

**GENDER RECOGNITION REFORM (SCOTLAND) BILL  
RESPONSE BY THE SCOTTISH GOVERNMENT TO THE STAGE 1 REPORT BY  
THE EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE**

1. The Scottish Government welcomes the Committee's scrutiny of the Gender Recognition Reform (Scotland) Bill and is pleased that the Committee has recommended to Parliament that it support the general principles of the Bill. In the remainder of this response, the Scottish Government is answering particular points or recommendations made by the Committee.

Removal of the Gender Recognition Panel from the process and the introduction of the Registrar General

**125. The Committee heard a variety of views on the removal of the Gender Recognition Panel (GRP) from the process.**

**126. The majority of the Committee supports removing the panel from the process and replacing it with a model based on self-declaration. They believe that proposals to do this via the Registrar General accepting, reviewing, and processing applications and issuing GRCs will introduce a more humane and less intrusive process. They believe that additional support should also be made available see paragraphs 116-120. They also note that this approach will bring Scotland in line with international best practice and human rights standards.**

2. The Scottish Government agrees with the comments made by the Committee and welcomes the majority support for the removal of the Gender Recognition Panel, with applications to be made instead to the Registrar General for Scotland.
3. As stated by the Registrar General in evidence, National Records of Scotland (NRS) will be responsible for processing applications and providing guidance specific to this process.

**127. A minority of the Committee, whilst recognising and acknowledging the negative experiences trans people have with the current process, such as lengthy waiting times, believes that a system must provide an element of safeguarding. They consider therefore that the Scottish Government should gather more data and provide more evidence before a decision to remove the GRP is made. Additionally, they would like the Cabinet Secretary to confirm if the Registrar General will issue guidance on what constitutes 'concerns', provide a definition of international best practice and confirm whether Yogyakarta Principles are themselves a legally binding part of international human rights law.**

4. Responses to both Scottish Government public consultations exercises, the UK Government consultation and to the UK National LGBT Survey have shown that the current process is a barrier to people accessing their human rights due to the requirement for a medical diagnosis and other evidence as well as the intrusive and lengthy process.

5. A range of international standards outline best practice in this area to establish a simple and administrative system. Scotland can better align with international best practice by establishing an administrative system with NRS who are responsible for civil registration and already carry out some functions in relation to gender recognition under the current system.
6. The Scottish Government and NRS will provide guidance to applicants on how to make an application and the effects and consequences of obtaining a gender recognition certificate. NRS will signpost to organisations that can be accessed for further support.
7. [The Yogyakarta Principles](#) are a non-binding set of principles relating to gender identity and sexual orientation, set out by a distinguished group of international human rights jurists and experts, which are intended to affirm binding international legal standards with which all States must comply. The Stage 1 Report at paragraph 60 and on page 16 (footnote (ix)) notes that the Principles are non-binding.

**128. Should the Bill be enacted, the Committee as a whole recommends that the Scottish Government address the concerns raised by the Children and Young People's Commissioner (see paragraph 236) around the adequacy of the protections for children's rights and support for them in navigating the application process. It would also welcome clarification on the statutory powers of the Registrar General in the Scottish Government's written response to this Stage 1 report.**

8. NRS are the body responsible for civil registration and already carry out some functions in relation to gender recognition under the current system. NRS also handle registrations in the marriage and civil partnership registers from young people. In line with the [Digital Scotland Service Standard](#), NRS will engage with users, as appropriate, on the development of a digital application process and will seek input from stakeholders on the development of the advice which supports this application process.
9. Young people will be involved in the development of the process and guidance and the Scottish Government agrees with the Children and Young People's Commissioner that a simplified process will benefit all applicants.
10. We have already begun engagement with LGBT Youth Scotland, Scottish Youth Parliament, NRS, and other stakeholders. We will engage and consult specifically with the CYPCCS, including on the potential tension between protection and autonomy referred to in the Commissioner's evidence.
11. The Scottish Government and NRS will provide guidance to applicants on how to make an application and the effects and consequences of obtaining a GRC. NRS will signpost to organisations who can provide specialist support to applicants. Applicants aged 16 and 17 will also be offered an opportunity to discuss their application on the phone or in person.

12. The Bill provides that the Registrar General, with the consent of Scottish Ministers, can make regulations about:

- the form and manner in which an application for a GRC is to be made
- the form and manner in which a notice of confirmation is to be given
- information or evidence to be included in an application for a GRC or a notice of confirmation
- other matters in connection with the making of an application for a GRC.

13. On the statutory powers of the Registrar General, as referred to in paragraph 122 of the Report quoting an explanation by the Cabinet Secretary, while the Registrar General has a power by regulations to make provision for or about further information or evidence that may be included in an application for a GRC or a notice of confirmation, the Scottish Government considers that this will not allow a change to the criteria and grounds which are specified in the Bill for a GRC to be granted. This provision is intended to ensure the smooth running of the process will not be frustrated if it transpires in light of experience in future that some additional information or evidence should be submitted with an application, or a notice of confirmation.

14. It is also noted that the Delegated Powers & Law Reform Committee has approved the delegated powers in the Bill at Stage 1.

Removal of the requirement for a diagnosis of gender dysphoria and the requirement for medical evidence

**172. The Committee recognises and acknowledges that not all trans people experience gender dysphoria or seek medical intervention as part of their transition. The Committee also notes the concerns expressed by some about the potential for abuse of the new process proposed by the Bill.**

**173. The majority of the Committee supports the removal of the requirement for any medical evidence or diagnosis, in line with a self-declaration model, believing that trans people know their own minds. They believe this based on the evidence they heard that medical gatekeeping is neither necessary nor appropriate. They further believe that the legal status of a statutory declaration (a witnessed, legal oath), the gravity with which such declarations are made, and the fact that making a false statutory declaration is an offence, together create a robust process for accessing a GRC that is in line with international human rights best practice. They also believe that this will address concerns expressed by witnesses about the psychological and other costs associated with accessing a diagnosis for gender dysphoria.**

15. The Scottish Government agrees with the comments made by Committee and welcomes the majority support of the removal of the requirement for a diagnosis of gender dysphoria and for other medical evidence.

**174. A minority of the Committee remains concerned that the removal of the requirement for gender dysphoria and the requirement for medical evidence may extend the GRC process to a large and more diverse group of people**

**which could potentially mean the process is open to abuse from bad faith actors, particularly predatory men. They also believe that the proposals could risk leaving those transitioning without medical support and increase the chance that other conditions may go undiagnosed or unexplored. They are not persuaded that alternatives to removing a medical diagnosis have been sufficiently explored by the Scottish Government.**

16. The same group of people who apply under the current system will be able to apply under the proposed system: trans men and women. In removing barriers we expect that more trans people will be able to access their rights to legal gender recognition which is a key aim. We estimate an increase from around 30 applications a year from those in Scotland to between 250 and 300. This is based on international evidence, particularly Ireland. We also expect that there may be an initial uptake from those who have chosen not to go through the current process that will level out over time to these figures. This is still a small number of people relative to the Scottish population of 5.5 million with less than 0.005% of the population a year.
17. We have not identified international evidence that supports the suggestion that people will make fraudulent applications. The Committee's report also notes that when asked about evidence of abuse and concerns, no witness was able to provide concrete examples.
18. It will be a criminal offence to knowingly make a false statutory declaration and to knowingly make a false application. The maximum penalty for these offences is imprisonment for up to 2 years or an unlimited fine or both. There is also provision in the Bill for a person who has an interest such as the Registrar General to make an application to the sheriff on the grounds an application was fraudulent.
19. We do not consider that removing the requirement for medical evidence for legal gender recognition will impact on people's access to healthcare. We agree it is important that trans people or anyone exploring their gender identity have access to the right support at the right time for them. In 2021, the Scottish Government published a Strategic Action Framework for NHS gender identity service improvement. This sets out how we are working to improve access to and delivery of clinical services.
20. The Scottish Government has undertaken two public consultation exercises and examined a variety of systems of legal gender recognition used in other countries or territories, including some requiring applicants to have received medical intervention or provide medical evidence and systems with no medical requirements.
21. Responses to both our consultations, the UK Government consultation and to the UK National LGBT Survey have shown that the current process is a significant barrier to people accessing their human rights due to the requirement for a medical diagnosis.

22. A range of international standards also outline best practice in this area, in particular the adoption of new standards by the World Health Organisation in the ICD-11 which no longer treats gender dysphoria as a mental disorder.

#### Living in the acquired gender for three months

**193. The Committee notes the differing views on this proposal ranging from abolishing the time period completely, setting it at three months as the Bill proposes or keeping it at two years.**

**194. The majority of the Committee supports a reduction in the period of time from the current two years to three months.**

**195. A minority of the Committee would prefer that the two-year period is retained to allow safeguarding.**

**196. Maggie Chapman supports the abolition of the time period completely.**

**197. The Committee as a whole agrees that it is unclear as to why a period of three months has been proposed by the Scottish Government and that it would be helpful to have more clarity on the reasoning behind the choice of three months in its written response to this Stage 1 report.**

23. The Scottish Government welcomes the majority support for a reduction in the period of time for living in the acquired gender to a minimum of three months.

24. We appreciate the range of views on this including that the time period should be longer or removed and note that no alternative time period has emerged from responses to our consultations that would be more widely accepted.

25. We consider the current requirement for applicants to provide evidence that they have been living in their acquired gender for a period of two years before applying is unnecessarily long. A reduction in the time period to three months represents our view of a balanced and proportionate of improving the system. It ensures that the applicant has already been living in their acquired gender before making an application without imposing a disproportionate barrier on people seeking to apply.

26. The Committee have also heard from witnesses that applying for legal gender recognition is often the end of a process whereby they have socially transitioned and made changes to their gender on official documents including to passports and driving licenses before applying. Where an applicant has already been living in their acquired gender for a minimum of three months they can affirm this in their statutory declaration.

#### Acquired gender

**211. The Committee notes the debate and differing views on this issue and acknowledges how important it is that the language used correctly reflects trans people's experiences.**

**212. The Committee notes the concerns of some witnesses that interpretations of “living in the acquired gender” could lead to the reinforcing of gender stereotypes and that this would be unacceptable to enshrine in law. Some witnesses also expressed concerns that someone’s gender is not something to be acquired. The Committee also notes the views of other witnesses that the intention of the term “acquired gender” is to describe acquiring legal recognition of gender, and does not describe the lived experience of the trans community but is simply an enabling term to ensure that the legislation can function. The Committee further notes the comments and explanation given by the Cabinet Secretary that the term accords with existing terminology in the GRA and other legislation and the use of the same phrase avoids creating problems with other parts of the statute book.**

**213. The Committee notes the legal reasons for using this terminology. It acknowledges the challenge in finding a more suitable alternative. However, the Committee considers that it is important that the drafting of current legislation reflects current thinking and highlights that terminology used in the GRA in 2004 may now be outdated.**

27. The Scottish Government appreciates the concerns raised by the Committee about the impact and importance of language. Acquired gender is the language used in the Gender Recognition Act 2004 and other existing legislation to describe legally changing your gender. We have used that language in the Bill in part to ensure that the provisions being inserted into the 2004 Act work with the rest of the Act without the need to change references to the acquired gender in provisions that are not being amended.

28. The term ‘acquired gender’ is only used in the Bill, as it is currently in the 2004 Act, to describe the legal change of gender, and is not used to generally describe the experience of trans people. For purposes of legal clarity and understanding it is appropriate to use language that is consistent with existing legislation. We therefore consider that the term ‘acquired gender’ should be retained in the Bill.

29.

#### Three-month reflection period

**226. The Committee notes that many trans people may feel certain about their choice to seek a GRC and consider the three-month reflection period as an imposition and one which questions their original decision. However, some others may be less certain and there are examples of very small numbers of people who have subsequently de-transitioned. Members of the Committee also hold differing views about the merits of this proposal.**

**227. The majority of the Committee asks the Scottish Government to consider whether the retention of a three-month reflection period in the Bill is an appropriate way to achieve its intention of ensuring both that there is no unnecessary delay for those people seeking to acquire legal gender**

**recognition while at the same time, providing adequate protection for those who may change their minds.**

**228. A minority of the Committee considers that the introduction of a reflection period means the Scottish Government is already anticipating that some might change their minds.**

**229. Maggie Chapman supports the abolition of the time period completely.**

30. The Bill requires applicants to confirm their wish to proceed with their application following a three month reflection period. There are examples of other countries that have similar periods of reflection including Denmark and Belgium.

31. Responses to our consultation on the draft Bill highlighted the range of views including that people will have already reflected on this for many years before applying or that the period of reflection should be longer. This is further reflected in the evidence to Committee as well as the views taken by Committee members.

32. We consider the current requirement for applicants to provide evidence that they have been living in their acquired gender for a period of two years before applying is unnecessarily long. A reduction in the time period to three months living in the acquired gender followed by the introduction of a three month reflection period represents our view of a balanced and proportionate way of reducing the length of the overall process while ensuring applicants have a further opportunity to consider their decision and access any further information they require before proceeding.

33. We have taken into account evidence given to the Committee that the reflection period could be a disproportionate barrier to people in some circumstances such as when they are terminally ill. We appreciate that an important benefit of legally changing your gender is ensuring that your death registration is reflective of the gender in which you lived. We therefore intend to bring forward an amendment to the Bill for an applicant who is terminally ill to be able to apply for a dispensation from the three month reflection period, similar to how a dispensation can be obtained to allow a marriage to take place more quickly.

**230. The Committee also believes that support, information and appropriate signposting should be made available throughout the application process about the gravity of change and the declaration, and where support is available. This should include information about the process for “detransitioning”. In determining the information that should be made available, the Committee asks that the Scottish Government works with relevant organisations, including young people’s organisations and the CYPCS to ensure appropriate support is available including on how and when to escalate concerns.**

34. Young people and key stakeholders will be involved in the development of the process and guidance.

35. We have already begun engagement with LGBT Youth Scotland, Scottish Youth Parliament, NRS, and other stakeholders. We will engage and consult specifically with the CYPSC, including on the potential tension between protection and autonomy referred to in the Commissioner's evidence.
36. The Scottish Government and NRS will work to provide guidance to applicants on how to make an application and the effects and consequences of obtaining a GRC. NRS will signpost to organisations that can be accessed for further support. Applicants aged 16 and 17 will also be offered an opportunity to discuss their application on the phone or in person.
37. In the circumstance that a person applying for legal gender recognition wishes to stop the process then, the applicant can withdraw the application. An application is to be treated as having been withdrawn if, at the end of the period of two years beginning with the day on which the reflection period ends, the applicant has neither given the Registrar General a notice of confirmation nor withdrawn the application. In the circumstance that a person who has obtained legal gender recognition wishes to legally change their gender, then they would be able to submit an application under the same process.

#### Lowering the age of eligibility for applicants from 18 to 16

**274. The Committee notes the different views on this proposal ranging between those who do not want any change to age limits, those content to reduce the age limit to 16 years of age and those who wish to reduce the age limit to below 16.**

**275. The majority of the Committee while acknowledging concerns raised, on balance, considers that this age limit accords with existing rights in terms of the Age of Legal Capacity (Scotland) Act 1991. They believe that, based on the evidence gathered, it is clear that most young people reach decisions about their gender identity long before they consider applying for a GRC. They therefore support lowering the age of eligibility from 18 to 16.**

38. The Scottish Government agrees with the majority of the Committee and welcomes the support for lowering the minimum age from 18 to 16.

**276. Maggie Chapman requests that the Scottish Government considers a future process that would enable young people under the age of 16 to apply for a GRC with appropriate safeguards.**

39. The Scottish Government does not intend to extend legal gender recognition to those under 16.

**277. A minority of the Committee are concerned that a 16-year old may not be mature enough to make this decision and of the potential influence of additional factors such as puberty and peer pressure on young people in their decision making in conjunction with the removal of any medical safeguarding. Furthermore, in their view, evidence suggests from the example in Iceland that**



**there is no guarantee that the Bill will not lower the age to obtain a GRC to below 16. They therefore wish to retain the age limit at 18.**

40. There is nothing in the Bill that would allow that age to be lowered in the absence of further primary legislation.

41. A minimum age of 16 for applying for legal gender recognition aligns with the provisions in the Age of Legal Capacity (Scotland) Act 1991 where under Scots law, a person of or over the age of 16 years generally has legal capacity to enter into any transaction having legal effect. Young people in Scotland are empowered at 16 to leave home without parental consent, get a full time job and pay National Insurance, enter into a legally binding contract, consent to surgical and medical procedures, vote, marry and change their name.

42. Regarding whether a person is capable of making an application, then there is provision in the Bill for a person with an interest in a GRC to apply to the sheriff on the grounds that the applicant was incapable of understanding the effect of it, or that the applicant was incapable of validly making the application.

**278. The Committee as a whole agrees that support should be in place for all applicants for a GRC but that this is particularly important for younger applicants. The Committee calls on the Scottish Government to commit to ensuring appropriate support and signposting to resources will be available.**

43. Young people will be involved in the development of the process and guidance.

44. We have already begun engagement with LGBT Youth Scotland, Scottish Youth Parliament, NRS, and other stakeholders. We will engage and consult specifically with the CYPSCS, including on the potential tension between protection and autonomy referred to in the Commissioner's evidence.

45. The Scottish Government and NRS will work to provide guidance to applicants on how to make an application and the effects and consequences of obtaining a GRC. NRS will signpost to other organisations who can provide specialist support to applicants. Applicants aged 16 and 17 will also be offered an opportunity to discuss their application on the phone or in person.

#### The Cass review

**287. The majority of the Committee shares the position of the Scottish Human Rights Commission and others that the Cass Review's findings do not relate to Scotland, being focussed on England only and concern the provision of gender identity healthcare there. They are concerned about the issues raised about the lack of data and waiting times and support for young people who are transitioning and note that these issues are not directly related to the Bill. They also consider it important to separate the medical process of transitioning from the legal process of acquiring a GRC.**

**288. A minority of the Committee agrees that progress on the current Bill should be paused until the Cass review is fully published and that the Scottish Government should scrutinise the Cass Report before proceeding with the legislation in Scotland. They consider the scope of the Review which looks at current models of care for children and young people questioning their gender identity and, in light of the evidence taken on the concerns about the Tavistock clinic, may be highly relevant to the parts of this legislation concerning younger people. Specifically, they consider that more up to date research on the mental health and wellbeing of all people wishing to obtain a GRC would be beneficial in relation to the data gap identified in the GRR equality impact assessment.**

46. The Scottish Government agrees with the majority of the Committee that given its focus on NHS services in England, there is no clear connection between the outcome of the Cass review and the Bill which is about legal gender recognition in Scotland.

47. The Scottish Government recognises the need to provide the best possible care for young people questioning their gender identity or experiencing gender incongruence or gender dysphoria. We and NHS Scotland will closely consider the ongoing findings of the Cass Review within the context of NHS Scotland services as they become available alongside wider national and international evidence.

**289. However, the Committee heard evidence from trans healthcare providers about wider issues such as waiting times and concerns around access to medical pathways. The Committee would welcome an update from the Cabinet Secretary for Health and Sport on how these issues are being addressed and request that he considers a full review into the provision of gender identity healthcare.**

48. The Cabinet Secretary for Health and Social Care has noted this request and will write to update the Committee on gender identity healthcare in due course.

#### Gender identity clinics in Scotland

**308. The majority of the Committee is of the view that the possession or otherwise of a GRC should not impact any healthcare that a trans person receives. The decision to undertake medical transition is separate from the legal process of attaining a GRC, and trans people seeking medical transition should be appropriately supported by the medical professions. The majority of the Committee believes that this distinction should be made very clear on all relevant information provided by the Registrar General.**

49. Applying for and receiving a GRC and clinical decisions about gender identity healthcare are separate matters. A GRC is not required in order to access gender identity healthcare and there has never been a requirement for someone to have undergone surgery or any other medical treatment to obtain a GRC.

50. The Scottish Government will work with NRS to provide guidance to applicants on how to make an application and the effects and consequences of obtaining a GRC.

**309. A minority of the Committee believes that decoupling the medical and the legal process risks leaving many vulnerable individuals without the appropriate support. Their view is that whether an individual has a GRC or not, this should not affect the level of medical support available to them; they also recognise that not all trans people wish to go through a medical transition, and if they wish to, they should be appropriately supported.**

51. We do not consider that removing the requirement for medical evidence for legal gender recognition will impact on people's access to healthcare. We agree it is important that trans people or anyone exploring their gender identity have access to the right support at the right time for them. In 2021, we published a [Strategic Action Framework](#) for NHS gender identity service improvement. This sets out how we are working to improve access to and delivery of clinical services.

**310. The Committee is also of the view that considerable work is required to ensure fair and timely provision of gender identity healthcare services across Scotland and would welcome an update from the Cabinet Secretary for Health and Sport.**

52. The Cabinet Secretary for Health and Social Care has noted this request and will write to the Committee on gender identity healthcare in due course.

#### Ordinarily Resident

**325. The Committee notes the varying views expressed by witnesses on this part of the Bill, and would welcome clarity on what is meant by the term 'ordinarily resident.'**

53. The meaning of "ordinarily resident" was set out in a House of Lords case forty years ago (*R. v Barnet LBC Ex. p. Shah*, 1982). Generally, being ordinarily resident in Scotland means that you live here and the residence must be voluntary, for settled purposes and lawful. There can be temporary or occasional absences from Scotland without disturbing ordinary residence. A person's individual circumstances are assessed against those criteria.

54. Ordinarily resident is an established concept within several areas of law. It is a concept used in at least 17 Acts of the Scottish Parliament, and many more UK Acts.

55. The term 'ordinarily resident' appears currently in section 3C of the 2004 Act, which in relation to Scotland enables certain persons to apply for a GRC if they are in a marriage solemnised in Scotland or a civil partnership registered in Scotland. One of the conditions is "that the applicant is ordinarily resident in Scotland."

**326. The Committee seeks clarification from the Scottish Government on whether a GRC issued via a statutory declaration will be available to Scottish-born people held in prisons in other parts of the UK. Similarly, clarification on whether this would include 16- and 17-year-olds from the rest of the UK coming to Scotland, and any international students.**

56. The Bill requires that applicants must be the subject of a Scottish birth or adoption register entry or ordinarily resident in Scotland. Applicants will have to make a statutory declaration to that effect.

57. A person who is the subject of a Scottish birth or adoption register entry but living outwith Scotland will be able to apply provided they are also able to meet the other requirements.

58. A 16 or 17 year old moving from another part of the UK to Scotland, or an international student in Scotland aged 16 or over, if they are not the subject of a Scottish birth or adoption register entry, will need to satisfy the criteria explained above to be ordinarily resident in Scotland at the time of application.

**327. The Committee particularly notes the concerns raised by witnesses in relation to refugees and asylum seekers who may be living in Scotland and that there is a smooth cross-border operation for all users of the system and the Cabinet Secretary's response that there may be competence issues which will require further consideration. The Committee also recognises the importance to trans people that a GRC issued in Scotland would be recognised in the rest of the UK.**

**328. The Committee would welcome further clarity on both of these issues including whether discussions have taken place with UK Ministers and what assurances have been given on refugees and asylum seekers and cross-border recognition. It recommends that the Cabinet Secretary provides more detail on these issues in her written response to this Stage 1 report.**

59. We have heard the concerns expressed by stakeholders about the potential that refugees and asylum seekers in Scotland might not meet the requirement of being ordinarily resident. We are sympathetic to these concerns but the Bill can only make provision within the competence of the Scottish Parliament.

60. Asylum and immigration are matters reserved to the UK Parliament and handled by the Home Office. The Scottish Government is responsible for devolved matters, including access to essential services like healthcare and education, that enable the integration of refugees and asylum seekers in Scottish communities.

61. Any proposition that asylum seekers who do not become ordinarily resident in Scotland should have access to legal gender recognition under the Bill would raise competence issues, as well as practical issues. Apart from asylum and immigration being matters reserved to the UK Parliament, the competence

consideration also involves that asylum seekers who have not been granted the right to reside in Scotland have a tenuous connection with this jurisdiction. There is case law which has confirmed that a failed asylum seeker is not “ordinarily resident” because they do not meet the requirement that the residence must be lawful.

62. A refugee or asylum seeker who would not be able to apply under the Bill may be able to apply under the 2004 Act as it would apply in the remainder of the UK, if they satisfy the criteria in the Act, which do not specify a requirement for ordinary residence within the UK. Trans people will continue to be protected from gender reassignment discrimination under the Equality Act 2010 throughout the UK whether or not they have a GRC.
63. The Cabinet Secretary has highlighted the Committee’s comments about refugees and asylum seekers in correspondence to UK Ministers.
64. The Scottish Government also recognises the importance to trans people that legal gender recognition obtained in Scotland is recognised in the rest of the UK.
65. It will be for other jurisdictions to set their policy on whether they recognise legal gender recognition obtained elsewhere. Under the current system, those who have obtained legal gender recognition outwith the UK can apply in the UK by making a statutory declaration and are not required to provide any medical evidence. The UK has a list of over 40 countries who can apply through this more streamlined route and the list includes countries that have introduced similar reforms to those proposed in Scotland such as Belgium, Denmark, Norway and Iceland.
66. Legal gender recognition is a devolved matter for which the Scottish Parliament can legislate. It is common for Scottish legislation to have implications for the rest of the UK and for UK legislation to have impacts relevant to devolved areas in Scotland.
67. A section 104 order under the Scotland Act 1998 provides the mechanism for the UK and Scottish Governments to work together to make consequential modifications to reserved law and to the law in the remainder of the UK in consequence of an Act of the Scottish Parliament. The Scottish, UK and Northern Irish Governments have been working together at official level on this matter.
68. The Cabinet Secretary for Social Justice, Housing and Local Government has written to the UK Minister for Equality setting out some of the issues that have been raised and the importance to trans people that legal gender recognition obtained in Scotland is recognised in the UK as well as reaffirming our commitment to continue to work together constructively on this matter.

#### Overseas gender recognition and confirmatory GRC

**340. The Committee notes the Cabinet Secretary’s explanations to us and her view that, as a general principle, a GRC obtained overseas would be recognised in Scotland and confirmatory GRCs should not, in theory, be**

**widely needed. Whilst this is welcome, we recommend that the Cabinet Secretary provides more detail in her written response to this Stage 1 report providing reassurance on these concerns particularly those raised over section 22 of the GRA 2004 as they relate to this issue.**

69. Where a person has obtained overseas gender recognition, the person is to be treated as if the person had been issued with a full GRC by the Registrar General unless manifestly contrary to public policy. A person who has obtained overseas gender recognition can apply to the Register General for a confirmatory GRC but there is no obligation to do so.

70. On the effect of the amendment made by the Bill to section 22 of the 2004 Act, subsection (2) of that section currently defines “protected information” which it is an offence to disclose in an official capacity. This is defined as information which relates to a person who has made an application for a GRC and which concerns that application or any other application by the person for a GRC under the various provisions of the 2004 Act - or if the application is granted (by issue of a GRC), otherwise concerns the person’s gender before it becomes the acquired gender. That includes an application either on the basis of living in the other gender, or where the person has changed gender under the law of an approved country or territory outside the UK.

71. Paragraph 7 of the schedule of the Bill consequentially amends the definition of “protected information” in section 22, so that it means information which relates to a person who has made an application for a GRC or a confirmatory GRC under the Bill, and (as currently under the 2004 Act) which concerns that application or any other application by the person under the 2004 Act - or information which relates to a person whose gender has become the acquired gender and which concerns the person’s gender before it became the acquired gender.

72. Regarding the concern cited in paragraph 336 of the Report, that the amendment of section 22 in the Bill schedule potentially broadens the definition of “protected information” to include trans people without a GRC, as above section 22 currently defines “protected information” with reference to persons who apply for a GRC. This approach is retained in the consequential amendment made by paragraph 7 of the Bill schedule. It is extended (consequentially) to an application for a confirmatory GRC, but the Scottish Government considers this to be appropriate. The Bill also does not modify the various exceptions from the section 22 offence contained in section 22(4) of the 2004 Act and the Gender Recognition (Disclosure of Information) (Scotland) Order 2005 (S.S.I. 2005/125). In particular, section 22(4)(f) provides for an exception where the disclosure of the protected information is made for the purpose of preventing or investigating crime.

**341. The Committee seeks clarification and reassurance from the Scottish Government about how it intends to record those benefitting from this change of legal status who do not obtain a confirmatory GRC, and whether this has been risk assessed.**

73. NRS will not record people who have overseas legal gender recognition unless they apply for a confirmatory GRC. There is provision in the schedule of the Bill

which amends the 2004 Act, so that an entry in the Gender Recognition Register is made where a person obtains a confirmatory GRC (as well as where a person obtains a full GRC).

74. The Scottish Government does not consider that people who have obtained overseas legal gender recognition but do not apply for a confirmatory GRC would pose a greater risk in Scotland than anyone else.

#### Spousal consent and interim GRCs

**350. The Committee is content with the provisions in the Bill on interim GRCs, but requests that clarity is provided by the Cabinet Secretary on timescales for applying for a full GRC and impacts including on spouses and partners.**

75. An application for a GRC must include a statutory declaration by the applicant as to whether they are married or in a civil partnership. Then, either with the application or at the notice of confirmation, a statutory declaration by the applicant on whether they wish the marriage or the civil partnership to continue, and either a statutory declaration by the applicant's spouse or civil partner that they wish to continue or by the applicant that no such declaration by the spouse or civil partner is included.

76. Where both parties wish the marriage or civil partnership to continue, the Registrar General will issue a full GRC and give notice of this to the applicant's spouse or civil partner. In other cases, the Registrar General will issue an interim GRC.

The interim GRC is issued to enable the applicant and their spouse to end their marriage or civil partnership. A person with an interim GRC can also apply to the Registrar General for a full GRC following divorce or dissolution if not issued by the court on the ground of obtaining the interim GRC. The Bill continues to give applicants 6 months from obtaining an interim GRC to institute proceedings for divorce or dissolution, and a further 6 months from the date of divorce or the dissolution of the civil partnership to apply for a full GRC if their marriage or civil partnership comes to an end. This is the same as the current process.

#### 77. Person with interest

**358. The Committee notes the concerns raised by several witnesses that individuals unhappy with a decision to apply for a GRC might use this provision to frustrate a legitimate application and believes that such vexatious complaints should be dealt with robustly.**

**359. The Committee agrees that some provision for a "person with interest" to appeal the award of a GRC to the Registrar General should be included in the Bill, but that it must be very tightly drafted to provide clarity on who is an interested party, and on what grounds they can appeal.**

**360. The Committee recommends that the Cabinet Secretary elaborates on this in her written response to this Stage 1 report and provides further detail and reassurances on the concerns it has set out here. The Cabinet Secretary**

**should include how objections, both vexatious and genuine, would be differentiated and dealt with.**

78. The Bill makes provision for a person who has an interest in a GRC to apply to the sheriff to revoke a certificate on the ground that the application was fraudulent, that the applicant was incapable of understanding the effect of it, or that the applicant was incapable of validly making the application.

79. The person seeking to revoke a certificate would have to have a genuine interest in the certificate in that it would have to affect them personally or professionally, and they would require to prove the ground on which the certificate could be revoked. It is common statutory language to require a person to have an interest in a particular matter in order to bring proceedings relating to that matter before a court, and the courts are used to determining what amounts to a sufficient interest in such cases. There are provisions which confer rights on a “person who has an interest” or a “person with an interest” in approximately 50 provisions in Acts of the Scottish Parliament.

80. The Bill’s explanatory notes provide examples of the people this provision is intended to cover include the Registrar General and the spouse or civil partner of the person to whom the certificate was issued. There are other persons who could validly have an interest in a certificate in the circumstance that the person obtaining the certificate may not have capacity. These include, for example, a person with a power of attorney, or a guardian or a person authorised under an intervention order under the Adults with Incapacity (Scotland) Act 2000 who acts for the person obtaining the certificate, or a curator ad litem appointed by the court. In relation to the Committee’s recommendation that the Bill should be ‘tightly drafted’ to define who may be persons who have an interest, the Scottish Government considers that a difficulty with seeking to list such persons in the Bill is that it is possible that an appropriate category of person could inadvertently be omitted.

#### Criminal offence to make a false statutory declaration or application

**372. The Committee notes the differing views expressed by witnesses about the creation of a new criminal offence in the Bill, and the concerns raised by some witnesses that it will be important not to criminalise anyone who enters into an application process for a GRC in good faith and then changes their mind.**

**373. There are differing views on the Committee about the new offence, with some being of the view that existing legislation already provides for the offence of making a false declaration. Whilst they welcome the Cabinet Secretary’s reassurances in this regard, they recommend that the Cabinet Secretary further elaborates on this point in her written response to the Stage 1 report as to which safeguards the Scottish Government intend to put in place.**

**374. A minority of the Committee is concerned that this provision will have unintended consequences. They believe that it is one of the safeguards to this**



**process from bad faith actors but it is near impossible to prove, while on the other hand poses the risk of criminalising anyone who enters the GRC process in good faith but later changes their mind. They believe that the Scottish Government should consider introducing a criterion of ineligibility.**

81. It will be a criminal offence to knowingly make a false statutory declaration and to knowingly make a false application. The maximum penalty for these offences is imprisonment for up to two years or an unlimited fine or both.

82. There is provision in the Bill for a person with interest such as the Registrar General to make an application to the sheriff on the grounds an application was fraudulent.

83. The Committee notes that it is already a criminal offence to knowingly make a false statutory declaration, in relation to why specific provision would be required. The Bill disapplies the existing offence in section 44 of the Criminal Law (Consolidation) (Scotland) Act 1994 (see paragraph 12 of the Bill's schedule) and replaces it with a provision covering statutory declarations, and also other aspects of an application under the Bill which would not be covered by the existing law. The disapplication of the existing law means that the offence is not being duplicated. The approach taken is about clarity of drafting and is intended to assist the user of the legislation, so they can see all the offences that could be committed in one place.

84. The offence relates to knowingly making a false statutory declaration. If at the time of making the statutory declaration you intended to live permanently in your acquired gender then you would not be committing an offence (unless some other aspect of the declaration was knowingly false).

85. Stopping or reversing a process of transition whether social, legal or medical will be a very personal. In the circumstance that a person applying for legal gender recognition wishes to stop the process then the applicant can withdraw the application. An application is to be treated as having been withdrawn if, at the end of the period of two years beginning with the day on which the reflection period ends, the applicant has neither given the Registrar General a notice of confirmation nor withdrawn the application. In the circumstance that a person who has obtained legal gender recognition wishes to legally change their gender again, then they would be able to submit an application under the same process.

86. We consider this to be the simplest and most appropriate way for an individual to change their gender in those circumstances and this is the same approach should that circumstance arise under the current system.

#### Removal of power to introduce fees and other powers

**381. The Committee agrees that financial barriers should not stand in the way of applicants for gender recognition certificates.**

87. The Scottish Government agrees with the Committee.

## Reporting Duty

**388. Future reporting on the implementation of the main provisions of this Bill and whether they are working in the way the Scottish Government intends is crucial.**

**389. The Committee believes the debate around this Bill and wider matters has been polarised and views differ starkly in terms of whether there will be negative or unintended consequences if the Bill is enacted. The Committee notes that, specifically relating to reporting, there was no evidence provided of negative impacts or unintended consequences of similar legislation in other jurisdictions.**

**390. The Committee believes the Scottish Government should consider how the NRS will report on the functioning of the Act if passed and what data will be collected and published by whom, and how frequently. The Committee recommends that the Scottish Government should collect as much information as possible as often as possible and report this to the Parliament to ensure all data on the impact of the Bill are captured and made available, mindful of the potential issue of being able to identify affected individuals as a result of small numbers.**

88. The Scottish Government agrees with the Committee that it will be important to collect and provide appropriate statistics and information.

89. NRS already provides statistics and reports in other areas including marriage, civil partnership, birth and death registration and the Bill requires NRS to report annually on the process. To ensure the privacy of applicants, NRS will not publish data which would allow a person who applied for, or was issued with, a GRC or a confirmatory GRC to be identified.

**391. A minority of the Committee expresses concern as to how reporting on the consequences of a GRC could be effective under section 22 of the GRA 2004. Therefore, they believe that more information is required on how this information would be retrieved, and whether this would require data to be collected on biological sex, as well as gender identity, more widely.**

**392. A minority of the Committee believes that the Scottish Government must in relation to reporting, provide guidance on the use of section 22 and outline its approach on the introduction of the Bill.**

90. NRS will continue to publish appropriate statistics from registration processes, including those who apply for a GRC. The publication of statistics will conform to the principles of official statistics in meeting user needs.

91. Under section 22 of the 2004 Act, it is a criminal offence for 'a person who has acquired protected information in an official capacity to disclose the information to any other person'. Protected information refers to either a person's application or their gender prior to obtaining a GRC.

92. There are several exceptions to the criminal offence in section 22 such as where the information does not enable the person to which it relates to be identified, the person to whom the information relates has consented to disclosure or where the disclosure is for the purpose of preventing or investigating crime.
93. This is an existing feature of the current system and will continue to apply under our proposed reforms and is neither subject to or dependent on the Bill.
94. In 2021, Scotland's Chief Statistician published [guidance](#) for public bodies on the collection of data on sex and gender.

#### EHRC's change of position on gender recognition reform

**399. The Committee notes the change of view of the EHRC and also the different view it now has from the SHRC. It is not for the Committee to instruct either rights body what view it should hold.**

**400. The majority of the Committee notes the inconsistent evidence given to the Committee by the EHRC on 17 May and are not persuaded that it has provided justification in oral or written evidence of their change of view.**

95. The Scottish Government agrees with the majority of the Committee's view. We have met and corresponded with the Equality and Human Rights Commission seeking clarity on the evidence base for their change of position. A copy of our correspondence has been sent to the Committee.

**401. A minority of the Committee agrees with the EHRC's recommendation that legislation should be paused because they believe the consultation on these changes has not adequately taken into account the impact on women's sex based rights and is broadly in line with evidence heard from several stakeholders. The minority of the Committee agree that more detailed consideration is needed from the Scottish Government before any change is made to the provisions of the Act and that an update should be provided to the Committee on how they will urgently improve waiting lists for services in Scotland. In the view of the minority of the Committee, it is essential that the recommendations of the EHRC are taken into account to ensure that potential unintended consequences of the reforms on UK wide laws or policies are fully scrutinised.**

96. The Scottish Government does not consider that the Bill will negatively impact on women's rights and equality which we support and uphold. The provisions of the Equality Act 2010 are not modified by the proposals in the Bill. The Bill also does not change the legal effects of a GRC as they are currently set out in the 2004 Act.

97. The Equality Act 2010 allows for the provision of single-sex services in certain circumstances. There are also circumstances where a single-sex service provider can prevent, limit or modify trans people's access to the service, if a proportionate means of achieving a legitimate aim, and whether or not they have

a GRC. We support the exceptions. The Bill does not change public policy around the provision of single-sex spaces and services.

98. Legal gender recognition is a devolved matter for which the Scottish Parliament can legislate. It is common for Scottish legislation to have implications for the rest of the UK and for UK legislation to have impacts relevant to devolved areas in Scotland.
99. A section 104 order under the Scotland Act 1998 provides the mechanism for the UK and Scottish Governments to work together to make consequential modifications to reserved law and to the law in the remainder of the UK in consequence of an Act of the Scottish Parliament. The Scottish, UK and Northern Irish Governments are working together at official level on this matter.
100. The Cabinet Secretary for Social Justice, Housing and Local Government has written to the UK Minister for Equality setting out some of the issues that have been raised and the importance to trans people that legal gender recognition obtained in Scotland is recognised in the UK as well as reaffirming our commitment to continue to work together constructively on this matter.

#### Impact on women and girls

**471. The Committee notes that there were some concerns expressed on the potential impacts of the Bill on women and girls and on single-sex spaces. The Committee notes that there were also some concerns expressed by some minority ethnic groups and some religious groups about the potential impacts of the Bill on grounds of religious belief. Further, the Committee recognises how service providers currently provide trans inclusive single-sex spaces making exceptions as allowed for by the Equality Act 2010.**

**472. The majority of the Committee believes that the concerns raised, while recognising that such views are sincerely held, go beyond the scope of the provisions in the Bill, and is satisfied that the Bill itself will not change any of the protections or definitions set out in the Equality Act 2010, including the ability to exclude trans people from single-sex services where proportionate and appropriate. The majority is satisfied that the Bill will not change or remove women's rights, make changes to how toilets and changing rooms operate, redefine what a man or a woman is, nor change or expand trans people's rights. The majority is satisfied that the Bill will not change the effect of a GRC, which is that the individual is legally recognised in their acquired gender. Further, the majority recognise that, when asked about evidence of abuse and concerns, no witness was able to provide concrete examples.**

**473. A minority of the Committee is not persuaded that the risks have been examined sufficiently and disagrees with the decision to frame these issues as separate from the Bill. They take the view that how acquiring a GRC affects a person's definition and rights under the Equality Act 2010 and believe that this is a central issue in determining what impact the Bill might have on women and girls and seeks clarification on that from the Scottish Government.**

101. The Scottish Government agrees with the majority of the Committee that the Bill will not negatively impact on women's rights and equality. As noted above, the Bill does not amend the Equality Act 2010 or change public policy around the provision of single-sex spaces and services.

102. We have not identified any international evidence that reforms similar to those proposed in Scotland have had a negative impact on women's rights and equality. The Committee's report also notes that when asked about evidence of abuse and concerns, no witness was able to provide concrete examples.

#### Impact on prisons

**494. The Committee notes the concerns some expressed on the potential impacts of the Bill on prisons and the safety of women in prison.**

**495. The majority of the Committee, while recognising that such views are sincerely held, believes that this issue is outwith the scope of the Bill, and is satisfied as per the evidence provided by the SPS, that the possession of a GRC does not affect the way in which the SPS undertake risk assessments relating to the custody of an individual. The majority of the Committee believes that the SPS should continue its current risk assessment process to ensure individuals are placed in the most appropriate estate, whether that is for their own safety or the safety of others, regardless of whether or not they have a GRC.**

103. The Scottish Government agrees with the majority of the Committee that the accommodation of trans prisoners is not related to the Bill.

**496. A minority of the Committee, in light of evidence that there may be an increase in the number of GRC holders, would like further reassurance from the Cabinet Secretary on the potential for legal challenge from that group.**

104. The management of transgender prisoners is an operational matter for the Scottish Prison Service. As with all public services, SPS must have regard to the law including the Equality Act 2010.

105. SPS use comprehensive individualised risk assessments to determine how trans prisoners are managed. Decisions taken by the SPS seek to protect both the wellbeing and rights of the individual as well as the welfare and rights of others around them, including staff.

106. SPS recognise having a GRC will be indicative of the type of estate within which a trans prisoner should be placed but that they retain the ability to place the prisoner in an estate which does not correspond with their GRC, where through the risk assessment process they determine that to do so could put the prisoner or others at risk.

#### Trans inclusion in sport

**514. The Committee recognises the differences of opinion on this matter.**

**515. The Committee notes the conclusions of the national sports body (sportscotland) that, for many sports, the inclusion of transgender people, fairness and safety often cannot co-exist in a single competitive model, and that these are matters for national governing bodies. In the main, we agree with that view.**

**516. The majority of the Committee is of the view that this issue is much wider than, and largely unconnected with, the specific provisions in the Bill. The majority of the Committee recognise and agree with the view of the national sports body (sportscotland) that GRCs have no impact on participation in sport.**

**517. The majority of the Committee does not consider that the Bill will impact the decisions made by sports' governing bodies on the grounds of safety, wellbeing, fairness and inclusion.**

**518. A minority of the Committee require further clarification that current safeguarding will be applied within the context of the law at both elite and grassroots levels.**

107. The Scottish Government agrees with the majority of the Committee that the Bill makes no changes to the rules for trans participation in women's sport whether professional, amateur or in schools. Sports governing bodies set their own policies on trans participation under the Equality Act 2010 which contains provision allowing restrictions on trans people participating in sport to be imposed if necessary to uphold fair competition or the safety of competitors. The Bill makes no changes to this.

108. The UK's Sports Councils (including sportscotland) published new guidance for transgender inclusion in domestic sport in September 2021. This guidance is primarily aimed at National Governing Bodies of sport and is relevant to, and considers, the needs of people of both genders. As sports are incredibly diverse and there can be no one-size fits all approach with inclusion, there may need to be different solutions for different sports, which is why the Guidance encourages sports to consider options to balance fairness, safety and inclusion.

#### Impact on data collection

**542. The Committee notes the concerns raised about the availability, quality and robustness of good data, and believes that good policy and services are reliant on data. Reporting on the implementation of the main provisions of this Bill and whether they are working in the way the Scottish Government intends is crucial.**

**543. The Committee believes that the Scottish Government should ensure the utmost clarity when collecting data to ensure people respond in a manner that is consistent and comparable. Further, the Committee believes the Scottish Government should consider how data will be collected, who will collect that**

**data and how often and how it will be monitored to ensure there are no unintended consequences arising from the impact of the Bill on policy development.**

**544. A minority of the Committee believes that as the proposed changes to the Bill will open up the GRC process to a wider group of people than originally intended in the 2004 Act has the potential to affect data collection. They believe that to accurately track data and outcomes (i.e. in health, crime, education etc.) data on both biological sex as well as gender identity must be collected. They believe this will not only paint a more accurate picture of the outcomes for trans people, but it will make it easier to monitor the consequences of self-declaration.**

109. In 2021, Scotland's Chief Statistician published guidance for public bodies on the collection of data on sex and gender.

110. The guidance highlights that the vast majority of official data is currently collected on the basis of self-defined sex. For example, some questions ask 'what is your sex?' or 'are you male or female?' with no guidance on how people should interpret the question. The guidance proposes a voluntary sex question followed by a voluntary question about 'trans status' and a voluntary open text box for people to describe their 'trans status'.

#### Non-binary recognition

**555. The Committee notes the complexities outlined by the Scottish Government in the policy memorandum on the extension of the provisions on the Bill to non-binary people.**

**556. The majority of the Committee expresses its disappointment that this issue cannot be dealt with in this Bill but notes that the Cabinet Secretary indicated that she is considering the recommendations of the Working Group on Non-Binary Equality.**

**557. A minority of the Committee recognises that the Cabinet Secretary has expressed views about the complexities of such an inclusion of non-binary people in this Bill which would require significant changes to UK and Scottish legislation and looks forward to a progress report from the Working Group on Non-Binary Equality.**

111. The Scottish Government issued its [response](#) to the Working Group on Non-Binary Equality's Report and Recommendations on 13 July 2022. We will now develop an action plan based on the group's work to set out more fully how we intend to improve equality and bring about real, positive and lasting change to the lives of non-binary people. We intend to publish this action plan by spring 2023.

## De-transition

**568. The Committee requests that the Cabinet Secretary clarifies in her written response to this Stage 1 report that the process for de-transitioning will be the same process of self-declaration.**

112. As noted above, stopping a process of transition whether social, legal or medical will be very personal. In the circumstance that a person applying for legal gender recognition wishes to stop the process then the applicant can withdraw the application. An application is to be treated as having been withdrawn if, at the end of the period of two years beginning with the day on which the reflection period ends, the applicant has neither given the Registrar General a notice of confirmation nor withdrawn the application. In the circumstance that person who has obtained legal gender recognition wishes to legally change their gender, then they would be able to submit an application under the same process.

113. We consider this to be the simplest and most appropriate way for an individual to change their gender in those circumstances and this is the same approach should that circumstance arise under the current system.

## Recommendation on the general principles of the Bill

**570. By a majority of five to two, the Committee recommends that the general principles of the Bill be approved.**

114. The Scottish Government welcomes the Committee's majority recommendation to Parliament that it supports the general principles of the Bill.

**The Scottish Government  
October 2022**