

Equalities, Human Rights and Civil Justice Committee

16th Meeting, 2022 (Session 6), Tuesday 31 May 2022

Gender Recognition Reform (Scotland) Bill

Note by the Clerk

Introduction

1. [The Gender Recognition Reform \(Scotland\) Bill](#) was introduced in the Parliament by the Cabinet Secretary for Social Justice, Housing and Local Government, Shona Robison MSP on 2 March 2022 and referred to the Equalities, Human Rights and Civil Justice Committee.
2. The Bill and accompanying documents can be accessed [here](#).
3. The Bill amends the [Gender Recognition Act 2004](#) to reform the grounds and procedure for obtaining legal gender recognition. The process under the GRA has been in place since 2005. Applicants must either have been born in Scotland or be ordinarily resident here.
4. The key differences between the current procedure and those provided in the Bill are:
 - The removal of the requirement for applicants to have a diagnosis of gender dysphoria and the removal of the requirement for medical reports;
 - A reduction in the period for which an applicant must live in their acquired gender before submitting an application from two years to three months;
 - The introduction of a mandatory three-month reflection period;
 - The removal of the Gender Recognition Panel (GRP). Applications will be made instead to the Registrar General for Scotland; and
 - A reduction in the minimum age for applicants from 18 to 16.
5. The Bill also creates a specific offence of knowingly making a false statutory declaration in an application for a GRC and creates an offence of knowingly including information which is false.
6. According to the Scottish Government's [policy memorandum](#), the Bill will simplify and improve the process in Scotland for those applying for legal gender recognition. It believes the current system can have an adverse impact on applicants due to the requirement for a medical diagnosis and supporting evidence.

Background

7. The Scottish Government undertook two separate consultations. The first ran from 9 November 2017 to 1 March 2018. It sought views on areas including reducing the minimum age of applicants and removing medical requirements.
8. The second consultation on the draft bill ran from 17 December 2019 to 17 March 2020. It sought views on areas including the requirement for applicants to live in their acquired gender for three months and on the three-month reflection period.

Approach to Stage 1 consideration

9. At its meeting on 15 March 2022, the Committee agreed its approach to Stage 1 scrutiny of the Bill. It began taking oral evidence on 17 May 2022 and will continue taking evidence throughout May and June.

Oral evidence

10. At its meeting on [Tuesday 17 May](#), the Committee heard from

- Vic Valentine, Scottish Trans Manager, Scottish Trans Alliance & Equality Network, Dr Mhairi Crawford, Chief Executive, LGBT Youth Scotland, Colin Macfarlane, Director, Stonewall Scotland and then from Alasdair MacDonald, Director of Policy and Human Rights Monitoring and Melanie Field, Chief Strategy and Policy Officer, Equality and Human Rights Commission (EHRC).

11. At its meeting on [Tuesday 24 May](#), the Committee heard from organisations representing children and young people and sports organisations.

- Bruce Adamson, Children and Young People's Commissioner Scotland, Ellie Gomersall, President-Elect of NUS Scotland and President of UWS Students' Association and then from Hugh Torrance, Executive Director, LEAP Sports Scotland and Malcolm Dingwall-Smith, Strategic Partnerships Manager, sportscotland.

12. At today's meeting the Committee will hear evidence from:

- Susan Smith, Co-Director, For Women Scotland, Lucy Hunter Blackburn, MurrayBlackburnMackenzie, Malcolm Clark, Head of Research, LGB Alliance, Dr Kate Coleman, Director, Keep Prisons Single Sex and then from Catherine Murphy, Executive Director, Engender, Sandy Brindley, Chief Executive, Rape Crisis Scotland, Naomi McAuliffe, Scotland Programme Director, Amnesty International UK and Jen Ang, Director of Policy and Development, JustRight Scotland.
- Written submissions received from relevant witnesses at today's evidence session are linked at [Annexe A](#) (no submission has been received from Rape Crisis Scotland).

- Ahead of next week's meeting, MurrayBlackburnMackenzie issued a letter to the Convener. This is included at [Annexe B](#) and will be published on the Committee's webpage in due course.

13. The meeting will be held in person. Members of the public can watch the evidence session live on the Scottish Parliament TV website from 09.30am on Tuesday 31 May.

<https://www.scottishparliament.tv/>

14. Following this evidence session, the Committee will consider the evidence received as part of the Stage 1 scrutiny of the Bill.

Written evidence

15. The Committee issued two [call for views](#) on the Bill. The first in the form of a survey for individual respondents and the second, where individuals or organisations could provide a more detailed response. The Calls for Views closed on 16 May 2022. Written submissions are published on the Committee's [webpage](#).

16. A [SPICe briefing](#) setting out further detail on the Bill was published on 10 March 2022.

Next steps

17. The Committee is due to report to the Parliament on the general principles of the Bill later this year.

Clerks to the Committee May 2022

The following documents are included for this meeting:-

- Annexe A: written submissions to our consultation from today's witnesses
- Annexe B: letter from MurrayBlackburnMackenzie

Annexe A

Gender Recognition Reform (Scotland) Bill

Written submissions received from:

Panel 1 witnesses

1. [For Women Scotland](#)
2. [MurrayBlackburnMackenzie](#)
3. [LGB Alliance](#)
4. [Keep Prisons Single Sex](#)

Panel 2 witnesses

5. [Engender](#)
6. [Joint submission from Amnesty international UK and JustRight Scotland](#)

Annexe B

Gender Recognition Reform (Scotland) Bill

Letter to Convener from Lucy Hunter Blackburn, MurrayBlackburnMackenzie

25 May 2022

Dear Convenor,

COMMITTEE MEETING 31 MAY

Thank-you for inviting MBM Policy to provide a witness to the Committee's stage 1 evidence sessions. I look forward to seeing the Committee on 31 May.

The Committee has a formidable task in considering a Bill for which the background work has not been done and the complexity of which the Government itself appears not to appreciate. Given this, and the limited amount of time available next week, I thought it might be helpful to write ahead, on two points I would like to make for the record without needing to take the Committee's time in the hearing.

First, there has been a serious misrepresentation of the position of those with concerns about potential impacts on women and girls. It was put to the Committee on 17 May by Colin MacFarlane that a key argument by those opposed to moving GRCs onto self-declaration is that "trans people, and particularly trans women, are a threat." Other witnesses have suggested similar.

This is not my position, I know it is not the position of others appearing with me, and I have not seen this claim made by any group or individual falling within what would be generally recognised as the mainstream of public discourse. I am confident that it is not the view of any group who has met the Scottish Government to argue for more care to be taken over impacts on women.

The only time I have seen this evidently harmful idea introduced into mainstream public debate is in fact by organisations and individuals who describe themselves as advocating for trans rights, as a view they ascribe to others.

The issue for us is not whether or not a person is trans, but what their sex is. In the context of women's single sex services and spaces, the issue therefore is simply whether or not someone is male; that is, in the words of a recent judgment of the Inner House of the Court of Session and the EHRC's recent guidance on single sex services and spaces, whether someone is biologically male.

The harmful mischaracterisation of concerns about sex, and specifically *maleness*, as being concerns about *trans status* has contributed substantially to the abuse of women seeking to have a voice in this discussion and to the atmosphere of tension and mistrust here. We would like it to stop here.

Nor equally is the argument here that all members of *any* group in the population are a danger. It is simply the long-standing observation that the female half of the population is at risk of violence and sexual offending almost exclusively from people drawn from the male half of the population. This ought not to be a controversial statement to make in 2022.

In seeking to understand properly the position we are coming from, I would further ask the Committee to note that the arguments here are not exclusively about physical safety. As the EHRC's recent guidance reinforces, in certain contexts single sex services can be justified on the grounds of privacy and dignity, as well as safety.

I would also like to pick up on comments made by a number of witnesses, who have discussed the classification of gender dysphoria as a mental health issue. The GRA of course does not specify that gender dysphoria is a mental health or psychiatric diagnosis. The definition of gender dysphoria in section 25 does use the term "disorder", and was criticised for doing so in a recent judicial review: the UK Government has said that it plans to amend the Act to deal with that. The Act, with this change, would therefore be consistent with the reclassification of gender dysphoria in other contexts, already noted by some witnesses, as not being a mental health diagnosis.

My reason for raising this however is that a number of witnesses have commented without challenge on mental health conditions being "stigmatising". I have spoken to several people following the early evidence sessions who are unhappy that the discussion in committee risks (re)normalising the idea that having a mental health condition is stigmatising. As someone who experienced post-natal depression, I share that concern. There have been major efforts by government and others over the past few years, for example the See Me campaign, to challenge the stigma traditionally attached to mental health conditions. Again, given time will be limited, this is perhaps better dealt with by letter. I would simply ask the Committee to be alert to how the discussion sounds to those outside the Committee room who are experiencing or have experienced mental health issues, and consider this also in drafting its Stage 1 report.

Copy goes for information to For Women Scotland and the LGB Alliance, who I have been advised are appearing on the same panel.

Yours,
Lucy Hunter Blackburn