

# Stonewall

**Stonewall Scotland Gender  
Recognition Reform  
(Scotland) Bill  
Stage Three Briefing  
December 2022**

## Overview

Stonewall Scotland supports the Scottish Government's proposals to move to a demedicalised process for allowing legal gender recognition and we were pleased to see an overwhelming majority of MSPs back the proposals for reform at Stage One. We ask MSPs to back the proposals at Stage Three.

The 2004 Act is now outdated and requires reform. Our colleagues at [the Scottish Trans Alliance produced a booklet](#) which explains why reform is necessary. Despite the importance of having a GRC for many trans people, only a small proportion have been able to obtain one. The UK Government's [National LGBT Survey \(2018\)](#) of 108,000 LGBT people across the UK found:

- Only 12 per cent of trans people across the UK had a GRC, despite 93 per cent of trans people who did not currently have a GRC being interested in getting one.
- Many trans respondents did not satisfy the requirements (44 per cent) or thought the process was too bureaucratic (38 per cent) or expensive (34 per cent).

It has been over 6 years since the Scottish Government announced it would reform the Gender Recognition Act. The Bill is one of the most consulted upon bills in the history of the Scottish Parliament. The Bill has proceeded through the usual legislative process in the Scottish Parliament which has allowed a wide range of individuals and groups to feed into the process at length. The Bill has had two public consultations, one in 2017 and another in 2019, receiving a joint total of over 32,000 responses. The Equalities, Human Rights and Civil Justice Committee opened a call for evidence allowing the public to make their views known. After 11 weeks of evidence sessions which saw contributions from proponents and opponents of the Bill, the Committee by a majority of five to two recommended in their Stage One Report that the general principles of the Bill be approved.

## Support for the Bill

The Bill has broad support from a wide range of credible human rights and equalities organisations and experts including the Scottish Human Rights Commission, The Children and Young People's Commissioner for Scotland, Engender, JustRight Scotland, Rape Crisis Scotland, Amnesty, The Church of Scotland, The Humanist Society, the National Gender Identity Clinical Network, the UN Independent Expert on Sexual Orientation and Gender Identity and the UN High Commissioner for Human Rights.

- On 16th December 2022, the UN Independent Expert on Sexual Orientation and Gender Identity made a significant intervention with regard the Bill by publishing a legal opinion report which reaffirmed the UN's position that legal recognition of gender identity is a human right, and that self-identification is the appropriate standard for it. The report also states that in the 30+ jurisdictions that have moved to demedicalised process of legal gender recognition *"there is no credible evidence to suggest systemic risk of predatory men using the process of identifying and living as a woman as an opportunity to perpetrate gender of sexual-based violence"* The report can be read here: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27757>

- [In the evidence provided by the Scottish Human Rights Commission \(SHRC\) during Stage 1 of the Bill](#), the SHRC outlined the human rights standards applicable to legal gender recognition processes. To do so, the SHRC considered: the European Convention on Human Rights, international treaties including the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Yogyakarta Principles, the work of the UN Independent Expert on Sexual Orientation and Gender Identity, and a review of the UK Equality Act 2010 provisions relating to sex discrimination, discrimination on the basis of gender reassignment, provision of single sex services and communal accommodation. From considering the above frameworks, the SHRC concluded: *“Shortening the process for obtaining legal recognition, removing the requirement for a diagnosis of gender dysphoria and abolishing the Gender Recognition Panel would achieve best practice standards in meeting the human right of trans people to have their gender identity recognised.”*
- [On 7 December 2022, the SHRC reaffirmed this position](#), and addressed concerns which had been raised in relation to the risks to the rights of women and girls: *“This remains our conclusion, having closely followed all of the debate that has taken place... we examined and analysed the concerns which had been raised... We could not identify any objectively evidenced prospect of real and concrete harm resulting from the proposed changes... we consistently found that holding a GRC does not determine how a person is treated in the key areas of concern – prisons, data, sport, access to medical treatment, access to single-sex services, changing rooms and toilets”*
- [In October 2022, Engender published a Parliamentary Briefing on the Bill](#), reiterating their position as: *“After years of extensive consideration of this legislation, we remain convinced that the proposed reforms will not negatively affect women’s equality and rights... some elements of the public discourse... has led to a false perception that the Bill is fundamentally in conflict with the aims of women’s equality. Engender does not share or uphold this view. Rather, we see the paths to equality and the realisation of human rights for women and trans people as being deeply interconnected and reliant on shared efforts to dismantle systemic barriers. We are confident that reform of the GRA will not have any adverse effect on the capacity of the Equality Act 2010 and CEDAW to protect women from discrimination and advance women’s equality and human rights.”*
- [In a joint Parliamentary Briefing, JustRight Scotland and Amnesty International](#) stated: *“we think that this Bill is an important step forward in improving the way that trans men and women can be legally recognised as who they are in Scotland. The Scottish Government has been consulting on reforming the GRA to bring it into line with international standards since 2017, and the proposed Bill would make vital improvements to the current legislation and remove breaches of fundamental human rights experienced by many trans people embedded within the current process.”*
- The Commissioner for Human Rights of the Council of Europe visited the UK from 27 June to 1 July 2022. [In a report detailing findings of the Commissioner’s visit](#), there is a specific reference to progress of the Bill in Scotland, and the recent escalation of the harsh public discourse that has followed. Commissioner Mijatović’s stated that she was *“...concerned about narratives that represent trans people as a threat to others in society. She calls on the authorities to take action to counter these narratives and promote inclusion. She warns against attempts to frame the protection of the rights of trans people and those of women as a zero-sum game. She furthermore highlights that self-determination models for legal gender recognition... present a human rights best practice”*

## International Comparisons

- The principle of self-declaration is a fundamental component of modern systems of gender recognition, for example those adopted in Argentina (2012), Denmark (2014), Malta (2015), Ireland (2015), Colombia (2015), Norway (2016), Belgium (2017), Portugal (2018), Luxembourg (2018), Iceland (2019), New Zealand (2021) and Switzerland (2022).
- Across these jurisdictions, trans men and trans women are able to access legal recognition through making a simple application or request, usually involving only a statutory declaration or other written statement. In Ireland, applicants make a statutory declaration on their solemn intention to continue to live in the acquired gender and their understanding of the consequences of the application.
- Therefore, the Scottish Government's proposals to remove the requirement to have a gender dysphoria diagnosis - in addition to removing the other requirements for evidence and medical reports - is absolutely essential for the reforms in Scotland to be considered close to international best practice.
- Furthermore, providing younger trans people with access to legal gender recognition is also well established internationally, with provisions for 16- and 17-year-olds in at least ten countries. In Norway, Portugal, Switzerland, and Malta, 16-17s can access gender recognition through the same process as those aged 18 and over.
- During evidence to the Equalities, Human Rights and Civil Justice Committee, the Chair of the Scottish Human Rights Commission, said:

“Having analysed concerns through a human rights lens we remain strongly of the view that the changes that are set out in the Bill will bring Scotland closer to satisfying international legal standards and will not jeopardise the rights of others.”

- And in further evidence to the Committee on their work looking at international comparisons, Naomi McAuliffe of Amnesty International stated:

*“We have not found a negative impact in any of the surveys. If anything, we have found evidence that the reforms could have gone further. Our evidence is not taken from newspaper reports or blogs but independently verified and we have not found self-ID to be a huge problem... It is important to balance the harm that the current process causes individuals with the potential harm that self-ID might bring. We do not see that as comparable with the actual harm done to trans people who are not able to obtain a GRC through as self-ID process”*

## UN Special Rapporteur on Violence Against Women and Girls

- In November 2022, the UN Special Rapporteur on Violence Against Women and Girls ('UNSR') wrote to the UK Government about her concerns with the Bill. It is noted that is a U-turn from her position in September 2021, when the UNSR joined a number of UN mandate holders (the UN Independent Expert on sexual orientation and gender identity, the Special Rapporteur on the right to health and the Special Rapporteur on the right to privacy) in [calling upon Bulgaria to ensure that legal gender recognition systems are simple and based on self-determination](#).
- On 30 November 2022, several women's and human rights organisations in Scotland – Engender, JustRight Scotland, Scottish Women's Rights Centre, Scottish Women's Aid, Amnesty International Scotland and Rape Crisis Scotland – [produced a joint response to the intervention on the Bill by the UNSR](#). In their letter, they expressed disappointment that the UNSR's letter was issued to the UK Government without consultation with human rights groups or specialist violence against women organisations in Scotland. In reference to the UNSR's concern about support services for women who have experienced sexual violence, they state: *"All specialist violence against women and girls' organisations have robust safeguarding procedures in place which include risk assessment at the point of service delivery. There is no rape crisis service in Scotland that requires a gender recognition certificate. Where services are available to women only, women are not required to provide 'proof' of their sex. All rape crisis services in Scotland are inclusive of transwomen and have been for 15 years. In those 15 years, there has not been a single incident of anyone abusing this"*
- [The Cabinet Secretary for Social Justice, Housing and Local Government responded to the issues raised by the UNSR in detail on 29 November 2022](#). The Cabinet Secretary concluded her letter by stating: *"The issues raised have been considered carefully as part of a long process of open public consultation and democratic scrutiny. The Scottish Government believes that the Bill provides for an effective gender recognition process based on self-determination, with an appropriate level of safeguards and assurances. The Scottish Government has worked with other parties to strengthen the Bill by amendment at Stage 2, and will consider further amendments at Stage 3, as is standard in Scottish Bills"*

Stonewall Scotland commends to MSPs briefings from our colleagues at the Scottish Trans Alliance, LGBT Youth Scotland and LEAP Sport Scotland and we fully support and align ourselves with the contents of those briefings. For this briefing we want to highlight to the Committee our thoughts on some key amendments to be read alongside those briefings.

## Stage Three Amendments

### Group 1 Applications by 16 and 17 year olds

Stonewall Scotland fully supports reducing the minimum age at which a person could apply to obtain a gender recognition certificate from 18 to 16.

During Stage One evidence to the Committee, the Children and Young People’s Commissioner said: *“We support the move to lower the age to 16. Protection and participation rights are not mutually exclusive, and we are looking for a process that recognises not only the growing autonomy of young people but the need to support and protect them.”*

The current restrictions placed on trans young people under the 2004 Act present inconsistencies with other rights afforded to 16- and 17-year-olds in Scotland, such as the ability to gain employment, enter a legally binding contract, vote in Scottish Parliament and local government elections, enter a marriage or civil partnership, consent to medical treatment, and be held legally responsible for their actions. Extending these rights to younger trans people will also help align their social and legal identities and bring the sex on their birth certificate in line with other documentation. Those aged 16 and 17 are already able to update other documentation in line with their identity of their own accord – for example, trans young people can apply for a passport on their own behalf and officially record a change of name, both in line with the ‘acquired gender’.

Importantly, many trans people aged 16 and 17 years old in Scotland will be at a point of change in their lives, at school leaving age, and would wish to obtain a gender recognition certificate before entering new communities, progressing into employment, or entering higher or further education.

As with older trans people, 16- and 17-year-olds who are in or seeking employment would benefit from having legal gender recognition so that their ‘right-to-work’ documents and tax records could not inadvertently reveal their trans status to their employer without their consent, impinging their privacy and putting them at risk of discrimination. Furthermore, those seeking to enter a marriage or civil partnership, in line with their legal rights, would only be able to do so in the ‘acquired gender’ if a gender recognition certificate had been obtained.

The bill was amended significantly at stage 2, to increase the time that applicants aged 16 and 17 need to be living in their gender from three months to six months, and to require them to have a discussion with an adult who knows them personally, or a person in a role providing advice, support, or information to young people, about the impacts of obtaining a GRC.

Stonewall Scotland opposes amendments that introduce additional barriers to young people and that do not match the principles of the Bill. **We recommend MSPs oppose amendments 6, 7, 8, 9, 12, 15, 24, 25, 26, 37, 93, 94, 98, 101 and 105.**

Amendments 6-9 would mean applicants need to be 18 or over to apply and should be rejected.

Amendment 15 narrows the scope of who a 16- or 17-year-old applicant can have a discussion with about obtaining a GRC and should be rejected.

Amendments 24, 25, 101 and 108 are not needed if MSPs support amendment 99. They either require a 16- or 17-year-old applicant to provide the name and contact details of the person with whom they discussed obtaining a GRC, require a 16- or 17-year-old applicant to be able to provide reasonable evidence that they have done so, or require that the Registrar General is satisfied that they have been given appropriate guidance, support or advice. The first two of these might be difficult where, for example, a younger applicant has called a helpline such as ChildLine and had this conversation over the phone. Amendment 99 ensures that the Registrar General can confirm an applicant who is 16 or 17 has had this conversation, without placing an overly high burden on the young person to evidence this. This would also mean amendment 101 is not needed.

Amendments 26 and 37 are not needed, as the Registrar General can refer any application to the sheriff court, regardless of the age of the applicant, where they believe that the applicant lacked capacity to make the application. The Registrar General can then not issue a GRC.

Amendments 93 and 94 related to not lowering the age for applicants from 18 to 16 until the Cass Review has been completed, and its findings taken into consideration. The Cass Review is a review into the provision of gender identity healthcare services in England and Wales, is out of scope and is entirely unrelated to the process of applying for a GRC.

Amendment 105 would essentially raise the minimum age that a person could apply for a GRC to 16.5 years old. This does not reflect any existing threshold in Scots law relating to capacity and should be rejected.

**We recommend MSPs support amendment 99.** This will require applicants who are 16 and 17 to provide details of the discussion they had about obtaining a GRC to the Registrar General when making their application. This will ensure that younger applicants have this discussion, without placing an undue burden on them to evidence this, which would increase barriers to them accessing their legal rights.

## **Group 2: Applicants with criminal charges or convictions**

**We recommend MSPs support amendments 40, 40A, 40B, 40C, 40D, 40E, 41, 42**

These amendments would allow the chief constable to notify the Registrar General of the granting of, or application for, a sexual harm prevention order, a sexual offences prevention order, or a sexual risk order, that includes the condition that an individual may not apply for a GRC, or will include this condition if granted.

It is Stonewall Scotland's view that the possession of a GRC would not facilitate a person committing a sexual offence, or indeed any criminal offence. A GRC does not guarantee a person access to specific services or spaces. It is also rightly the case that obtaining a GRC does not provide protection from being prosecuted and convicted for gender specific offences, as is made clear in section 20 of the Gender Recognition Act 2004, which is not amended by this bill.

However, unlike the amendments in this group which we oppose, we agree that if the chief constable were to make a successful application for either a sexual harm prevention order, a sexual offence prevention order, or a sexual risk order in which the chief constable met the required threshold to evidence that a condition of such an order should be to prevent that individual from applying for a GRC, that this would be an appropriate way of preventing specific individuals from making an application for a GRC.

This is because this would require there to be evidence provided to the sheriff that preventing an application from a specific individual for a GRC would prevent future harm and protect either the public or specific members of the public from this harm. This would include consideration of whether interfering with their right to a private and family life, guaranteed under article 8 of the European Convention of Human Rights, was proportionate. If such an order were granted with this condition, we would be satisfied that this was a necessary and proportionate restriction on a specific individuals ability to apply for a GRC.

Moreover, these amendments would use a pre-existing legal route. The issuing of a sexual harm prevention order, a sexual offence prevention order or a sexual risk order to a specific individual would not unfairly stigmatise all trans people by linking the application process for a GRC with criminal conviction checks and bans relating to criminal convictions, but instead focus on those specific individuals who were demonstrably a risk to others.

## **We recommend MSPs oppose amendments 18, 22, 28, 39, 39A, 39B, 39C, 50, 52, and 53**

These amendments seek to prevent those who commit certain offences from obtaining a GRC, allow an application to be paused where someone is being prosecuted for certain offences at the point of application, so that if they are convicted they cannot obtain one, provide a power to revoke a GRC if certain offences are committed after obtaining one, and allow an individual to appeal to the sheriff that it was ‘manifestly unfair’ that they could not make an application for a GRC due to a previous conviction

We do not think that it is proportionate for an individual to be unable to obtain legal recognition of their acquired gender, or to face additional barriers to doing so, due to having previously committed, or going on to commit, specific offences. All the offences are rightly criminal and have penalties on conviction reflecting the seriousness of the offence.

It is not proportionate for there to be an additional punishment of interfering with someone’s right to a private and family life, guaranteed under article 8 of the European Convention of Human Rights, which is what underpins the right to legal gender recognition. As all members will know, legislation passed in the Scottish Parliament must comply with the European Convention of Human Rights.

### **Group 4: Support and information for applicants and potential applicants**

**We recommend MSPs oppose amendments in this group.** Stonewall Scotland welcomes the spirit of these amendments and would of course welcome increased support and information for trans people.

However, we think that this amendment is too broadly drawn. It is unclear how “individuals who are considering making an application for a gender recognition certificate” would be identified, or how it would be ensured they could access support and information because of this provision.

### **Group 5: Grounds on which the application is to be granted: medical evidence and time living in the acquired gender**

**We recommend MSPs oppose amendments in this group.**

Amendment 10 would require applicants who are 16 or 17 to have been living in their acquired gender for two years and should be rejected.

Amendment 11 would reintroduce a requirement for an applicant to live in their acquired gender for two years before they can apply for a GRC. A key principle of the bill is to reduce the time delay between when a trans man or woman has begun permanently living in their gender, and they are able to apply for legal gender recognition.

Amendment 16 would require a report from a medical practitioner that the applicant had discussed the application with them. This would reintroduce evidence to the process and move away from demedicalising the process, and should be rejected.

Amendments 95, 96, 97, and 102 should be rejected. They introduce a requirement for an applicant to confirm at the time of making an application that they “discussed the intention of the applicant to obtain a gender recognition certificate with a medical professional and received any mental health support that was considered by that professional to be necessary.” This would move away from the principle of demedicalising the process of legal gender recognition and should be rejected.

We agree with Scottish Trans Alliance that it would be highly unacceptable that an applicant would need to confirm that they had received mental health support considered necessary, and would be unable to obtain a GRC unless they had done so. This would remove an applicant’s ability to make choices about their own mental health and wellbeing and medical care, as to do so would prevent them from accessing

other legal rights. We also agree with Scottish Trans Alliance that it pathologizes trans people. We are not aware of any other examples in Scotland where an individual would be required, by law, to discuss a personal decision with a doctor before being able to access legal rights, and where that would only be on the basis that that individual had agreed to specific treatment. By specifying mental health support in amendment 95, it also seems to make a clear and harmful assumption that an applicant would need a medical professional to check that making their application was what was right for them, and not instead a symptom of mental ill health.

Amendments 107 and 137 introduce a route which would allow an applicant to be granted a GRC if they provide the two types of medical evidence currently required under the Gender Recognition Act 2004 – a diagnosis of gender dysphoria, and an additional medical report. This should be rejected.

### **Group 7: Statutory declarations: formalities and supporting evidence**

#### **We recommend that committee members support amendments 47, 103/104, 140**

Amendment 47 includes within the provisions of the bill the pre-existing requirement that an applicant for a GRC must provide two pieces of proof to verify their identity to the person that is witnessing their statutory declaration.

Amendments 103 and 104 are alternatives. Amendment 103 would mean that the person who witnesses the statutory declaration made for the purpose of an application for a GRC cannot be a local councillor. Both would require that the statutory declaration made should use the form specified by the Registrar General by regulations. This would ensure applicants were confident that they were completing this important part of the process correctly.

#### **We recommend that committee members oppose amendments 100, 1, 106, 2, 3, 4, 5, 47A and 141**

A key principle of the Bill is that the process by which trans people can obtain a Gender Recognition Certificate and legal recognition of the gender in which they live their life should be done on the basis of self-declaration.

Self-declaration refers to demedicalised process of legal gender recognition and is administrative. Rather than requiring evidence of any medical treatments or diagnoses, or that a person has been living in their gender, instead it relies on a statutory declaration by the individual applying.

More than 30 jurisdictions around the world have moved to a demedicalised process of legal gender recognition.

All these amendments introduce evidence requirements, which would fundamentally undermine a key principle of the bill.

Amendment 100 would require an applicant to include copies of the identification they had used to verify their identity to the person witnessing their statutory declaration with their application. This is entirely unnecessary, as the person witnessing the statutory declaration will only have done so if they were satisfied with the evidence provided.

Amendments 1-5 would require applicants to provide evidence that they had been living in their acquired gender for three months, and should be rejected.

Amendments 106 and 141 would require a counter-signatory to an application. It is not right in principle that something as fundamental to a person as their own gender identity should be subject to another person's approval. This may also serve as a particular barrier for more isolated trans men and women, who might lack supportive family members or friends, and lack the confidence to approach a work colleague or other relevant person to act as a counter-signatory.

Amendment 47A is an alternative to amendment 47. It provides a specific list of acceptable items of identification than an applicant can provide when making their statutory declaration. We have concerns that this amendment seeks to reintroduce evidence requirements for applicants simply by moving them to this part of the process, from the application form. In particular, this seems to be the case because it specifies that the identification must be in the 'acquired gender' and that all items must have a name and title. Several items listed would not fulfil these requirements: for example, a driving licence with a male gender code does not allow a title to be displayed, and for people who use a gender neutral title such as 'Reverend' then many of the more administrative items such as letters from the person's solicitor would not give any indication of the applicants acquired gender.

The evidence required by this amendment would represent a particular barrier for younger applicants and applicants living in poverty, with many of the items listed either extremely unlikely to be accessible to younger applicants, or expensive. It undermines the principles of the bill, and it is not needed if MSPs support amendment 47.

### **Group 8: Background checks for applicants**

**We recommend MSPs oppose amendments in this group.**

These amendments would require all applicants to undergo a criminal conviction check. They would also prevent those who had committed certain offences from obtaining a GRC if doing so would be deemed 'unreasonable', and require Police Scotland to be notified about a GRC being granted where a person has certain previous convictions.

We think that amendments that introduce the ability for specific individuals to be banned from making an application for a GRC, due to the conditions of a sexual offence prevention order, a sexual harm prevention order, or a sexual risk order, is the most appropriate way to deal with concerns in this area.

Requiring all applicants to undergo checks for criminal convictions is disproportionate, stigmatises trans people, and is an unfair invasion of all applicants' privacy.

Disclosure Scotland already has processes in place, when doing checks relating to suitability to work in certain roles that mean that people are unable to hide previous details – such as their previous names, and their gender history. This has been working well since the 2004 Act was passed. Disclosure Scotland have confirmed this directly in evidence to the Equalities, Human Rights and Civil Justice Committee, and no provisions of the bill would change how that system operates.

### **Group 9: Applications by adults with incapacity**

**We recommend MSPs oppose amendments in this group.**

Stonewall Scotland does not believe obtaining a GRC should be treated as unique, or indeed, a dangerous process for someone to go through. Amendment 34 would require the Registrar General to contact the Public Guardian before granting an application to ascertain if they have a welfare power of attorney or a guardianship order. This would be an unusual approach, with similar checks not being required for, for example, entering a marriage.

While we welcome the spirit of amendment 46, we think it may be outside legislative competence as it mentions "opportunities to advance equality and non-discrimination" when the wording in the Scotland Act on what is devolved is the "encourage equal opportunities".

However, we would welcome a commitment from the Scottish Government to ensure that information provided by the Registrar General about the Act is done in an inclusive way, and that information includes providing advice help and support to those considering making an application but who are unsure whether

they have the capacity to do so, so they can understand how any decision relating to their capacity will be made.

### **Group 10: Certificates obtained by fraud**

**We recommend MSPs support amendments 108, 110, 114, 115, 138 and 139.**

Amendments 108 and 110 clarify the meaning of a fraudulent application for a GRC.

Amendment 114 narrows the scope of the statutory aggravator of an offence by connection with a gender recognition certificate obtained by fraud from the one introduced at stage 2.

We would like to reiterate our position that we do not think such an aggravation is necessary. There is no evidence from other jurisdictions that operate similar gender recognition arrangements that gender recognition is being fraudulently applied for to facilitate the commission of offences. It remains entirely unclear to us how the possession of a GRC could be used to facilitate the commission of offences. In any case, a judge can always take all circumstances into account when deciding on sentencing, so there is no need for a specific aggravating factor to be included. Where a person had fraudulently obtained a GRC, they could also be prosecuted and sentenced for this, in addition to any other offence. We do not foresee this aggravator being used.

However, Amendment 114 is an improvement on the amendment agreed at stage 2, as it requires that 'the person's gender, as recognised by the certificate, was material to the commission of the offence' whereas the earlier provisions simply said it must be 'connected to' having fraudulently obtained a GRC.

Amendment 115 automatically revokes a GRC where someone is found guilty of the statutory aggravation, which we agree would be appropriate, should an individual ever have the aggravation applied to sentencing.

**We recommend MSPs oppose amendment 116.** A GRC does not guarantee you access to a single-sex service.

Trans people with and without GRCs are frequently included in single-sex services in line with the gender they live in. However, trans people with and without GRCs can be treated less favourably, or excluded, by the operators of single-sex services if this is a proportionate means of achieving a legitimate aim. This is laid out at Schedule 3 Paragraph 28 of the Equality Act 2010.

### **Group 12: Manifestly unfounded application to sheriff to revoke certificate**

**We recommend that MSPs support amendment 51.**

Stonewall Scotland has very real concerns that trans people may face vexatious complaints to the sheriff court to revoke their GRC, simply because a family member or other "person with an interest" does not accept their trans identity.

There are campaign organisations that disagree with this bill, and in some cases, with the concept of gender recognition itself, and we are concerned that an organisation might seek out, and possibly fund, cases where a family member is willing to take a trans family member to court to challenge their GRC.

### **Group 13: Interaction with the Equality Act 2010, the concept of sex, and single-sex services**

**We recommend that MSPs support amendments 54.**

Amendment 54 would require Scottish Ministers to publish guidance on the operation of the Act, in consultation with relevant equality and human rights statutory bodies.

**We recommend that MSPs oppose amendments 111, 112, 113, 117, 118, 119, 120, 61, 123, 72, 73, 74, 127, 128, 129, 130, 133, 92 and 136.**

Amendment 112 relates to Section 9 (3) of the 2004 Act. The Bill does not modify, amend or replace any part of Section 9 (3) of the 2004 Act, and so this is not needed.

Amendments 113, 127, 130 relate to specific provisions in the Equality Act 2010. An amendment was agreed at stage 2 to include new section 15A which states: “For the avoidance of doubt, nothing in this Act modifies the Equality Act 2010.” We believe this is as far as the Scottish Parliament can go within competence. It also covers the entire Equality Act 2010.

Amendments 111, 117, 118, 119, 120, 61, 123, 72, 73, 74, 129, 133 and 92 generally require guidance to be produced relating to single-sex services, or provisions within the Equality Act 2010.

This bill will not impact on the operation of single-sex services. This is because Paragraph 28 of Schedule 3 of the Equality Act 2010 allows all trans people, both with and without GRCs, to be treated less favourably or excluded from a single-sex service where this is a proportionate means of achieving a legitimate aim. This was confirmed, by Melanie Field, Chief of Policy and Strategy at the EHRC, to the Equalities, Human Rights and Civil Justice Committee at Stage One.

<https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13752>

It is the remit of the EHRC to produce guidance on the operation of the Equality Act 2010, which is not modified by this Act. Amendments relating to guidance produced by the Scottish Government on this area risk being out of legislative competence, or encroaching on the remit of the EHRC.

#### **Group 15: Review of the Act**

**We recommend that MSPs support amendments 56, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 84A 85, 86, 87, 88, 89, 90, 91.**

We support the idea of a single general review of the Act that would cover a range of potential impacts, which is done within a reasonable timeframe after the Act is commenced so this can be properly evaluated. These amendments consolidate the amendments agreed at stage 2 into a single general review.

Importantly, this review would include considerations of the Act’s waiting periods on trans people and the impact of differential time periods on 16- and 17-year-olds. We strongly support this, as we think these periods are unnecessary and unusual. It would also include a review into the impact of the provisions relating to a person with an interest being able to apply to revoke a GRC, which we continue to have significant concerns about.

**We recommend that MSPs oppose amendments, 76A, 83A, 90A, and 134**

Amendments 76A and 90A would require a review of the Act to be done every five years, for the fifteen years following the first review after three years. This is onerous and not needed.

Amendment 83A unfairly stigmatises trans people, by including specific focus on offender management and disclosures. It is also not needed if **members support amendment 81**, which will review the operation of the Act on Disclosure Scotland.

Amendment 134 is not needed. A review of the Act, including if members support amendment 83, will include specific focus on section 22, whether the exceptions remain reasonable, and for the report to include consideration of findings.

## **Group 16: Operation and impact of the Act**

### **We recommend that committee members support amendments 122, 13 and 71.**

Amendments 13 and 17 state that the Bill has no impact on Article 9, and Article 10, rights under the European Convention on Human Rights. The Bill does not impact on these rights, and as MSPs will know, the Scottish Parliament cannot pass legislation that contravenes the ECHR.

Amendment 122 relates to the functions of Scottish Ministers in relation to prisons. We agree that these will not be impacted.

We do not think these amendments are needed, but if they provide reassurance and clarity in specific areas then we think this is helpful.

### **We recommend committee members oppose amendments 57, 58, 59, 67, 68, 14 and 131.**

Amendments 57, 58, 59, 67, 68 and 14 touch on areas that are outside of the scope of the impacts of the Bill, or where guidance requested is far outside of the bill's provisions. Participation of trans people in sport will not be impacted by the Act as set out in detail at Stage One Committee evidence by SportScotland. Our colleagues at LEAP Sport have provided detailed briefing covering amendments relating to sport.

It is unclear why guidance on the interaction between the Act and Article 9 of the ECHR is needed. The Act does not impact on how a patient is able to request knowledge of the sex of a health professional carrying out a medical examination or treatment.

Amendment 131 would require a specific consultation exercise with women and girls six months after Royal Assent, which is far too soon for a review. Of course, we would welcome a gendered analysis of any impacts within a general review of the Act.

## **Group 18: Reporting**

### **We recommend MSPs support amendments 63, 64, 65 and 66.**

These introduce requirements for reporting on a range of matters relating to the Act, such as the number of GRCs granted, rejected and withdrawn, and whether the person has been recognised as male or female, annually.

### **We recommend that MSPs oppose amendments 124 and 125.**

Amendment 124 would require reporting to be done on a six-monthly basis rather than annually, which is unnecessary.

Amendment 125 is not needed if other amendments in the group are agreed to.

Colin Macfarlane  
Stonewall  
Director Nations

[Colin.Macfarlane@stonewallscotland.org.uk](mailto:Colin.Macfarlane@stonewallscotland.org.uk)

