

# Consultation Briefing – Gender Recognition Reform (Scotland) Bill

**The Scottish Government is consulting on reform of the Gender Recognition Act 2004. The consultation closes on 17 March. While NUS Scotland has responded to the consultation in full, it's not necessary to answer every question. This sheet sets out our response to the questions that are most relevant to students, and the work of NUS Scotland.**

**Respond to the consultation here:** <https://consult.gov.scot/family-law/gender-recognition-reform-scotland-bill/>

**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 ☒ No ☐ If yes, please outline these comments.**

Yes

- NUS Scotland opposes the proposed requirement for applicants to live in their acquired gender for at least three months before applying for a Gender Recognition Certificate. We believe this is an unnecessary hurdle for people to overcome and there is not evidence that this is necessary.
- Other statutory declarations do not require evidence of backdating and it is likewise not a requirement in other gender recognition systems around the world, which only require a declaration to be made in the present.
- If documented evidence is required as proof of living in the acquired gender, this may again prove difficult as trans people are more likely to be estranged without a fixed address, be unemployed or struggle to access employment because of transphobia. This makes official records difficult to obtain.
- We do not believe that living in any particular way is proof of a person's gender identity and that there are no universal metrics for doing so.
- Stonewall, the Trans Alliance and the Equality Network are encouraging respondents to include how their organisation recognises trans people on the basis of self-declaration. If your students' association recognises trans people on this basis, you could provide this detail.

**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 ☒ No ☐ If yes, please outline these comments.**

Yes

- NUS Scotland opposed the proposed requirement for applicants to go through an additional period of reflection for at least 3 months before obtaining a Gender Recognition Certificate.
- A reflection period is not common practice for other statutory declarations and is only used in two other countries with a similar system of gender recognition.
- Trans people are the experts in knowing their own gender, this proposal ignores this principle
- Not being able to legally change their gender when they are ready to do so denies trans people dignity and respect, and may have implications for their wellbeing.
- A delay in legal recognition can put trans people in unsafe situations if they are forced to out themselves when needing to show their birth certificate which does not match their gender identity.

- If your students' association does not require a reflection period with a model of self-declaration, mention this.

**Question 3. Should the minimum age at which a person can apply for legal gender recognition be reduced from 18 to 16? Yes ☒ No ☐ Don't know ☐ If you wish, please give reasons for your view.**

Yes

- NUS Scotland believes the minimum age should be lowered to 16 years old.
- 16 years-old is already the age at which individuals can vote, get married or join the army.
- Forcing individuals to wait an additional two years is likely to have a negative impact on their wellbeing.
- Students are often asked to disclose their gender at birth when applying to study, this can result in 16 and 17 year-old trans students starting further or higher education being required to register under the wrong gender if they unable to access legal recognition. Trans students who have to register under the wrong gender can face significant after they graduate if their qualification is in a different name to the one they're using and they don't have a gender recognition certificate.

**Question 4. Do you have any other comments on the provisions of the draft Bill? Yes ☒ No ☐ If yes, please outline these comments.**

Yes

- We are disappointed that the Scottish Government has chosen not to process with recognition for non-binary people.
- If the underlying principle of Gender Recognition is to allow trans people to be recognised as who they are, this principle should also apply to non-binary people
- Non-binary recognition would end the current necessity for non-binary individuals to legally identify as either male or female.
- Similar to questions 1 and 2, Stonewall, the Trans Alliance and LGBT Youth Scotland are encouraging respondents to outline the ways their organisation recognises non-binary people.
- It is already a criminal offense to knowingly make a false statutory declaration in Scotland. We are opposed to the proposal within the draft Bill to introduce an additional offence specific to the context of gender recognition.
- It is unclear how it can be proven that someone has abused the process and equally who is harmed in the event that an individual wishes to reverse their gender recognition.
- Additionally, we have concerns that this proposed additional offence could be used to facilitate the harassment of trans people and lead to trans people being accused maliciously by anti-trans individuals or groups.
- We are concerned that there does not appear to be provision for asylum seekers within the proposed Bill.

**Question 5. Do you have any comments on the draft Impact Assessments? Yes ☒ No ☐ If yes, please outline these comments.**

Yes

- We welcome the inclusion of the Equality Impact Assessment in the consultation and its rightful conclusion that this Bill will not have a detrimental impact on the rights of any other protected group.

- We would like to see more consideration given to the impact on pregnancy and maternity characteristics and are asking the review to consult with the Cross-Party Group on Sexual Health and Blood Borne Viruses, which recently carried out research into trans healthcare and reproductive health which NUS Scotland provided evidence to. We would encourage students' associations to include their students' experiences of this issue and where gender recognition may impact on this.

**For more information on this submission, please contact:**

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