

Briefing on the progress of the Gender Recognition Reform (Scotland) Bill

7 December 2022

As the Gender Recognition Reform Bill (“the Bill”) moves towards its Stage 3 debate in the Scottish Parliament, the Commission would like to outline its position on the Bill’s progress.

The Scottish Human Rights Commission (the Commission) is Scotland’s National Human Rights Institution (NHRI), recognised by the United Nations as an A status NHRI. A core function of an NHRI at the national level is advising on compliance with international and regional human rights standards and best practice.

The Commission provided oral and written evidence during Stage 1 of the Bill. Our written submissions can be found on the Publications page of our website at www.scottishhumanrights.com.

1. [Submission: Gender Recognition Reform \(Scotland Bill\)](#)
2. [Submission: Gender Recognition Reform \(Scotland Bill\) 2022](#)

In that evidence, we outlined the human rights standards applicable to legal gender recognition processes. We considered:

- The European Convention on Human Rights (ECHR), which requires that processes be quick, transparent and accessible. The ECHR provides a floor and not a ceiling of human rights protection and allows states a margin of appreciation. Within this system, there exist both states with self-identification systems and those with medical diagnosis requirements;
- International treaties, including the UN Convention on the Elimination of All Forms of Discrimination Against Women

(CEDAW), which protects women from sex and gender-based discrimination;

- The Yogyakarta Principles and the work of the UN Independent Expert on Sexual Orientation and Gender Identity. These both highlight that best practice requires that the process does not require a medical diagnosis and ought to ensure that minors, aged 16 and 17 years old, have access.
- 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.

We concluded that 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. This remains our conclusion, having closely followed all of the debate that has taken place since that time.

Last year, the Special Rapporteur on violence against women and girls, Ms Reem Alsalem, 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 29 November this year, the Special Rapporteur on violence against women and girls made an intervention on the Gender Recognition Reform (Scotland) Bill with a letter to the UK Government.

In this letter, the Special Rapporteur focuses on a number of particular concerns regarding the risks of the proposed self-identification system to women and girls.

In our earlier evidence (see above), we examined and analysed the concerns which had been raised in relation to the risks to the rights of women and girls. We could not identify any objectively evidenced prospect of real and concrete harm resulting from the proposed

changes. In our analysis, we consistently found that holding a Gender Recognition Certificate (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.

The Commission recognises and respects the role of the Equality and Human Rights Commission to lead on regulation and application of equality in Scotland. However, in order to deliver our human rights analysis, we looked at the role of the Equality Act 2010 in upholding women's rights. It remains the case that none of the protections of the Equality Act will change. The Equality Act allows a person's trans status to be taken into account - and ultimately for them to be excluded or offered an alternative service - where there is an objective reason for doing so.

The exception in relation to trans people applies at every stage of their transition, including after any GRC has been awarded.

The Special Rapporteur on violence against women and girls raises these areas of concern again and seeks further consideration. It is our view that each of these issues have been comprehensively considered through the public consultations in 2018 and 2020 and through a thorough process of evidence-taking by the Scottish Parliament at Stage 1. That process heard from witnesses with a wide range of views, including those critical of the Bill. Having heard the evidence, the relevant Parliamentary Committee concluded that the concerns raised went beyond the scope of the Bill and were satisfied that the Bill itself would not change any of the protections of the Equality Act, nor would it change or remove women's rights, or change the effect of a GRC. We share that view.

Our view on the Bill has been, and remains, clear. We recognise that there are a range of views both domestically and internationally in relation to the Bill. It is important that the legislative process considers all views and examines the impact on human rights on all sides.

We believe that the careful and detailed consideration of Parliament has given ample opportunity for that to take place, both through Stage 1 evidence and the consideration of over 150 amendments at Stage 2.

As Scotland's National Human Rights Institution, the Commission promotes and protects everyone's human rights.

The Commission has noted the strength of debate around this issue and cares about the rights of everyone involved, there is no hierarchy of rights. As the Bill approaches its Stage 3 debate, it is now for the Scottish Parliament to make its decision.

Ends.