

Equalities, Human Rights and Civil Justice Committee

17th Meeting, 2022 (Session 6), Tuesday 7 June 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 Alliance & Equality Network, Dr Mhairi Crawford, LGBT Youth Scotland, Colin Macfarlane, Stonewall Scotland and then from Alasdair MacDonald and Melanie Field, 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 then from Hugh Torrance, LEAP Sports Scotland and Malcolm Dingwall-Smith, sportscotland.

12. At its meeting on Tuesday 31 May, the Committee heard from

- Susan Smith, For Women Scotland, Lucy Hunter Blackburn, Murray Blackburn Mackenzie, Malcolm Clark, LGB Alliance, Dr Kate Coleman, Keep Prisons Single Sex and then from Catherine Murphy, Engender, Sandy Brindley, Rape Crisis Scotland, Naomi McAuliffe, Amnesty International UK and Jen Ang, Justright Scotland.

13. At today's meeting, the Committee will hear evidence focussing on the Bill's roll out in practice and on faith and secular groups:

- Paul Lowe, Registrar General for Scotland, James Kerr, Deputy Chief Executive, Scottish Prison Service, Kevin Guyan, University of Glasgow and then from Anthony Horan, Director, Catholic Parliamentary Office of the Bishops' Conference Scotland, Rev Karen Hendry, Vice Convener of the Faith Impact Forum, Minister of Yoker Parish Church, Church of

Scotland, Chris Ringland, Public Policy Officer, Evangelical Alliance and Fraser Sutherland, Chief Executive Officer, the Humanist Society Scotland.

14. Written submissions received from relevant witnesses at today's evidence session are linked at [Annexe A](#) (no submissions were received from representatives on Panel 1 nor from The Humanist Society of Scotland, appearing on Panel 2).
15. Disclosure Scotland were also invited but unable to attend the session so have provided a letter to the Convener which is included at [Annexe B](#) . The letter will be published on the Committee's webpage in due course.
16. The meeting will be held in hybrid form. Members of the public can watch the evidence session live on the Scottish Parliament TV website from 10.00am on Tuesday 7 June.

<https://www.scottishparliament.tv/>
17. Following this evidence session, the Committee will consider the evidence received as part of the Stage 1 scrutiny of the Bill.

Written evidence

18. 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](#).
19. A [SPICe briefing](#) setting out further detail on the Bill was published on 10 March 2022.

Next steps

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

Clerks to the Committee June 2022

The following documents are included for this meeting:-

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

Annexe A

Gender Recognition Reform (Scotland) Bill

Written submissions received from:

Panel 2 witnesses

1. [Catholic Parliamentary Office of the Bishops' Conference of Scotland](#)
2. [Church of Scotland](#)
3. [Evangelical Alliance Scotland](#)

Annexe B

Gender Recognition Reform (Scotland) Bill

Letter to Convener from Gerard Hart, Chief Executive, Disclosure Scotland

Dear Convener,

I am writing in response to the Equalities, Human Rights and Civil Justice Committee's request for Disclosure Scotland to provide evidence to inform the Committee's consideration of the Gender Recognition Reform (Scotland) Bill ("the GRR Bill").

Disclosure Scotland is an Executive Agency of the Scottish Government. We provide disclosure certificates on behalf of Scottish Ministers under Part V of the Police Act 1997 ("the 1997 Act") and administer the Protecting Vulnerable Groups (PVG) Scheme and the barred lists under the Protection of Vulnerable Groups (Scotland) Act 2007 ("the 2007 Act").

The Disclosure Scotland process protects an individual's right to a private life. It does not afford the opportunity for any party to conceal any past criminal behaviour or any names the person may have previously used. Any criminal history information, including convictions and other relevant information, that the law says must be disclosed will be, even if that information predates the current name or gender of the applicant. This is the case whether or not a person has changed their gender or name.

No impact is anticipated on Disclosure Scotland resulting from the changes proposed in the GRR Bill. Gender is not a category we use to carry out vetting checks. Our systems are already designed to find people who have changed their names for any number of possible reasons. Given this, we have chosen to provide explanatory information in writing to make this point clear.

Gender recognition and Disclosure Scotland

The Scottish Ministers are required under sections 112, 113A and 113B of the 1997 Act to include on a criminal record certificate (referred to as a "disclosure certificate") the prescribed details of every conviction (and relevant matter, in relation to higher level disclosures) which is recorded in the central records. There are similar requirements on the Scottish Ministers in relation to PVG scheme records in section 47 (as read with section 48 and 49) of the 2007 Act. These details are not removed from a criminal record if an individual is granted a gender recognition certificate. The chief officer of a relevant police force can also provide other relevant information under section 113B(4) of the 1997 Act and section 49(1)(c) of the 2007 Act. Disclosure Scotland must include this information on disclosure certificates and PVG scheme records.

Section 22(4)(j) of the Gender Recognition Act 2004 provides that it is not an offence to disclose protected information in accordance with any provision of, or made by virtue of, an enactment. Therefore, if an individual's criminal record information includes a gender-specific offence, Disclosure Scotland must include it subject to the same rules as other criminal record information.

A disclosure certificate does not include information on previous names, whether the applicant is transgender or not.

Identification and vetting

Applications for higher level disclosures (including PVG scheme records) may only be made by persons and organisations registered with Disclosure Scotland under section 120 of the 1997 Act. The registered person/countersignatory will check identification confirming name, current address and date of birth. We advise that one form of identification should be photographic, where possible.

Disclosure Scotland use the information supplied and verified during the application process to match an application to a record. The person and record match processes rely on a mixture of algorithms and vetting staff trained on accessing police systems. Gender is not used to confirm a match. The nominal details used are name, date of birth, place of birth and address. The system is alert to the possibility of any person concealing previous names or trying to hide their identity. This is not specific to transgender applicants. Disclosure Scotland has a vetting exceptions process where there is a partial records match on nominal details or where additional alias names or date of birth are recorded.

In rare cases where there is doubt about a person's identity after further enquiries, under section 118 of the 1997 Act and section 63 of the 2007 Act, Disclosure Scotland can ask for fingerprints to check an applicant's identity. Disclosure Scotland can refuse to issue a disclosure certificate or PVG scheme record unless the application is supported by the required evidence of identity.

Transgender applicant process

The same details must be provided to Disclosure Scotland, regardless of whether the applicant is transgender or not, or holds a gender recognition certificate. It is a legal requirement to provide the information asked for in the application, including previous names.

Disclosure Scotland has had a process allowing transgender applicants to provide previous names separately from their application form since 2002. The process was introduced to ensure compliance with Article 8 of the European Convention on Human Rights (right to respect for their private and family life), preventing unnecessary disclosure of an individual's transgender status to prospective employers. The Disclosure and Barring Service (for England and Wales) and Access NI (for Northern Ireland) have similar arrangements.

Disclosure Scotland must have regard to the public sector equality duty in how it carries out its functions. Publicly available guidance is available to transgender disclosure applicants on filling out an application form. The guidance allows transgender applicants who would not otherwise have to share their transgender

EHRCJ/S6/22/17/1

status with their potential employer (because they have updated primary identification documents such as their passport or driving licence) to maintain privacy without committing an offence.

Yours sincerely,

Gerard Hart
Chief Executive - Disclosure Scotland