their gender seems to contradict established practice in other areas.

We also note there are many other areas of law where those under 18 are prohibited from undertaking various actions. For example, individuals under 18 years of age in Scotland cannot:

- Vote in General Elections in the UK.
- Stand for election as a local councillor, MP or MSP.
- Serve as a juror.
- Buy alcohol in licensed premises and consume alcohol in a bar.
- Buy cigarettes and tobacco.
- Buy a lottery ticket.

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<sup>1</sup> Zucker K.J. 'Measurement of psychosexual differentiation', *Arch Sex Behav*, 2005, 34(4):375-388.

- See, rent or buy any film.
- Buy or possess fireworks.
- Place a bet.
- Get tattooed.
- Hire or buy a sunbed.
- Hold a licence to drive a medium-sized goods vehicle.
- Become a policeman or policewoman
- Train to become an army officer

If someone later regrets their decision and undergoes de-transitioning, will compensation be available to young people? We all have a duty to protect young people in our society who are vulnerable and the proposals to reduce the age to 16 do not achieve this.

**Question 6: Views relating to the provisions for interim Gender Recognition Certificates**

We note that provisions for interim Gender Recognition Certificates exist due to a recognition that decisions to change gender can impact on other relationships in society – particularly marriages and civil partnerships. We welcome this recognition that our identity cannot simply be self declared as it affects other people. We would encourage the Scottish Parliament to give more consideration to how gender recognition is affecting other people in society, especially women accessing women only services, women wishing to exercise their right to choose who provides them with certain medical treatments and those competing in women’s sport.

**Question 7: Views relating to the provisions for confirmatory Gender Recognition Certificates for applicants who have overseas gender recognition**

We believe that provisions for confirmatory Gender Recognition Certificates for applicants who have overseas gender recognition are only appropriate where the jurisdiction issuing the certificate operates a rigorous system of assessing the appropriateness of the certificate. This should include the involvement of medical professionals.

**Question 8: Views relating to the offences of knowingly making a false application or including false information**

In general, we welcome the introduction of the offence as deterrent to people treating a change of gender as a trivial matter. The offence rightly recognises the seriousness of a decision to change gender.

However, we would want to ensure that the offence does not discourage those who later change their mind and wish to de-transition.

**Question 9: Views relating to the removal of powers to introduce a fee**

We do not believe financial barriers should prevent anyone in Scotland accessing a service. However, we do not see why the fee should be removed for receiving a gender recognition certificate while other services provided by the Registrar General still charge a fee – such as an application for a marriage schedule.

**Question 10: Views relating to the Bill’s intended policy outcomes could be delivered through other means such as using existing legislation or in another way?**

We do not believe this bill is required.

**Question 11: Views relating to suggestions for how this Bill could be amended. If so, please provide details**

We note, with regret, how divisive discussions relating to gender have become in our society. We understand that the Scottish Government wishes to restrict discussion on this bill to a very narrow range of issues relating to the formal process for applying for a gender recognition certificate. We question the

wisdom of this approach. Proposals relating to gender recognition certificates impact a wide range of areas of society and cannot be easily separated from wider policy considerations where there is confusion in society. It is the responsibility of the Scottish Parliament to seek to address the wider issues relating to gender in society. In particular more should be done to protect Freedom of Expression around issues of gender, to safeguard victims of abuse with a focus on what will make victims more comfortable rather than on the rights of the care providers, and in areas such as women's sport. The Gender Recognition Reform (Scotland) Bill should include provisions to address these issues.

We also note that documents like *Supporting Transgender Pupils in Schools* have been issued by the Scottish Government on a non-statutory basis but which encourage schools to adopt a child's chosen gender before the age of 16 and state that they do not have to inform the child's parents of this new gender. Issues of this magnitude should be addressed in legislation, with proper consultation and parliamentary debate, rather than being left to non-statutory guidance. The Gender Recognition Reform (Scotland) Bill should include provisions to address these issues.

Finally, we note that the bill amends the offences relating to disclosing someone's previous gender under Section 22 of the Gender Recognition Act 2004. We are concerned that it being an offence to disclose this information makes it impossible for operators of legitimate single sex spaces to exercise their rights under the Equality Act to exclude those living in an acquired gender as they will be unable to ascertain someone's original gender.

#### **Question 12: Views relating to any other comments on the Bill**

We note that the Scottish Government says that the Equality Act exceptions will protect single-sex spaces – especially women's safe spaces for women who have previously been subject to abuse. However, we still believe the erosion of safe spaces is a real problem. The potential protections in the Equality Act are complex and confusing. There is a risk that many people in practice will not understand the exemptions and so will feel they have no option but to allow those self-identifying as another gender to enter their spaces.

While it is true that the law may give protection – often people do not understand the law and so don't make use of the exemptions. For example, Health and Safety concerns are often cited as a reason not to undertake certain activities whereas a proper risk assessment would mean the activities could be carried out in a safe way.

Accordingly, allowing a self-declaring model is likely to have harmful effects on women even if there are legal protections in place because not everyone will understand the exemptions. We also note that a space employing the restrictions might have trouble securing funding relating to trans-inclusion and so there may be financial motivations to stop people making the correct use of exemptions.

In any event, where a women's only group decides to open their doors to trans-women that will always only be the decision of the leaders of the group and many individual women who are uncomfortable with that decision may simply choose not to access the service themselves and so they may be excluded from the help they need. We must do more to protect potential victims of abuse.

In general, the Free Church of Scotland opposes the changes being proposed by the Scottish Government in the Gender Recognition Reform (Scotland) Bill. Whilst recognising the limited exception of intersex, we believe that the vast majority of human beings are either male or female and this is a biological fact encoded in every cell of our body. Gender is not a social construct and cannot be changed at will – these proposals will have a major impact on what it means to be human and serious thought should be given to the wider context rather than focusing narrowly on issues relating to the process for obtaining a GRC.

At the same time, we are concerned for those experiencing issues relating to gender recognition. We believe all people are made in the image of God and have inherent dignity and worth. We just have differing views on how best to support those struggling with these issues. We believe more holistic support is required rather than simply affirming someone's self declared gender identity. Why when there is a conflict between someone's mind and body do we assume it is the body that has to change?

We have also seen aggression expressed to those who hold differing views in these areas. A lot of online abuse has been seen as well. Whether we agree with one another or not we should be able to treat each

other respectfully while also being able to disagree with one another. Healthy disagreement and debate are essential factors if our society is to pursue truth. We would encourage people on all sides of debate around reform of gender recognition to interact with grace for one another.

Central to our response to this call for views is that the current proposals and even the existing legislation in this area are not truly helping those affected by gender dysphoria. More confusion is being created in society and there has been insufficient research into the long-term impact of some of these proposals – especially on young people. We would urge the parliament to reject these reforms and give greater consideration as to how those in society suffering from gender dysphoria can be truly helped.