



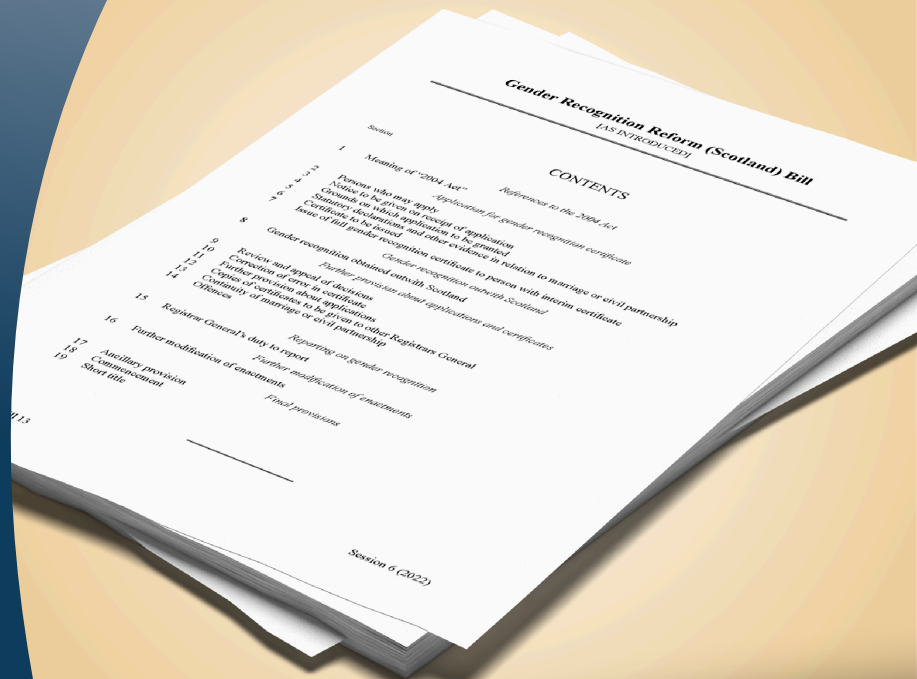
SPICe Briefing

Pàipear-ullachaidh SPICe

Gender Recognition Reform (Scotland) Bill: consideration prior to Stage 3

SPICe Research

The Bill aims to improve the application process for legal gender recognition. This briefing looks at parliamentary consideration of the Bill at Stages 1 and 2.



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Terms used in this briefing

Acquired gender - the Gender Recognition Act 2004 describes this as the gender in which an applicant is living and seeking recognition

Bill - The Gender Recognition Reform (Scotland) Bill

[Cass Review](#) - commissioned by NHS England and NHS Improvement in Autumn 2020 to make recommendations about the services provided by the NHS to children and young people who are questioning their gender identity or experiencing gender incongruence

The Committee - Equalities, Human Rights and Civil Justice Committee

ECHR - European Convention on Human Rights

GRA - Gender Recognition Act 2004

GRC - Gender Recognition Certificate

GRP - Gender Recognition Panel

What the Bill does

The aim of the Bill is to improve the application process for legal gender recognition, which the Scottish Government says can have an adverse impact on applicants. The Bill's provisions will amend the current gender recognition process under the Gender Recognition Act 2004 (GRA), and introduce a statutory declaration-based system.

The Bill's provisions will:

- remove the requirement for an applicant to have, or have had gender dysphoria, and therefore removes the requirement for medical evidence to be provided
- reduce the minimum age for application from 18 to 16
- remove the Gender Recognition Panel from the process; instead applications will be made to the Registrar General for Scotland
- reduce the period for which an applicant must have lived in their acquired gender before making an application from two years to three months
- introduce a mandatory three month reflection period and a requirement for the applicant to confirm at the end of that period that they wish to proceed with the application before the application can be determined
- introduce a new duty on the Registrar General for Scotland ('the Registrar General') to report the number of applications for GRCs made, and the number granted, on an annual basis.

It will also be a criminal offence to make a false statutory declaration or false application. A person who commits such an offence is liable to imprisonment for up to two years and/or a fine.

At Stage 2 of the Bill, the main amendments were:

- 16 and 17 year olds to take advice or guidance before making their decision to obtain a GRC. They must have a discussed the matter with an adult they know personally, or someone that has a role in giving guidance. They must then confirm this with the Registrar General for Scotland.
- 16 and 17 year olds must have lived in their acquired gender for six months, extending the three month period available to older applicants
- asylum seekers are included in the definition of 'ordinarily resident'
- waive the three month reflection period for applicants who are "gravely ill and not expected to recover"
- require the Registrar General to publish information online on the effect of obtaining a GRC, how to make an application, the requirement to make a statutory declaration, and the consequences of making a false application
- to create an aggravator, where the circumstances of the offence are proven to be connected to the fact that a person has fraudulently obtained a GRC

- a statement that: "For the avoidance of doubt, nothing in this Act modifies the Equality Act 2010."

There were also three amendments made to review the operation of the Act across a range of specified areas. The Cabinet Secretary for Social Justice, Housing and Local Government, Shona Robison MSP, indicated an intention to create a single provision for review of the Act at Stage 3.

It was also announced that the Scottish Government would introduce regulations to amend the sex offender notification requirements so that those who are on the register are required to notify the police with details about whether they have made an application for a GRC. These would be introduced before the Bill is commenced.

About the Bill - key dates and documents

The [Gender Recognition Reform \(Scotland\) Bill](#) was introduced in the Scottish Parliament on 2 March 2022 by the Cabinet Secretary for Social Justice, Housing and Local Government, Shona Robison MSP.

The Bill and its related documents, including the [Policy Memorandum](#), [Explanatory Notes](#), and [Financial Memorandum](#), are available on the [Parliament's website](#).

The [SPICe briefing on the Bill](#) as introduced provides information on the Gender Recognition Act 2004 (GRA) and its history, the current application process, reasons for reform, various consultations and inquiries on GRA reform, exceptions in the Equality Act 2010, and the provisions in the Bill.

Stage 1 scrutiny by the Equalities, Human Rights and Civil Justice Committee

The Committee ran a call for views on the Bill between 21 March and 16 May 2022. It received:

- 10,800 individual submissions to a [short survey](#) on the general principles of the Bill, once duplicate responses were removed
- 814 detailed [written submissions](#) on the provisions of the Bill, of which 63 were from organisations.

The Committee held eight formal oral evidence sessions between 17 May and 28 June 2022. It also held several informal engagement events with people with different lived experiences.

Oral evidence sessions

| Official Reports | Witnesses |
|------------------|---|
| 17 May 2022 | <ul style="list-style-type: none"> • Vic Valentine, Scottish Trans Manager, Scottish Trans Alliance • Dr Mhairi Crawford, Chief Executive, LGBT Youth Scotland • Colin Macfarlane, Director, Stonewall Scotland • Alasdair MacDonald, Director of Policy and Human Rights Monitoring; Equality and Human Rights Commission • Melanie Field, Chief Strategy and Policy Officer, Equality and Human Rights Commission |
| 24 May 2022 | <ul style="list-style-type: none"> • Bruce Adamson, Children and Young People's Commissioner Scotland • Ellie Gomersall, President-Elect of NUS Scotland and President of UWS Students' Association • Hugh Torrance, Executive Director, LEAP Sports Scotland • Malcolm Dingwall-Smith, Strategic Partnerships Manager, sportscotland |
| 31 May 2022 | <ul style="list-style-type: none"> • Susan Smith, Co-Director, For Women Scotland (FWS) • Lucy Hunter Blackburn, MurrayBlackburnMackenzie (MBM) • Malcolm Clark, Head of Research, LGB Alliance (LGBA) • Dr Kate Coleman, Director, Keep Prisons Single Sex (KPSS) • Catherine Murphy, Executive Director, Engender • Sandy Brindley, Chief Executive, Rape Crisis Scotland (RCS) • Naomi McAuliffe, Scotland Programme Director, Amnesty International Scotland • Jen Ang, Director of Policy and Development, JustRight Scotland |
| 7 June 2022 | <ul style="list-style-type: none"> • Paul Lowe, Registrar General for Scotland and Keeper of the Records of Scotland, National Records of Scotland • James Kerr, Deputy Chief Executive, Scottish Prison Service • Robert Strachan, Head of Strategy and Improvement, Scottish Prison Service • Dr Kevin Guyan, Research Fellow, University of Glasgow • Anthony Horan, Director, Catholic Parliamentary Office of the Bishops' Conference of Scotland • Rev. Karen Hendry, Vice-Convenor of the Faith Impact Forum, Minister of Yoker Parish Church, Church of Scotland • Chris Ringland, Public Policy Officer, Scotland, Evangelical Alliance • Fraser Sutherland, Chief Executive Officer, Humanist Society of Scotland |
| 14 June 2022 | <ul style="list-style-type: none"> • Professor Sharon Cowan, Professor of Feminist and Queer Legal Studies, University of Edinburgh School of Law • Naomi Cunningham, Barrister, Outer Temple Chambers and Chair, Sex Matters • Karon Monaghan QC, Barrister, Matrix Chambers • David Parker, Lead Clinician, National Gender Identity Clinical Network Scotland |
| 21 June 2022 | <ul style="list-style-type: none"> • Professor Alice Sullivan, Head of Research, UCL Social Research Institute • Robin White, Barrister, Old Square Chambers • Victor Madrigal-Borloz, United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Office of the United Nations High Commissioner for Human Rights (OHCHR) • Ian Duddy, Chair, Scottish Human Rights Commission |

| Official Reports | Witnesses |
|------------------|---|
| | <ul style="list-style-type: none"> • Barbara Bolton, Head of Legal and Policy, Scottish Human Rights Commission • Cathy Asante, Legal Officer, Scottish Human Rights Commission • Dr Sandra Duffy, Lecturer in Law, University of Bristol School of Law • Dr Peter Dunne, Senior Lecturer, University of Bristol School of Law • Dr Chris Dietz, Lecturer in Law and Social Justice, University of Leeds |
| 22 June 2022 | <ul style="list-style-type: none"> • Senator Regina Doherty, Leader, Seanad Éireann |
| 28 June 2022 | <ul style="list-style-type: none"> • Cabinet Secretary for Social Justice, Housing and Local Government, Shona Robison MSP • Scottish Government officials |

The Committee published its [Stage 1 report](#) on 6 October 2022. A majority of the Committee (5-2) supported the general principles of the Bill.

The Scottish Government gave its [response](#) on 26 October 2022.

The Stage 1 debate

The [Stage 1 debate](#) took place on 27 October 2022.

At the start of the debate, the Cabinet Secretary for Social Justice, Housing and Local Government, Shona Robison MSP, welcomed the Committee's majority support for the general principles of the Bill and acknowledged that Members and the wider public "have differing and genuinely held opinions on the matter of gender recognition reform."

Issues raised in the debate included:

- Whether a GRC changes someone's sex in relation to the protections in the Equality Act 2010. The Cabinet Secretary said:

"The Scottish Government completely accepts and agrees with the [Equality and Human Rights Commission](#). Its definitions of the protected characteristics under the Equality Act 2010 and of the effect of a GRC have not changed since the 2004 act, and none of that will be changed by this bill. That all remains the same. I give that guarantee again."

- The potential impact on women and girls, in terms of access to single-sex services and spaces, and to participation in sport. The Cabinet Secretary said:

"We know from all the evidence that the threat to women comes from predatory and abusive men, not trans women or trans men."

The Cabinet Secretary also agreed to work with Pam Duncan-Glancy MSP on an amendment to address concerns about the interaction between the Bill's provisions and the Equality Act 2010:

"I have said that the single-sex exemptions under the Equality Act 2010 will remain, regardless of this bill. However, I understand that putting that into the bill will help to leave that in no doubt whatsoever and will recognise the importance of that, so I am

willing to work with Pam Duncan-Glancy and others to achieve that."

- Concerns about lowering the minimum age from 18 to 16. The Cabinet Secretary welcomed the majority view of the Committee that the minimum age should be 16, and that it will be important to ensure appropriate support and signposting to resources for all applicants, and particularly those aged 16 and 17. A commitment was made to work with Christine Grahame MSP on the three-month time period to have lived in the acquired gender for 16 to 18 year olds.
- Calls to take note of the Cass Review's findings. The Cabinet Secretary said:

"We, and NHS Scotland, will closely monitor the on-going findings of the Cass review, alongside wider national and international evidence, as those become available and within the context of NHS Scotland services."
- Concerns about how the provisions will operate cross-border. The Cabinet Secretary said:

"It will be for other jurisdictions to set their policy on whether they recognise legal gender recognition obtained elsewhere. Under the current system, some people who have obtained legal gender recognition outwith the UK, including under systems based on self-determination similar to that proposed in the bill, can apply in the UK without needing to provide any medical evidence."
- The meaning of "ordinarily resident" in the Bill. The Cabinet Secretary said:

"Being "ordinarily resident" is an established concept in several areas of law, including pensions and benefits, taxation and jurisdiction, and including in at least 17 acts of the Scottish Parliament. In general, it means that someone's residence here is voluntary, for settled purposes and lawful."

The Cabinet Secretary also announced the intention to introduce an amendment to the Bill for a dispensation from the three-month reflection period where an applicant is terminally ill.

Closing the debate, the Cabinet Secretary said she wanted to achieve 'maximum consensus' on the Bill, and would continue to have an 'open door' policy to discuss the provisions.

The Bill was [passed at Stage 1](#): For 88, Against 33, Abstentions 4.

Stage 2 scrutiny

Stage 2 was held on 15 and 22 November 2022.

A [version of the Bill as amended at Stage 2](#) and [Supplementary Financial Memorandum](#) were subsequently published on the Parliament's website.

This section of the briefing covers the main amendments debated at Stage 2, and how they progressed. It does not attempt to deal with all the Stage 2 amendments lodged.

The results of all amendments are available in the Minutes of the Equalities, Human Rights and Civil Justice Committee:

- [15 November 2022](#)
- [22 November 2022](#)

Applications by 16 and 17 year olds

Rachael Hamilton's amendments sought to retain the minimum age of obtaining a GRC at age 18 and to delay the Bill coming into force until the final report of the Cass Review has been published and considered by Scottish Ministers.

The debate on minimum age repeated arguments heard at Stage 1:

- that those under 18 are too young to make such a commitment, they are not allowed to buy alcohol, cigarettes or get a tattoo, and the UN Convention on the Rights of the Child defines children as those under 18
- those aged 16 are mature enough to make this decision, have legal capacity, as set out in the Age of Legal Capacity (Scotland) Act 1991, they can get married, work and vote in the Scottish Parliament and local elections.

The Cabinet Secretary:

- said the amendment to set the minimum age at 18 was contrary to the general principles of the Bill
- reiterated the position that there is no connection between the Cass review of NHS England's services and the Bill, which is about the process to obtain legal gender recognition. Further, that the Scottish Government will consider the findings of the Cass review in the context of work to improve NHS Scotland services, as previously stated.

At the Bill's introduction, the Cabinet Secretary had said the Scottish Government would consider the need for further guidance for 16 and 17 year olds.

There were a range of amendments focused on 16 and 17 year olds who wish to obtain a GRC.

Carol Mochan's amendment would require 'free and confidential support' to be available to 16 and 17 year old applicants at their request. This must include 'wellbeing support from a

professional and trusted source' and 'family liaison support in communicating the applicant's decision to family members'. The amendment was not moved.

Martin Whitfield's amendments would require the Registrar General to reject applications from 16 and 17 year olds, if satisfied that the applicant was incapable of understanding the effect of obtaining a GRC or the importance of a statutory declaration, or that they had made the application under coercion. These amendments were not moved.

Christine Grahame's amendments, supported by Jackson Carlaw, ultimately achieved support.

These amendments will require:

- 16 and 17 year olds to take advice or guidance before making their decision to obtain a GRC. They must have a discussed the matter with an adult they know personally, or someone that has a role in giving guidance. They must then confirm this with the Registrar General.
- 16 and 17 year olds to have lived in their acquired gender for six months, extending the three month period available to older applicants.

Table 1

| Amendment number and MSP who lodged the amendment | Aim | Vote |
|---|---|---|
| 18, Rachael Hamilton | To raise the minimum age to 18 | Disagreed For 2, Against 4, Abstentions 1 |
| 38, Christine Grahame, supported by Jackson Carlaw | Require 16 and 17 year olds to confirm to the Registrar General that the applicant has discussed the implications of obtaining a GRC with a person who has a role which involves giving guidance, advice or support to young people | Agreed For 3; Against 3; Abstentions 1 Casting vote used. |
| 42 and 43, Christine Grahame, supported by Jackson Carlaw | For 16 and 17 year olds, extend from three months to six months the minimum period of living in the acquired gender before an application is made | Agreed For 3, Against 3, Abstentions 1 Casting vote used. |
| 31, Rachael Hamilton | To delay the Bill coming into force until the Cass Review has published its final report, and been considered by Scottish Ministers | Disagreed For 2, Against 5, Abstentions 0. |

Applicants with criminal charges or convictions

Russell Findlay's amendments sought to prevent those with certain criminal offences from applying for or receiving a GRC, pause applications for those who are charged with certain offences, or introduce reporting requirements relating to certain convictions. Anyone with any criminal convictions would need to declare them.

Russell Findlay said these provisions are not directed towards trans people, but at male criminals.

The Cabinet Secretary said that there is no evidence that those men would obtain a GRC in order to abuse women, or that that has happened in any countries with similar processes. It was argued that some of the amendments in the group are likely to be incompatible with ECHR, and therefore outwith legislative competence.

However, the Cabinet Secretary had noted concerns about the possibility of sex offenders taking advantage of the new process for gender recognition. It was announced that the Scottish Government would introduce regulations to amend the sex offender notification requirements so that those who are on the register are required to notify the police with details about whether they have made an application for a GRC. These would be introduced before the Bill is commenced.

Table 2

| Amendment number and MSP who lodged the amendment | Aim | Vote |
|---|---|---|
| 114, Russell Findlay | Prohibit anyone on the sex offenders register from being able to acquire a GRC | Disagreed For 3, Against 4, Abstentions 0 |
| 123, Russell Findlay | Require applicants to disclose criminal convictions | Disagreed For 2, Against 5, Abstentions 0 |
| 125, Russell Findlay | Require an applicant to disclose various convictions - sexual offences, violent offences, domestic abuse and fraud. Require an applicant to disclose that they are on the children's barred list. The Registrar General could only grant an application in these cases if the applicant has provided 'authentic evidence' that they have gender dysphoria | Disagreed For 2, Against 5, Abstentions 0 |
| 127, Russell Findlay | Pause applications where the applicant is charged with any crimes that would be prosecuted under solemn proceedings | Disagreed For 2, Against 4, Abstentions 1 |
| 129, Russell Findlay | Require the Registrar General to inform Police Scotland when someone with a criminal record is granted a GRC | Disagreed For 2, Against 5, Abstentions 0 |
| 131, Russell Findlay | Allow a sheriff or judge to revoke a GRC of someone who was later convicted of rape or another sex crime | Disagreed For 3, Against 4, Abstentions 0 |

Recognition of gender recognition obtained outwith Scotland

Roz McCall said her amendments were probing ones to ascertain the Cabinet Secretary's views on overseas gender recognition. The amendments would do different things, for example:

- remove the process of overseas gender recognition entirely - so that all applicants go through the main GRC process set out in the Bill
- limit overseas gender recognition to a list of 'approved countries', so that those not on the list of approved countries go through the main GRC process set out in the Bill.

The Cabinet Secretary said she did not support these amendments, but would be happy to discuss any further concerns ahead of Stage 3. In broad terms, she said that the Bill's

approach is similar to that currently taken in Scotland to the validity of marriage which has happened outside Scotland, and to the recognition of divorce overseas.

The amendments were not moved.

The Cabinet Secretary moved amendments (56-58) to:

- clarify that the automatic recognition of overseas gender recognition ends if the gender recognition obtained elsewhere no longer has effect
- provide that if someone with overseas gender recognition goes on to acquire recognition of non-binary gender in their own country, in Scotland their gender will not revert to being their gender at birth but will continue to be the male or female gender that they had previously acquired.

These amendments were agreed to without division.

Retention of current application process and evidence required in support of applications

Sue Webber's amendments aimed to retain the current application process, to maintain the status quo. The only difference would be that applications are made to the Registrar General, but applications would still need the approval of the GRP, so the effect would be the same.

The Cabinet Secretary said that these amendments were not in keeping with the general principles of the Bill, as agreed at Stage 1.

Some of these amendments were not moved, those that were moved were disagreed to by division - For 2, Against 5, Abstentions 0.

Meaning of "ordinarily resident" in Scotland

The Bill requires that an applicant either be 'ordinarily resident' in Scotland, or have a Scottish birth or adoption certificate. The term 'ordinarily resident' was debated during Stage 1.

Pam Duncan-Glancy's amendment sought to add asylum seekers to the term 'ordinarily resident'.

Tess White's amendment sought to clarify that 'ordinarily resident' means that a person has been living, or intends to live, in Scotland for a minimum period of one year.

The Cabinet Secretary said that the term 'ordinarily resident' appears in several areas of law, and is used in at least 17 Acts of the Scottish Parliament.

On asylum seekers, the Cabinet Secretary was sympathetic, but noted that asylum is reserved. As such, asylum seekers might be able to apply for a GRC under the GRA 2004. Therefore, the Cabinet Secretary asked the Committee not to support the amendment.

However, it was agreed to by division. The Cabinet Secretary has subsequently [written to the Committee](#) stating that this provision risks putting the Bill outwith legislative competence and that she will lodge an amendment at Stage 3 to remove this provision.

On setting a definition of 'ordinarily resident', the Cabinet Secretary said that having an intention to live in Scotland does not satisfy the test of ordinarily resident. Therefore, the Cabinet Secretary asked the Committee not to support the amendment.

Table 3

| Amendment number and MSP who lodged the amendment | Aim | Vote |
|---|---|--|
| 115, Pam Duncan-Glancy | Include asylum seekers in the term 'ordinarily resident' | Agreed For 4, Against 3, Abstentions 0 |
| 116, Tess White | The term 'ordinarily resident' would apply to a person who has been living, or intends to live, in Scotland for at least a year | Disagreed For 3, Against 4, Abstentions 0 |

Time periods before an application can be granted

Maggie Chapman's amendments sought to remove the time periods from the application process, specifically:

- the three month period of living in the acquired gender
- the three month reflection period required before the applicant can confirm they wish to proceed with the application.

This was based on evidence heard during Stage 1 that the timescales in the Bill were arbitrary and unnecessary, given that trans people have often spent months or years considering their decision.

The Cabinet Secretary recognised that there are some who would prefer there to be no time periods at all, while others believe the time periods in the Bill should be longer. However, there was no alternative to the proposals in the Bill that would be accepted and would keep to the principles of reforming the process.

The amendments were disagreed to.

Offence of making a false statutory declaration

The Bill will make it a criminal offence to make a false statutory declaration or false application. A person who commits such an offence is liable to imprisonment for up to two years and/or a fine.

Pam Duncan-Glancy's amendments would require the statutory declaration to include confirmation that the applicant understands that making a false statutory declaration is an

offence. The aim was to make it clearer that if someone made a statutory declaration that they did not intend to comply with, they would be committing a criminal offence.

The Cabinet Secretary said that this amendment would be an additional measure to ensure that the applicant is aware that making a false statutory declaration is an offence, and asked the Committee to support it.

These amendments were agreed to without division.

Graham Simpson's amendments sought to provide for regulations that would require Scottish Ministers to set out what would constitute a false statutory declaration, and what would constitute evidence to show that a person had made a false statutory declaration. This was based on concerns that it is not clear what would constitute a false declaration and what prosecutors would have to prove should a person be accused of doing so.

The Cabinet Secretary said that prosecutorial policy is for the Lord Advocate, and that as with any criminal offence, it would be for the police and the procurator fiscal to demonstrate, and for the court to determine, whether an offence had been committed in any individual case. The Committee were asked not to support these amendments.

These amendments were not moved.

Sufficiency of statutory declarations

Michael Marra's amendments would require a statutory declaration to have a counter-signatory, modelled on the process for obtaining a passport. The counter-signatory would be someone who has personally known the applicant for two years and is from a 'recognised profession', for example, a doctor, nurse, teacher or accountant.

Some Committee members felt these amendments would go against the principle of the Bill, which is self-declaration. Other Committee members said these amendments would provide an additional safeguard.

The Cabinet Secretary considered that the statutory declaration is sufficient. She also had concerns about how these amendments would work in practice and that they could create further barriers for trans people in obtaining legal gender recognition.

The amendment was disagreed to: For 2, Against 4, Abstentions 1

Pam Duncan-Glancy's amendment would set out that a statutory declaration means a declaration as set out in the Statutory Declarations Act 1835. This was agreed to without division.

Application to sheriff for rejection of application or revocation certificate

The Bill, as introduced, requires the Registrar General to grant a GRC if the applicants meets the requirements in the Bill. If the Registrar General considers that an application is fraudulent or that the applicant is not able to understand the process, they would first have

to issue the certificate and then apply to the sheriff for the certificate to be revoked.

The Cabinet Secretary's amendments sought to allow the Registrar General to apply to the sheriff before a GRC is issued. The court would then determine whether the application should be rejected or should proceed.

These amendments were agreed to without division.

Meaning of "living in the acquired gender"

The GRA 2004 defines "living in the acquired gender" as "the gender in which the person is living." The Bill does not change this definition, but it was an issue raised during Stage 1 scrutiny.

Graham Simpson's amendments sought to require Scottish Ministers to make further provision, via regulations, on the meaning of "living in the acquired gender".

The Cabinet Secretary said that the Bill does not change the meaning of "living in the acquired gender" in the 2004 GRA. The requirement is not about looking or dressing in a certain way, but about the way in which someone may demonstrate their lived gender to others. Examples of what would constitute "living in the acquired gender" are contained in [current guidance](#), and include updating official documents such as a passport, driving licence, utility bill or bank account. It might also include using gender markers in their acquired gender and using a name that is associated with the acquired gender.

The Cabinet Secretary said she would be happy to discuss this further before Stage 3, but would be reluctant to go beyond the GRA 2004 on this point.

The main amendment in this group was withdrawn, and the others not moved.

Waiver of reflection period for applicants nearing end of life

The Cabinet Secretary's amendments would allow the Registrar General to waive the three month reflection period for applicants who are "gravely ill and not expected to recover". In practice, the Cabinet Secretary said that this would be established through a letter from the applicant's doctor confirming it, and the detail would be set out in guidance. This reflects similar provisions for marriage under the Marriage (Scotland) Act 1977. A fraudulent application for dispensation of the three month reflection period would be included in the offence created by the Bill.

These amendments were agreed to without division.

Guidance and support for applicants and potential applicants

Sarah Boyack's amendment sought to require Scottish Ministers to "take steps" to ensure that those considering making a GRC application have access to "appropriate support and information." This was based on evidence heard during Stage 1 and a recommendation made by the Committee in its Stage 1 report.

Christine Grahame's amendment, supported by Jackson Carlaw, would require the Registrar General to publish information online on:

- the effect of obtaining a GRC
- how to make an application for a GRC
- the requirement to make a statutory declaration
- the consequences of making an application for a GRC or statutory declaration which is false
- any other information relating to the making of application for a GRC the Registrar General considers appropriate.

The Cabinet Secretary said that it is "essential that all applicants for a GRC have carefully considered this important legal step, understand the effect of applying and are able to access information and guidance to inform their consideration." The intention is for the National Records of Scotland to signpost people to other organisations that can provide specialist support to applicants.

On Sarah Boyack's amendment, the Cabinet Secretary said that it was open to lots of questions about what "appropriate support and information" would be. Further, that it raises the possibility of legal challenge on the specific meaning of "appropriate" in this context. The Committee were urged to reject this amendment, although the Cabinet Secretary said she would be open to further discussions on this in advance of Stage 3. On the basis of having further discussions with the Cabinet Secretary, Sarah Boyack withdrew this amendment.

The Cabinet Secretary said that Christine Grahame's amendment was more specific and in line with what the Registrar General has already committed to do. The Committee were urged to support this amendment. This amendment was agreed to unanimously.

Minor and technical

The Cabinet Secretary's amendments were lodged on the suggestion of the Scottish Courts and Tribunals Service.

The Bill refers in a number of places to the role of the sheriff, such as giving notice that a GRC has been issued or in giving copies of GRCs to the Registrar General. Although technically competent, the Scottish Courts and Tribunals Service suggested that for the sake of clarity those references should instead be to the sheriff clerk as, in practice, it would be the sheriff clerk who would carry out that function.

These amendments were agreed to without division.

Application to revoke certificate

The Bill as introduced provides that a person with an interest in a GRC may apply to the sheriff to have it revoked on various grounds, including that it was fraudulent, the applicant was incapable of understanding the effect of it, or the applicant was incapable of validly making the application.

The Committee heard evidence during Stage 1 that the definition of a 'person with interest' could increase the risk of vexatious or malicious complaints to the sheriff.

Maggie Chapman's amendments sought to address this concern in two ways. First, by narrowly defining who a person with interest is. Second, by creating a further step that would require a request for revocation to go through the Registrar General's office first.

Pam Duncan-Glancy's amendments sought to require a person with interest to apply to the Registrar General for leave to apply to the sheriff to revoke a GRC.

The Cabinet Secretary said these amendments would give the Registrar General a preliminary role in assessing potential applications to a sheriff and refusing permission to apply to the sheriff, based on whether the application was malicious and whether the applicant had a genuine interest. There is no precedent for that type of process. Further, defining who a person with interest is could lead to the potential omission of an appropriate category of person.

The Cabinet Secretary said she was open to discussing this matter further ahead of Stage 3, but asked the Committee not to support these amendments.

Maggie Chapman indicated support for Pam Duncan-Glancy's amendments, and therefore withdrew her amendments. Pam Duncan-Glancy's amendments were disagreed to: For 2, Against 5, Abstentions 0.

Effect of the Act

A range of amendments were considered in this group, several of which began with the phrase "for the avoidance of doubt."

Rachael Hamilton's amendment sought to ensure that a GRC under the Bill would not change the status of a parent, as mother or father of a child. The Cabinet Secretary said this amendment was unnecessary because it is in the GRA 2004 and the Bill does not change that. The amendment was withdrawn.

Tess White's amendments sought to require Scottish Ministers to "take steps" to encourage the public's understanding of the Bill's provisions, and that a report must be published on how that has been fulfilled. The Cabinet Secretary did not support these amendments and referred to the two consultations on the Bill, the accompanying documents published, as well as the Committee's call for views at Stage 1. The amendment to encourage public understanding was disagreed to: For 3; Against 4;

Abstentions 0. The amendment to publish a report was not moved.

Jeremy Balfour's amendments sought to ensure that, "for the avoidance of doubt" the Bill does not affect Article 9 of the European Convention on Human Rights - the freedom of thought, conscience and religion. The Cabinet Secretary said that the Scottish Parliament cannot alter the effect of the Convention, and therefore it brings ambiguity rather than clarity. These amendments were not moved.

Fulton McGregor's amendment sought to ensure that, "for the avoidance of doubt", nothing in the Bill affects the ability of the Scottish Prison Service to take a risk based approach to where trans people are housed in the prison estate. The Cabinet Secretary said the Scottish Prison Service already uses individualised risk assessments to determine how trans prisoners are managed, whether or not they have a GRC. This amendment was not moved.

On the use of the phrase, "[for the avoidance of doubt](#)", the Cabinet Secretary said that in general such provisions do not add value to legislation as they simply state what is already the case. However, an exception would be made for a later amendment.

Aggravation of offences connected with certificate obtained by fraud

Jamie Greene's amendment sought to create an aggravator, where the circumstances of the offence are proven to be connected to the fact that a person has fraudulently obtained a GRC. The aim is to deliver harsher punishment and sentence in such cases. It seeks to address concerns that the some may use the simpler process for obtaining a GRC for malicious intentions.

The Cabinet Secretary agreed that this amendment would send a "clear message" and act as a deterrent, but that the wording might require further consideration ahead of Stage 3.

This amendment was agreed to with division: For 6, Against 1, Abstentions 0.

Reviewing the impact of the Act

There were a range of amendments lodged with the purpose of reviewing the impact of the Act's provisions for specific purposes. These included reviewing the Act's impact on:

- sport
- religious groups
- prisons
- gender identity healthcare
- women and girls
- section 22 of the Gender Recognition Act 2004 - this makes it an offence for a person

who has acquired protected information in an official capacity to disclose the information to any other person. “Protected information” means information about a person's application or their gender before obtaining a GRC.

There was extensive debate on this group of amendments. The Cabinet Secretary indicated support for a number of them and suggested there should be a single review that covers a range of areas. Further, that the timescale should be three years after the new system has been established, and to allow for data to be collected. The Cabinet Secretary said that all the issues would be considered for Stage 3.

Table 4

| Amendment number and MSP who lodged the amendment | Aim | Vote |
|---|---|--|
| 1, Brian Whittle | Scottish Ministers must prepare and publish report on the impact of this Act on the participation of transgender people in sport, one year after Royal Assent | Disagreed For 3, Against 4, Abstentions 0 |
| 76, Pam Gosal | Scottish Ministers must prepare and publish report on the impact of this Act on patients where knowledge of the biological sex of a health professional carrying out a medical examination or treatment is required, including on religious grounds | Disagreed For 2, Against 5, Abstentions 0 |
| 136, Jamie Greene | Scottish Ministers must prepare and publish report on the impact of this Act on the placement of transgender people in prisons, no later than three years after s.2 is in force | Agreed (by division) For 6, Against 1, Abstentions 0 |
| 139, Sarah Boyack | Scottish Ministers must review the impact of the Act on gender identity healthcare, and publish a report, within two years of Royal Assent | Disagreed For 3, Against 4, Abstentions 0 |
| 140, Rachael Hamilton | Scottish Ministers must review the interaction of the Act with healthcare for trans people, and publish a report | Disagreed For 3, Against 4, Abstentions 0 |
| 143, Tess White | Scottish Ministers must report on the operation of the Act on educational establishments, the health system, and the criminal justice system, every two years | Not moved |
| 144, Tess White | Under the Registrar General duties to report, include the number of GRCs from people who have previously obtained a GRC | Not moved |
| 145, Pam Duncan-Glancy | Scottish Ministers must review the Act, no later than 3 years after s.2 is in force, including the operation of s.22 of the GRA 2004 and any provision for non-binary people | Agreed without division |
| 146, Pam Duncan-Glancy | Scottish Ministers must publish an impact assessment of the Act, no later than 3 years after s.2 is in force, with a range of areas to be specifically considered, such as the effect on single-sex spaces and the number of prisoners with GRCs | Disagreed For 3, Against 4, Abstentions 0 |
| 148, Tess White | Scottish Ministers to consult the public on how it should report on the impact of the operation of the Act on women and girls, within six months of Royal Assent | Disagreed For 2, Against 4, Abstentions 1 |
| 156, Claire Baker | Scottish Ministers must review section 22 of the GRA 2004, in light of changes made by this Act, no later than 3 years after s.2 comes into force | Agreed without division |

Interaction of the Act with the Equality Act

There were a range of amendments on how the Bill's provisions would interact with the Equality Act 2010, and there was extensive debate on them.

The aim of several amendments were to address concerns about the Bill's provisions on the protections in the Equality Act 2010, particularly for women. They used the phrase "[for the avoidance of doubt](#)". The Cabinet Secretary had previously said that this phrase does not generally add value to legislation as it simply states what it is already the case, but indicated support for Pam Duncan-Glancy's amendment:

"For the avoidance of doubt, nothing in this Act modifies the Equality Act 2010"

The Cabinet Secretary said:

"... we felt that, because of the importance of the discussion and the need for reassurance, it was important and proportionate to put it in the text of the bill. That is the clearest way of moving forward."

On the other amendments which used "for the avoidance doubt", the Cabinet Secretary said:

"What is not required is for different elements of the 2010 act to be pulled out and also to be included in the text of the bill, because the 2010 act covers all that, and there is no change."

There was also debate about the meaning of 'sex' as defined in the Equality Act 2010, and how this interacts with the Bill's provisions. The Cabinet Secretary said that the Bill does not modify reserved provisions in the 2010 Act, including the protected characteristics and single-sex exceptions. Further, on the effect of obtaining a GRC:

"... the position is as set out in section 9 of the 2004 act. Nothing in the bill changes that. Essentially, that enables people to change their birth certificate to be in line with their acquired gender. That has been the case for 18 years, and that remains the same."

Several amendments sought to require Scottish Ministers to publish guidance on the interaction between the Bill's provisions and the Equality Act 2010. The Cabinet Secretary said that guidance relating to the Equality Act 2010 is led by the Equality and Human Rights Commission (EHRC), but the Scottish Government would be happy to work with the EHRC on whether guidance needs updating after the passing of the Bill.

Table 5

| Amendment number and MSP who lodged the amendment | Aim | Vote |
|---|--|---|
| 23, Rachael Hamilton | For the avoidance of doubt, nothing in the Act would affect the definition of 'sex' in the Equality Act, or any protections in the Equality Act 2010 | Withdrawn, by agreement |
| 24, Rachael Hamilton | For the avoidance of doubt, nothing in the Act would affect the protections for sport in the Equality Act 2010, s.195 | Not moved |
| 25, Daniel Johnson | Scottish Ministers must issue guidance on the interaction between this Act and the Equality Act | Disagreed For 3, Against 4, Abstentions 0 |
| 74, Pam Gosal | Scottish Ministers must provide information on the impact of this Act on single-sex spaces, and exceptions to single-sex spaces | Disagreed For 3, Against 4, Abstentions 0 |
| 101, Pauline McNeill | Scottish Ministers must issue guidance on the effect of having a GRC, and set out how this impacts on the rights in the Equality Act 2010 | Disagreed For 3, Against 4, Abstentions 0 |
| 103, Brian Whittle | Scottish Ministers must produce guidance on sporting activities to sports governing bodies and teachers in relation to the inclusion of trans people | Disagreed For 3, Against 4, Abstentions 0 |
| 104, Foysal Choudhury | For the avoidance of doubt, nothing in the Act affects the definition of 'sex', the definition of 'man' or 'woman', and any protections in the Equality Act 2010 | Not moved |
| 37, Pam Duncan-Glancy | For the avoidance of doubt, nothing in this Act modifies the Equality Act 2010 | Agreed by division For 5, Against 0, Abstentions 2 |
| 110, Pauline McNeill | For the avoidance of doubt, nothing in this Act affects the requirement to collect data on 'sex', as defined in the Equality Act 2010 | Disagreed For 2, Against 4, Abstentions 1 |
| 151, Claire Baker | Scottish Ministers must issue guidance on occupational exemptions | Disagreed For 3, Against 4, Abstentions 0 |

Data collection

The Bill provides for the Registrar General to report annually on the number of GRC applications and the number of GRCs granted.

Pam Duncan-Glancy's amendment sought to require Scottish Ministers to collect and publish information on GRCs including: the number of GRCs received, granted or rejected, the reason for rejection, the number of applications withdrawn, the number of requests for review, and the number of appeals. The Cabinet Secretary said that this amendment was overly prescriptive, but would consider whether anything could be added to the Registrar General's reporting duty, ahead of Stage 3. The amendment was withdrawn.

Sarah Boyack's amendment sought to require Scottish Ministers to set out in regulations the data required to be collected, in addition to the reporting duty on the Registrar General, in order to monitor the operation and impact of the Bill's provisions. This would include data on the impact on trans healthcare waiting times, and collecting data on an individual's acquired gender and gender at birth to monitor access to and provision of healthcare and the commission of specific offences.

The Cabinet Secretary was not sure how this amendment would work in practice given that an individual does not need a GRC to access gender identity healthcare. Furthermore, she said that the Scottish Government will bring forward regulations to amend the sex offender notification requirements so that those who are on the register are required to notify the police with details about whether they have made an application for a GRC. She also stated that the Scottish Prison Service carries out a risk assessment on the accommodation of trans prisoners, irrespective of whether they have a GRC. The Cabinet Secretary said she would be happy to work on some of the issues raised in this amendment. The amendment was not moved.

Regulations made by the Registrar General for Scotland

Pam Duncan-Glancy's amendment sought to provide that all future changes to the legislation made by the Registrar General would be subject to the affirmative procedure.

The Cabinet Secretary said that regulations made under that section that contain a provision that adds to, replaces or omits any part of the text of an act are subject to the affirmative procedure. Otherwise, regulations made under that section are subject to the negative procedure. This was considered appropriate and proportionate. The amendment was disagreed to: For 3, Against 4, Abstentions 0.

Stage 3

The Stage 3 timetable is:

- Stage 3 proceedings, Tuesday 20 December, where amendments will be considered by the whole parliament.
- Stage 3 debate, Wednesday 21 December, where members will debate and then vote on whether to pass the Bill.

The deadline for Stage 3 amendments closed at 12 noon on Tuesday 13 December. The amendments have been published:

- [Marshalled List of Amendments for Stage 3](#)
- [Groupings of Amendments for Stage 3](#)

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