

Shona Robison,
Cabinet Secretary for Social Justice,
Housing and Local Government

From: Baroness Kishwer Falkner,
Chairwoman

By email only

Our ref: 833Robison

Wednesday 26 January 2022

Dear Cabinet Secretary,

Following our meeting on 21 January, I am writing as promised with our position on reform of the Gender Recognition Act 2004.

Like you, we are concerned at the polarised debate on this issue. It is causing much distress to people on all sides. We want to work with you and other interested parties to support a careful and respectful discussion of potential changes to the law.

As you know, some lawyers, academics, data users and others have increasingly expressed concerns about the potential implications of changing the current criteria for obtaining a Gender Recognition Certificate (GRC).

These concerns centre on the potential consequences for individuals and society of extending the ability to change legal sex from a small defined group, who have demonstrated their commitment and ability to live in their acquired gender, to a wider group who identify as the opposite gender at a given point. The potential consequences include those relating to the collection and use of data, participation and drug testing in competitive sport, measures to address barriers facing women, and practices within the criminal justice system, inter alia.

As such, we consider that more detailed consideration is needed before any change is made to the provisions in the Act.

We recognise that many trans people have criticised the current process to obtain a GRC as being intrusive, medically-based, bureaucratic, expensive and lengthy. We welcomed the UK Government's reduction of the fee for obtaining a GRC and commitment to digitalize the process, which we encourage them to deliver at speed.

We are also concerned about the unacceptably long waiting times for gender identity services – in some cases over five years for an initial appointment. We strongly welcome your commitment to improve gender identity services in Scotland so that individuals with gender dysphoria can obtain the support and treatment they need and begin the process of gaining legal recognition of their acquired gender. We continue to press the UK government to progress improvements.

As we work to promote and uphold equality and human rights law, we will continue to call for urgent improvements to gender identity services throughout Britain.

We otherwise consider that the established legal concept of sex, together with the existing protections from gender reassignment discrimination for trans people and the ability for them to obtain legal recognition of their gender, collectively provide the correct balanced legal framework that protects everyone. This includes protecting trans people from discrimination and harassment, and safeguarding their human rights. Our focus is on continuing to

seek opportunities to use our powers to support litigation to protect trans people's rights.

We will write to you shortly to update you on our forthcoming guidance for single-sex service providers.

We look forward to working with you and others in Scotland to take forward these important issues.

Yours sincerely,

Baroness Kishwer Falkner

Chairwoman

Equality and Human Rights Commission |