



Equalities, Human Rights and Civil Justice Committee

Stage 1 Report on the Gender Recognition Reform (Scotland) Bill

2 Pers

Published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish
Parliament website at:
[http://www.parliament.scot/abouttheparliament/
91279.aspx](http://www.parliament.scot/abouttheparliament/91279.aspx)

For information on the Scottish Parliament contact
Public Information on:
Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot

Contents

Introduction	1
Glossary of terms	2
Overview of the current grounds and procedure for applying for a gender recognition certificate	4
Policy objectives of the Bill and consultation by the Scottish Government	6
Scottish Government consultations	6
First consultation	6
Second Consultation	7
Sections of the Bill	7
Key changes made by the Bill	8
The Equality Act	9
Consideration by the Equalities, Human Rights and Civil Justice Committee and other Committees	10
Informal engagement events	13
Consideration by other Committees	14
Membership changes	14
International context	15
European examples of the self-declaration approach	15
Key issues in the Committee's consideration of the Bill	16
The case for and against reform	16
Procedure before an application for legal gender recognition	21
Removal of the Gender Recognition Panel from the process and introduction of the Registrar General	21
Removal of the requirement for a diagnosis of gender dysphoria and the requirement for medical evidence	25
Live in the acquired gender for three months	31
"Acquired gender"	33
Procedure after an application for gender recognition	35
Three-month reflection period	35
Eligibility for a GRC	37
Lowering the age of eligibility for applicants from 18 to 16	38
The Cass Review	44
Gender identity clinics in Scotland	46
Ordinarily resident	49
Overseas gender recognition and confirmatory GRC	52

Spousal consent and interim GRCs	53
Person with interest	54
Criminal offence to make a false statutory declaration or application	56
Removal of power to introduce fee and other powers	57
Reporting duty	58
Wider issues arising in evidence	61
EHRC's change of position on gender recognition reform	61
Impact on women and girls	62
Equality Act 2010: Separate and single-sex exceptions	62
Equality Act 2010: Other exceptions	63
Self-exclusion	69
Religious sensitivities	70
Impact on prisons	72
Trans inclusion in sport	76
Impact on data collection	79
Non-binary recognition	83
De-transition	84
Recommendation on the general principles of the Bill	86
Annex A	87
Bibliography	88

Equalities, Human Rights and Civil Justice Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

- a. matters relating to equal opportunities, and upon the observance of equal opportunities within the Parliament; and
- b. matters relating to human rights.
- c. matters relating to civil justice within the responsibility of the Cabinet Secretary for Justice and Veterans.

2. In these Rules

(a) “equal opportunities” includes the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds or on grounds of disability, age, sexual orientation, language or social origin or of other personal attributes, including beliefs or opinions such as religious beliefs or political opinions; and

(b) “human rights” includes Convention rights (within the meaning of section 1 of the Human Rights Act 1998) and other human rights as for example contained in any international convention, treaty or other international instrument ratified by the United Kingdom.



ehrcj.committee@parliament.scot

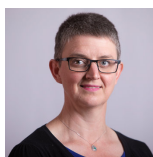
Committee Membership



Convener

Joe FitzPatrick

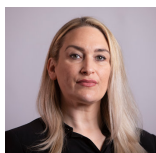
Scottish National Party



Deputy Convener

Maggie Chapman

Scottish Green Party



Karen Adam

Scottish National Party



Fulton MacGregor

Scottish National Party



Pam Duncan-Glancy

Scottish Labour



Pam Gosal

Scottish Conservative
and Unionist Party



Rachael Hamilton

Scottish Conservative
and Unionist Party

Introduction

1. The [Gender Recognition Reform \(Scotland\) Bill](#) (“the Bill”) was introduced in the Scottish Parliament by the Cabinet Secretary for Social Justice, Housing and Local Government, Shona Robison MSP (“the Cabinet Secretary”), on 2 March 2022. The Parliament designated the Equalities, Human Rights and Civil Justice Committee (“the Committee”) as the lead committee for Stage 1 consideration of the Bill.
2. Under the Parliament’s Standing Orders Rule 9.6.3(a), it is for the lead committee to report to the Parliament on the general principles of the Bill. In doing so, it must take account of views submitted to it by any other committee. The lead committee is also required to report on the Financial Memorandum and Policy Memorandum, which accompany the Bill.

Glossary of terms

A range of different terms are used in this report. It is important to note that trans terminology has changed and evolved over time and continues to do so. These terms have been adapted from a range of sources.^{i ii iii iv v}

Acquired gender – the 2004 Act describes this as the gender in which an applicant is living and seeking recognition.

the Bill – Gender Recognition Reform (Scotland) Bill.

Formal evidence session – An element of Parliamentary proceedings where a Committee can take evidence from Ministers, academics, organisations, and public bodies, amongst others. These meetings are open to the public, and video recordings and transcripts are available on the Scottish Parliament website.

GIC – Gender identity clinic. GICs offer assessment and access to medical interventions in relation to gender incongruence or dysphoria.

GRA – Gender Recognition Act 2004.

GRC – a gender recognition certificate. A full GRC provides legal recognition of a person's acquired gender.

GRP – Gender Recognition Panel. This is a UK Tribunal which currently deals, across the UK, with applications for legal gender recognition. A panel is formed of people with medical or legal qualifications, who decide whether an application for a GRC meets the legal requirements.

Gender dysphoria – a term that describes a sense of unease that a person may have because of a mismatch between their biological sex and their gender identity.

Gender identity – a person's internal sense of self and how they see themselves in terms of being a man or a woman, or being somewhere in between or beyond these categories (see non-binary below).

Gender reassignment – this is the protected characteristic in the Equality Act 2010. A person has this protected characteristic if they are proposing to undergo, are undergoing

i [HM Courts and Tribunals Service. \(2021\). The General Guide for all Users: Gender Recognition Act 2004.](#)

ii [Scottish Government. \(2019, December 17\). Gender Recognition Reform \(Scotland\) Bill: consultation.](#)

iii [Scottish Government. \(2017, November 9\). Review of the Gender Recognition Act 2004: A Consultation.](#)

iv [National Gender Identity Clinical Network for Scotland \(NGICNS\) Gender Identity Clinics \(scot.nhs.uk\)](#)

v [UK Government, Apply for a Gender Recognition Certificate. Apply for a Gender Recognition Certificate: Overview - GOV.UK \(www.gov.uk\)](#)

or have undergone a process (or part of the process) for the purposes of reassigning the person's sex by changing physiological or other attributes of sex. A transsexual person has this characteristic.

Informal engagement/evidence session – As is the case for formal evidence sessions, these meetings allow a Committee to take evidence from individuals or representatives. However, factors such as GDPR or safeguarding concerns mean that these meetings are held in private.

Non-binary – an umbrella term for people who do not identify as men or women.

the Registrar General – the Registrar General for Scotland.

Transgender or trans – umbrella terms used to describe a diverse range of people who find that their gender does not fully correspond with the sex they were assigned at birth. Non-binary people can also be included under the trans umbrella, although some may not consider themselves as trans.

Transsexual – this is seen by many as an outdated term for transgender/trans, but is used in the Equality Act 2010 under the definition of gender reassignment.

Overview of the current grounds and procedure for applying for a gender recognition certificate

3. The Gender Recognition Act 2004 (“GRA”) is existing UK-wide legislation which enables a person aged 18 or over to make an application for a gender recognition certificate (“GRC”) on the basis of living in the other gender or having changed gender under the law of a country or territory outside the UK.
4. There are three routes that applications can take, the standard track, the alternative track and the overseas track.
5. Under the standard track, applications for GRCs are made to the Gender Recognition Panel (“GRP”), a UK tribunal. The GRP will grant an application if it is satisfied that the applicant:
 - Has or has had gender dysphoria;
 - Has lived in what is referred to as their “acquired gender”^{vi} for the preceding two years;
 - Intends to continue to live in their acquired gender until death and;
 - Complies with the requirements of section 3 of the GRA^{vii}.
6. Under the alternative track, an application for a GRC can be made by a person who:
 - Has been diagnosed with gender dysphoria or has had surgery for the purpose of changing their sexual characteristics;
 - Ordinarily resides in England and Wales, Scotland or Northern Ireland;
 - Intends to live in their acquired gender for the remainder of their life;
 - Is in a marriage or civil partnership registered in Scotland, or a marriage or civil partnership made in England and Wales or Northern Ireland on or before the date of the application and
 - Has lived in their acquired gender for at least six years before 6 December 2014 or 16 December 2014 or lived in the acquired gender on 13 January 2014

^{vi} The Committee recognises that some people have objections to this term. The Committee is using this and other disputed terminology in this report as this is the wording used in the Bill and accompanying documents.

^{vii} Section 3 requires the applicant to provide reports from two registered medical practitioners providing details of the applicant’s diagnosis of gender dysphoria as well as statutory declarations concerning the applicant’s living in their acquired gender, whether the applicant is married or in a civil partnership and the intentions of the applicant as to the continuation of the marriage or civil partnership.

depending on which jurisdiction their marriage or civil partnership was solemnised or registered in.

7. Under the overseas track, a person can apply for a GRC if their acquired gender has been legally accepted in one of the approved countries or territories. Evidence must be provided with the application.
8. Successful applicants receive either an interim GRC (which does not give legal recognition) or a full GRC which does. Where a full GRC is issued, a person's gender becomes for all purposes in law their acquired gender.

Policy objectives of the Bill and consultation by the Scottish Government

9. According to the [policy memorandum](#), the Scottish Government aims to create a more equal Scotland where people and communities are valued, included and empowered and which protects and promotes equality, inclusion and human rights.
10. In line with this vision, it states that the policy of this Bill is to improve the process for those applying for legal gender recognition as it believes the current system can have an adverse impact on applicants due to the requirement for a medical diagnosis and supporting evidence.
11. The policy memorandum at paragraph 58 states that current legislation in this area is complex and the Bill simplifies the process applying to Scotland. Under the current process, 16- and 17- year olds cannot apply for gender recognition despite other rights they have at that age. The Bill lowers the minimum age for applicants to 16.
12. The Bill amends the 2004 Act to introduce a new process for legal gender recognition in Scotland and new criteria which require to be satisfied by applicants to obtain a GRC. Although the Bill changes the process by which legal gender recognition can be obtained, the policy memorandum states that it does not change the effects of the GRC and the rights and responsibilities which a person has on obtaining legal gender recognition.
13. According to the Scottish Government, the process set out in the Bill is a “balanced and proportionate way of improving the current process for trans men and women seeking to obtain legal gender recognition”. The policy memorandum states that retaining the requirement for a statutory declaration and the provision for offences in the Bill for making a false statutory declaration or other false information in an application ensures the process will continue to be as serious a step as under the current system. Such an offence is punishable by imprisonment for up to two years and/or a fine.
14. If the Bill becomes law, the Scottish Government anticipates in its Financial Memorandum that there will be an increase in applications for a GRC from around 30 to between 250-300 per year. This figure is based on figures taken from other countries of similar size with similar size populations who have adopted a self-declaration approach rather than on statistical modelling.

Scottish Government consultations

First consultation

15. The Scottish Government published an initial [consultation](#) which ran from 9 November 2017 to 1 March 2018. It sought views on a number of areas including reducing the minimum age of applicants, removing medical requirements, the period of time that applicants had to demonstrate they had been living in their acquired gender and retaining the requirement for an applicant to make a statutory declaration.

16. The consultation received 15,697 responses of which the majority were from individuals. It received 165 responses from groups or organisations. The Scottish Government published an [analysis](#) of the consultation on 23 November 2018 which stated that the majority of respondents, 60% of those answering the question, agreed with the proposal to introduce a self-declaratory system for legal gender recognition.
17. Those who agreed with the proposals suggested the existing process is too lengthy and intrusive and difficult to navigate. Those who disagreed with the proposals raised concerns about the impact that changes may have on women and girls and that the proposed system may be open to abuse or conflict with the rights of women.

Second Consultation

18. The Scottish Government then published a [second consultation](#) on the draft Gender Recognition Reform (Scotland) Bill which ran from 17 December 2019 to 17 March 2020. The second consultation sought views on the requirement for applicants to live in their acquired gender for three months prior to submitting an application and for a three-month reflection period before a GRC was granted. It also asked whether the age for applicants should be reduced from 18 to 16 years old.
19. The Scottish Government published an [analysis](#) of the consultation responses on 2 September 2021. It received 17,058 responses, the majority of these were from individuals with 215 submitted by organisations. According to the Scottish Government, the responses broadly took two positions either in support of, or opposed to a statutory declaration-based system.
20. The analysis states that comments made suggests that a small majority of organisations broadly supported changing to a statutory declaration-based system. Around 4 in 10 organisations did not support changing to a statutory declaration-based system and around 1 in 10 either did not take a view or their view was not clear.
21. Those broadly in support considered that the current system was in need of reform and the new system would make acquiring a GRC simpler. This was the perspective of many individual respondents and the majority of groups representing young people.
22. Those broadly against thought the case for change had not been made, that the existing system was fit for purpose and raised concerns about the removal of the need for medical diagnosis of gender dysphoria and about the impact of the changes on society and on the safety and well-being of women and girls. They disagreed with reducing the age for applicants from 18 to 16 years old. This was the perspective of the majority of women's groups and faith-based organisations.

Sections of the Bill

23. The Bill comprises 19 sections and 1 schedule. Further details on each section of

the Bill are provided in the [explanatory notes](#). The main provisions are divided into several parts as follows:

- Section 1 References to the 2004 Act
- Sections 2-7 Application for gender recognition certificate
- Section 8 Gender recognition outwith Scotland
- Sections 9-14 Further provision about applications and certificates
- Section 15 Registrar General's duty to report
- Section 16 Further modification of enactments
- Sections 17-19 Final provisions
- Schedule: Further modification of the 2004 Act and modification of other enactments. Part 1 Gender Recognition Act 2004, Part 2 Other enactments.

Key changes made by the Bill

24. The Bill, if passed, amends the Gender Recognition Act 2004 to reform the grounds and procedure for obtaining legal gender recognition. Applicants must either have been born in Scotland or be ordinarily resident here.
25. The Bill repeals sections 1 to 8 of the GRA which deal with the grounds and procedures for applying for GRCs and for the issuing of full or interim certificates.
26. The key differences between the current grounds and procedure and those provided for in the Bill are:
 - The removal of the requirement for an applicant to have gender dysphoria and therefore the removal of the requirement for medical reports;
 - A reduction in the minimum age for applicants from 18 to 16 years old;
 - The removal of the GRP from the process. Applications will be made instead to the Registrar General for Scotland;
 - A reduction in the period for which an applicant must have lived in their acquired gender before submitting an application from 2 years to 3 months;
 - The introduction of a mandatory 3-month reflection period; and
 - The introduction of a new duty placed on the Registrar General to report on an annual basis, the number of applications for GRCs and the number granted.
27. The Bill also creates a specific offence of knowingly making a false statutory declaration in an application for a GRC and creates an offence of knowingly including information which is false. A person who commits such an offence is liable to imprisonment for up to two years and/or a fine.

The Equality Act

28. The Bill does not make changes to public policy or to the 2010 Equality Act, which includes a number of exceptions which allow for trans people to be excluded when this is a proportionate means of achieving a legitimate aim.
29. [The Equality Act 2010](#) makes it generally unlawful to discriminate against people who have a “protected characteristic”, as defined under the Act. These protected characteristics include both “sex” and “gender reassignment”. The protected characteristic of gender reassignment is not restricted to those with a Gender Recognition Certificate or who have undergone any specific treatment or surgery. The Equality Act is discussed in further detail in this report at paragraphs **404-473**.
30. The Scottish Government has stated that this means single-sex services are protected as are single-sex employment rights and health services. The Scottish Government has also stated that it supports these exceptions and that the Bill does not make any changes to these.
31. Further information can be found in the policy memorandum and explanatory notes accompanying the Bill. A detailed SPICe briefing on the Bill can be found [here](#).

Consideration by the Equalities, Human Rights and Civil Justice Committee and other Committees

32. The Committee ran a call for views between 21 March and 16 May 2022. As part of this, the public was able to respond to a short survey on the general principles of the Bill and/or share detailed views on specific provisions in the Bill.
33. The Committee received 10,800 individual submissions to the [short survey](#), once duplicate responses were removed. Of these: 59% disagreed with the overall purpose of the Bill; 38% agreed; and 3% indicated that they did not know if they agreed with the overall purpose of the Bill.
34. There were 814 detailed [written submissions](#) received of which 63 were from organisations.
35. The Committee continued to receive supplementary written submissions and correspondence throughout its Stage 1 scrutiny of the Bill. These are available on the [Committee's correspondence page](#) and include further submissions from:
 - [EHRC](#) , which refers to lowering the minimum age and the Cass Review, and cross border concerns.
 - [LGBT organisations joint submission](#) which refers to the term 'acquired gender', addressing concerns that the Bill will widen the group eligible for a GRC, and addressing a claim made in evidence that LGBT organisations encourage young people to take puberty blockers.
 - [Reverend Karen Hendry, Church of Scotland](#) , which provides further detail on how the Church of Scotland reached its policy position on the Bill.
 - [Keep Prisons Single Sex](#) , provides supplementary evidence on the "importance of sex registered at birth to data collection within the criminal justice system".
 - [Fair Play for Women, For Women Scotland, LGB Alliance, MurrayBlackburnMackenzie, Sole Sisters, Woman's Place UK, Women and Girls in Scotland, and Women Speak Scotland](#) , which criticises the Scottish Government's consultation process.
 - [MurrayBlackburnMackenzie](#) , which addresses a view raised in evidence that those opposed to reform suggest trans women pose a threat. It also addresses a concern that labelling gender dysphoria as a mental health condition is 'stigmatising' given moves to challenge the stigma traditionally attached to mental health conditions.
 - [MurrayBlackburnMackenzie](#) supplementary evidence (12 July)
 - [Scottish Prison Service](#) , which responds to questions raised in oral evidence.

- [Robin White](#), which responds to areas of questioning not raised in oral evidence, such as the wider impact of GRA reform, the impact of 'evolving jurisprudence' on sex and gender, the EHRC's guidance on single-sex spaces and services, and whether the term 'sex' in the Equality Act is 'biological' or 'legal'.
- [David Parker](#) of National Gender Identity Clinical Network for Scotland which responds to questions raised in evidence, such as, numbers on GIC waiting lists, information on how gender is recorded on medical records and the impact on medical screening.

There are also submissions from:

- [Disclosure Scotland](#) setting out the disclosure process and consideration of any impact with gender recognition and the Bill and;
- [British Psychological Society](#), which indicates support for the Bill, comments on the Cass Review, and information on the role of psychologists in supporting trans people.

36. The Committee began taking oral evidence on the Bill on 17 May 2022 and continued taking oral evidence throughout May and June. On [17 May 2022](#), it heard evidence from the following:

- 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; and
- Melanie Field, Chief Strategy and Policy Officer, Equality and Human Rights Commission.

37. On [24 May 2022](#), the Committee took evidence from two panels, the first representing children and young people's organisations and the second representing sports' bodies. It heard from:

- Bruce Adamson, Children and Young People's Commissioner Scotland;
- Ellie Gomersall, President-Elect of NUS Scotland and President of UWS Students' Association;

And then from:

- Hugh Torrance, Executive Director, LEAP Sports Scotland; and
- Malcolm Dingwall-Smith, Strategic Partnerships Manager, sportscotland.

38. On [31 May 2022](#), the Committee took evidence from two panels. It heard from:

- 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);

And then from:

- 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.

39. On [7 June 2022](#), the Committee heard from two panels, firstly from organisations about the impact of the Bill in practice and secondly from faith and secular groups. It heard from:

- 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;

And then from:

- Anthony Horan, Director, Catholic Parliamentary Office of the Bishops' Conference of Scotland;
- Rev. Karen Hendry, Vice-Convener 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.

40. On [14 June 2022](#), the Committee heard from legal experts and academics:

- 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;

And then from:

- David Parker, Lead Clinician, National Gender Identity Clinical Network

Scotland.

41. On [21 June 2022](#), the Committee heard from:

- Professor Alice Sullivan, Head of Research, UCL Social Research Institute;
- Robin White, Barrister, Old Square Chambers;

And then from human rights organisations:

- 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;
- Barbara Bolton, Head of Legal and Policy, Scottish Human Rights Commission;
- Cathy Asante, Legal Officer, Scottish Human Rights Commission.

And then from international experts:

- 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.

42. On [22 June 2022](#), the Committee heard evidence from Ireland:

- Senator Regina Doherty, Leader, Seanad Éireann.

43. On [28 June 2022](#), the Committee took evidence from the Cabinet Secretary for Social Justice, Housing and Local Government, Shona Robison MSP and Scottish Government officials.

Informal engagement events

44. The Committee also held a number of informal engagement sessions. On 15 March 2022, the Committee had an [informal briefing from the Scottish Government Bill Team](#) to learn more about the provisions of the Bill.

45. It also held informal sessions in private with a range of people with different lived experiences:

- [Trans people](#) (26 April and 3 May);
- [Bayswater support group and another parent support group](#) (20 June);
- [People with other relevant experience](#) (27 June).

46. The Committee also took formal evidence in private from [an anonymous witness](#) from a faith group which utilises single-sex spaces (7 June). The decision by the

Committee to hear from this witness in private was due to safeguarding and welfare concerns expressed by the witness.

47. The Committee also extended invitations to a number of organisations and individuals who declined or were unable to attend. The Committee welcomed the written submissions from a number of these which have informed its consideration of the Bill.

Consideration by other Committees

48. On 16 May 2022, the Delegated Powers and Law Reform Committee (DPLR) reported its views on the Bill. The Committee considered each of the delegated powers in the Bill and whether they are framed appropriately (for example, the power being conferred is not too broad) and that the Parliament is afforded sufficient scrutiny of the exercise of this power.
49. The Delegated Powers and Law Reform Committee published its report on 16 May 2022. It reported that it was content with the delegated powers provisions contained in the Bill.
50. The Finance and Public Administration Committee issued a call for evidence which concluded on 20 May 2022. Six written submissions were received and are published [here](#). The Finance and Public Administration Committee agreed to take no further action in relation to the Bill.

Membership changes

51. On 26 May 2022, Rachael Hamilton MSP replaced Alexander Stewart MSP as a member of the Equalities, Human Rights and Civil Justice Committee.

International context

52. As part of its scrutiny, the Committee looked at a number of international comparisons to see what impact gender reform legislation is having internationally. The Committee was particularly interested in examining the impacts in countries where a self-declaration^{viii} approach has been adopted. Evidence from international witnesses is provided where relevant in this report.
53. A summary of the main points of the legislation is provided below.

European examples of the self-declaration approach

54. There are nine countries in Europe who have adopted self-declaration for legal gender recognition. These are Denmark, Malta, Ireland, Norway, Belgium, Luxembourg, Portugal, Iceland and Switzerland. From these, legal gender recognition via self-declaration is available to adults aged 18 (except Norway, Malta and Switzerland where it is 16, and Iceland from age 15), who are resident in the country.
55. There is no standardised approach to legal gender recognition based on self-declaration.
56. Eight of the countries, except Denmark, provide some process for young people to legally change their gender. Belgium, Portugal and Ireland provide for additional measures for 16- to 17-year olds.
57. Five countries provide a process, with additional measures, for those under 16, with minimum age limits of: 6 in Norway, 5 in Luxembourg, and no minimum age in Malta and Iceland. Only Denmark and Belgium include time periods, totalling six months. Malta and Iceland also include legal gender recognition for non-binary people.
58. The Committee is also aware of other countries, including Spain and Germany, which are considering the introduction of legal gender recognition based on self-declaration.
59. Ireland undertook a review of its legislation and how it operates in 2018.
60. There have also been calls for countries to introduce legal gender recognition based on self-declaration, in line with international human rights law. These are the non-binding Yogyakarta Principles and Resolution 2048 of the Parliamentary Assembly of the Council of Europe. These are referred to in paragraph 63.

^{viii} Gender self-identification is the concept that a person's legal sex or gender should be determined by their gender identity without any medical requirements. Respondents generally referred to their support for, or opposition to, self-declaration or self-identification and used both terms. However, while self ID can be used when accessing services, the correct term in relation to statutory declaration is a "legal self-identification approach" or "self-declaration approach".

Key issues in the Committee's consideration of the Bill

The case for and against reform

61. The Policy Memorandum sets out the Scottish Government's reasons for reform of the GRA. It states that it–
- ” aims to create a more equal Scotland where people and communities are valued, included and empowered and which protects and promotes equality, inclusion and human rights.
62. During the ministerial statement on 3 March 2022, the Cabinet Secretary for Social Justice, Housing and Local Government, Shona Robison MSP said–
- ” The World Health Organisation's revised international classification of diseases, which was approved in 2019 redefined gender identity-related health and removed it from a list of “mental and behavioural disorders”. It took that step to reflect evidence that trans-related identities are not conditions of mental ill health and that classifying them as such can cause distress.
63. The Policy Memorandum also refers to two human rights developments relating to legal gender recognition: Yogyakarta principles^{ix} and Parliamentary Assembly of the Council of Europe (PACE)^x.
64. The Cabinet Secretary said in her statement–
- ” moving to a system that is based on personal declaration rather than medical diagnosis will bring Scotland into line with well-established systems in Norway, Denmark and Ireland and recent reforms in Switzerland and New Zealand. We are aware of at least 10 countries that have introduced similar processes.
65. It was important, Ms Robison said to focus on the reforms that were in the Bill which were–

^{ix} The 2006 non-binding Yogyakarta Principles were agreed by a group of human rights law experts, representatives of non-governmental organisations and others. Principle 3 asks countries to “take all necessary ..measures to ensure that procedures exist whereby all state issued identity papers which indicate a person's gender/sex including birth certificates reflect the person's profound self-defined gender identity”

^x Resolution 2048 of PACE made in 2015 expressed concerns that requiring someone seeking legal recognition of their acquired gender to have been medically treated or diagnosed is a breach of their right to respect for their private life under Article 8 of the ECHR. The resolution calls for Member states to “develop quick, transparent and accessible procedures based on self-determination for changing the name and registered sex of transgender people on birth certificates, identity cards, passports, educational certificates and other similar documents”

” to introduce a new process for obtaining a GRC which is open to people who were born or adopted in Scotland or are ordinarily resident here. It will remove the requirement for a medical diagnosis of gender dysphoria, reducing the minimum period of living in the acquired gender from two years to three months and lower the minimum age for applying from 18 to 16.

Source: Scottish Parliament, 2022¹

66. The Committee heard broad support for the Bill from the trans community, LGBT organisations, NUS Scotland, the Children’s Commissioner, SHRC, UN Independent Expert on Sexual Orientation and Gender Identity (UNIE), Engender, Amnesty, Rape Crisis Scotland, JustRight Scotland, Church of Scotland, the Humanist Society and the National Gender Identity Clinical Network, amongst others.
67. Those in support criticised existing mechanisms to acquire legal gender recognition as dehumanising, overly bureaucratic, difficult to access and time consuming with applicants having to wait up to four years to access appointments at gender identity clinics. Others considered Scotland to be lagging behind international human rights standards and that this needed to change. The report discusses this in further detail at paragraphs 97-128.
68. Others cited hidden costs incurred in gathering the required information, such as passport renewal costs or payment for a GP letter as well as accessing private services in an attempt to avoid waiting times. Vic Valentine of Scottish Trans Alliance told us that individuals who could afford it resorted to private healthcare which was expensive. Ellie Gomersall of NUS Scotland explained that this route was unaffordable for many trans people “who are disproportionately likely to experience poverty”. Private treatment was particularly inaccessible for young trans people and students.
69. A lack of support in navigating the current system was also cited as a barrier. One witness told us that their GP and staff had “no idea how the system worked or what was required” and that changing their name on other documents was simple when compared to the current gender recognition process.
70. Witnesses from the trans community broadly considered the Bill an important step in representing recognition and validation. However, the consequence of the barriers in place meant that many people who would like to apply for a GRC do not do so and consequently face practical challenges as they go through their lives.
71. We heard that “misinformation” in the press had left many feeling “demonised in society” and “portrayed as threats”.
72. Vic Valentine said having to show a birth certificate as identity for a new job or proof of right to work could be “distressing and embarrassing” as the document is in a different name and gender to other identity documents and to how that person identifies. One witness described that they felt vulnerable, scared and embarrassed that they would be outed having to provide a birth certificate to an employer. They told us that “trans people need to be afforded a level of privacy”. Younger people faced issues with having mismatching documents as they moved into the world of work and education.

73. The requirement under the current system to provide a diagnosis of gender dysphoria was seen as particularly problematic. Vic Valentine told us that, albeit the World Health Organisation had removed gender identity disorder from their mental health chapter of the International Classification of Diseases, trans people are still required to submit a psychiatric diagnosis. They described the requirement as both “pathologising and stigmatising”.
74. This view was shared by Dr Mhairi Crawford from LGBT Youth Scotland who welcomed the Bill as a “huge step forward” but said trans people were clear that it did not go far enough and delays in the Bill were already having an impact on them. She said “From our research we know that the average age for coming out as trans is 15. That means that a 15-year-old who came out in 2017 when work started on the Bill would be 20 now”. She added that “It is likely that during that time they have been unable to apply for a GRC because of their age and because of the requirement for a psychiatric diagnosis.”²
75. Colin Macfarlane of Stonewall Scotland raised concerns about the public discourse around the Bill which he stated were full of “misinformation about the proposed changes”.
76. Mr Macfarlane said, “Trans people tell us that a significant amount of the reporting and discussions present trans people as a problem that needs to be solved. There has been a whipping up of moral panic and othering of trans people”. His experience was that the majority of the public support trans equality and the proposed changes.²
77. Ian Duddy of the SHRC said, “Having analysed concerns through a human rights lens we remain strongly of the view that the changes that are set out in the Bill will bring Scotland closer to satisfying international legal standards and will not jeopardise the rights of others.”³
78. Reference was made by witnesses to other examples of international practice of self-declaration systems as well as human rights standards towards recognising trans people on the basis of self-determination.
79. Many witnesses referred to the [Yogyakarta Principles](#) (2006), the updated [Yogyakarta Principles +10](#) (2017), and [Resolution 2048 of the Parliamentary Assembly of the Council of Europe](#) which calls for legal gender recognition based on self-determination (2015).
80. The UN Independent Expert on Sexual Orientation and Gender Identity (UNIE) Victor Madrigal-Borloz set out international standards which recommended that States provide access to legal gender recognition, based on self-determination, that it is based on a simple administrative process, is not connected to medical interventions, includes recognition of non-binary identities, and ensures minors have access to recognition of their gender identity.
81. He referenced his inquiry into gender-based frameworks which formed the basis of reports “[The Law of Inclusion](#)” and “[Narratives of Exclusion](#)” presented to the United Nations Council and to the General Assembly of the United Nations^{xi}.

xi A summary of the two reports is available here [Reports on Gender Final Summary.pdf](#)

82. The reports reached three main conclusions: that legal recognition of gender identity is key to breaking down institutional and social drivers of discrimination and violence; that certain requirements are dictated by international human rights law in relation to processes of legal recognition including that they be accessible, fast and widely available; and that gender identity is protected under international human rights law as a trait that is protected from discrimination and violence.
83. The SHRC's view is that this, cumulatively, with the Yogyakarta Principles and the Council of Europe Resolution 2048, support proposals to shorten the process for obtaining a GRC, to remove the requirement for a diagnosis of gender dysphoria, and to abolish the GRP.
84. In their written submission they said—
- ” ...it is the Commission's analysis that international standards and best practice require that the Gender Recognition Act 2004 be reformed to remove unnecessary barriers to the enjoyment of human rights for transgender people.
85. However, For Women Scotland said that the Yogyakarta Principles failed to consider women. They referred to work^{xii} from Professor Robert Wintemute, a signatory to the Yogyakarta Principles who said that the international human rights community did not consider women when it developed the Principles.
86. In his [written submission](#), Professor Wintemute stated “The Yogyakarta Principles do not represent “international best practice”. There is no legal obligation to comply with any part of the Principles that goes beyond the case law of the European Court of Human Rights, especially Principle 31 on abolishing the reference to a newborn child's sex on her or his birth certificate”.
87. Dr Sandra Duffy explained that the case for reform comes from an understanding of the basic human rights, autonomy and equality of the individual. She said “They should not have to choose between their autonomy and respect for their identity”.³ That logic, she explained, derives from a European Court of Human Rights case which removed sterilisation as a requirement for legal gender recognition in France.
88. A number of organisations including the EHRC, For Women Scotland (FWS), MurrayBlackburnMackenzie (MBM), LGB Alliance, Keep Prisons Single Sex, Catholic Bishops' Conference and the Evangelical Alliance and others do not fully support some or all of the proposed reforms.
89. Malcolm Clark of LGB Alliance thought the Bill was sending the wrong message stating “that the biological sex that we are matters less than gender identity that we feel”. He said “Lesbians and gays are defined and legally protected as people who are same sex attracted. If you replace the fixed definable reality of sex with the indefinable fluid and vague concept of gender identity the rights that we fought for for decades will be erased”.⁴
90. Some religious groups argued that the current law is working well. The Evangelical

[\(ohchr.org\)](https://ohchr.org/)

xii [The Yogyakarta Principles: women's rights were not considered — Sex Matters \(sex-matters.org\)](#)

Alliance in its written submission stated that the current GRA is “sufficient” in providing legal recognition and support for transgender people in Scotland. Further that it strikes “the right balance” on how it could impact on other protected groups and trans people.

91. MBM said that the EQIA is largely unchanged since their criticisms of it, when it accompanied the draft Bill. They said, “This is despite extensive evidence on negative effects being drawn to the attention of the Scottish Government in the 2019 consultation and summarised in the Independent analysis of consultation responses”. They stated that the Scottish Government has not undertaken any further substantive analysis since then, nor explored their concerns.
92. In supplementary evidence, MBM were concerned that the GRC population would become more diverse and would now include 16- and 17-year olds, those who are newly entitled to make a statutory declaration and those willing to make a false declaration. It argued that the larger group “can therefore be reasonably expected to contain more people who have made fewer changes (if any) to how they present, compared to current GRC holders”.
93. In a supplementary submission, the LGBT organisations said that the Bill “continues to require applicants to be living in their acquired gender, and to intend to do so permanently, in order to obtain a GRC, just as the law does currently”. They said that it applies to the same type of people, and that because barriers to obtaining a GRC would be removed, the overall numbers are likely to increase. They said “The crucial difference is that in 2004, trans people were almost exclusively seen through a medical lens, and our identities were significantly more pathologised and stigmatised than they are now.”
94. Several witnesses referred to legislation already in place in other countries and said there is no evidence of self-declaration systems being abused. The EHRC said that their focus has been on wider implications, and less on abuse in any system, but also that “evidence on the impact is still emerging”. The Children’s Commissioner and Amnesty International told the Committee that evidence of abuse has not been evidenced internationally.
95. MBM were not persuaded by this argument and said there was a fundamental problem comparing the proposals with international practice due to the differing legal frameworks. They argued that not every country, for example, provides for section 22^{xiii} provisions on ‘protected information’ and “the Committee should not latch on to the assumption that an absence of evidence means that there is evidence of absence”. Section 22 is discussed further in this report at paragraphs 335-341.
96. The Evangelical Alliance referred to comparisons in Europe and said that in the Netherlands supporting expert opinion is required, and in the vast majority of EU member states for example in Croatia, Finland, Germany and Sweden, supporting

^{xiii} Section 22 of the Gender Recognition Act 2004 makes it an offence for a person who has acquired protected information in an official capacity to disclose the information to any other person, although there are some exceptions. “Protected information” means information which relates to a person who has made an application for a GRC and which concerns that application or, if the application is granted “otherwise concerns the person’s gender before it becomes the acquired gender”

medical documentation is required.

Procedure before an application for legal gender recognition

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

97. Under the current process, the Gender Recognition Panel (GRP) makes decisions on issuing gender recognition certificates (GRCs). The GRA, Schedule 1, requires that GRP members must have a relevant legal qualification or be registered medical practitioners or registered psychologists. The GRP must be satisfied that the applicant:
- has provided medical evidence of gender dysphoria and;
 - has been living in their acquired gender for two years.
98. The Bill proposes that applications for a GRC will be made to the Registrar General for Scotland, instead of the GRP.
99. The Registrar General will have a role in accepting processing and approving applications. The Bill requires the Registrar General to report annually on the number of GRC applications and the number of GRCs granted. It will also have powers to make regulations on, for example, the form and manner in which GRCs are to be made and the information to be included in an application.
100. The Bill also provides for the sharing of GRCs with other Registrar Generals in the UK where it relates to someone born or adopted in England, Wales or Northern Ireland. This will allow for the register entries to be updated.
101. Those in support of the Bill such as SHRC, LGBT organisations, the Scottish Youth Parliament, Engender/Amnesty/JustRight and Rape Crisis Scotland welcomed the replacement of the GRP with the Registrar General citing applicants' negative experiences of the current process as humiliating, an administrative burden and where a decision is made by a panel that the applicant never meets.
102. Vic Valentine told us “this is the thing we most strongly support about the Bill. Trans people are opposed to the fact that we have to send off a pack to a tribunal of doctors and judges who never meet us and who essentially hold quarterly meetings to look at our applications and decide whether who we are and how we live our lives should be legally recognised. That is one of the aspects of the current process that people find the most offensive”.²
103. Colin Macfarlane of Stonewall agreed that “removing the panel system and replacing it with the registrar general will make it a far more humane and less intrusive system and will allow trans people to flourish and thrive”.²
104. Robin White spoke from personal experience and had not sought a GRC because she felt the current process is demeaning. She said “I have known who I was since I

was an early teenager, and I do not need anyone to tell me that. I have been through a full gender transition, and it is a really serious process. There is medical gatekeeping in that process—and rightly so, as you need to be very certain that you have the strength to go through the process. Does there need to be gatekeeping on declaring your identity? No, I do not think so.”³

105. Section 11 of the Bill provides powers for the Registrar General to make regulations on, for example, the form and manner in which GRCs are to be made and the information to be included in an application. Any such regulations will be subject to the affirmative procedure if they add to, omit or replace any part of the text of an Act. Otherwise, they will be subject to the negative procedure.
106. Vic Valentine and others expressed concern about these powers, for example, what additional evidence might be required by the Registrar General.
107. The SHRC raised a concern that the Bill invites the Registrar General to provide more detail on what evidence is required from trans people. They said “This raises the prospect that the panel may be replaced with another burdensome and bureaucratic process”. They said that has to be a good justification for introducing any element of third-party assessment into somebody’s “very personal gender identity”.
108. Organisations opposed to GRA reform such as LGB Alliance, For Women Scotland, Keep Prisons Single Sex (KPSS) and the Evangelical Alliance would like to see the GRP retained.
109. They argued that the panel is necessary to provide oversight and gatekeeping and were not persuaded that the current process is intrusive. Malcolm Clark of LGB Alliance said “I have never heard anyone say that getting the medical diagnosis that have been provided up to now in the GRC process is really traumatic, dreadful or intrusive”.⁴ Others said the evidence shows that the GRP is working well and instead they would like to see procedures strengthened and maintained.
110. MBM’s position was more nuanced. In their initial written submission they said “It is not clear how far in practice the panel has added value in either [acting as a safeguard and in protecting those who might be harmed by acquiring a GRC prematurely] as neither the UK nor the Scottish Government has done any work to evaluate this.”
111. In oral evidence, Lucy Hunter Blackburn spoke about the relationship between the medical world and the legal world. She said “From our point of view, the medical gatekeeping connects the two and avoids that dislocation. It also creates oversight. If you have some medical oversight – as you still have for passports, of course – then you bring in an external third party. That deals with an awful lot of the concerns about self-declaration that people are making”.
112. Dr Kate Coleman of KPSS said “I note that the gender recognition panel already conducts no risk assessment when considering an application, nor is there any requirement for medical treatment or surgical reassignment”. She added “We know that there are prisoners with a GRC [in England] who have been convicted of the most serious and violent sexual offences against women and who have intact male genitalia. They pose a real risk”⁴. This report discusses the impact on prisons in further detail at paragraphs 474-496.

113. Karon Monaghan questioned proposals and offered an alternative to the current system which would retain an element of gatekeeping. She said “There could be a panel that makes some objective assessment, determines whether it is real permanence and whether there is meaningful dysphoria even if it cannot be characterised as a medical condition. We could have some form of gatekeeping”.⁵
114. The Committee heard from Paul Lowe from National Records of Scotland (NRS) as to how the new role of the Registrar General would operate in practice. He told us the NRS was working closely with the Scottish Government on the practicalities of the system in relation to the policy and legislation.
115. He explained that the NRS will design the application process, but that it would not be their role to contradict people who satisfy legislation in making declarations “unless there is evidence to the contrary”. He added “If I am concerned, or if my staff or others are concerned, about an application that has been made, the Bill envisages procedures for escalation to the sheriff court. That will be an important additional protection, which we would certainly be open to using.”⁶
116. Mr Lowe responded to questions about the level of advice and guidance that NRS would provide which, he said, would be focused on the GRC application process with other organisations providing appropriate personal support and guidance.
- ” It is important that we separate out two sources of advice and guidance. There is the advice and guidance to somebody who is taking decisions as to whether they will apply for a GRC [...] and there is the advice that is provided to somebody who is dealing with the process of applying for the certificate. My role is not to replace the current medical panel; it is to establish an administrative system to allow people to apply for a GRC.”⁶
117. There are also proposals to provide additional support for young people who wish to make an application in the form of phone and potentially face to face conversations. Mr Lowe stressed that those conversations would not be investigatory but would be of a support nature and could be informal.
118. On concerns about adequate resourcing, he referenced Scottish Government estimates of an additional 250-300 applications a year and explained that a small team of three or four people will be appointed to handle those, as well as tracking the number of applications over time.
119. Staff at the Registrar General would receive training and support, but this would sit within a broader picture of the type of advice they provide to a range of people, such as on adoptions and change of name. Mr Lowe told the Committee “These can be emotive and difficult issues so we already have staff who are familiar with dealing with those sorts of issues”.⁶
120. Witnesses with lived experience suggested it would be helpful if the Registrar General was able to provide general and legal advice.
121. In oral evidence, the Cabinet Secretary responded to concerns about resourcing and referenced the financial memorandum accompanying the Bill which does not anticipate huge costs as the number of additional applicants is expected to be relatively low.

122. The Cabinet Secretary also clarified how the powers in the Bill to make regulations would operate. Ms Robison told us the Bill “would allow the Registrar General to tweak the process in terms of the specific information provided, but would not allow a change to the basis on which certificates would be issued. For example, they would not allow regulations to be made to reintroduce the requirement of medical evidence”.⁷
123. On the process of information passing between the registrars in Scotland and those in England, Wales and Northern Ireland Ms Robison explained that, currently the Registrar General can update birth certificates and Registrar Generals in England, Wales and Northern Ireland can update their respective birth registers and certifications. Currently, applications go to the GRP and, if approved, the panel informs the Scottish Registrar who makes the update in Scotland.
124. For the new process officials clarified “We are proposing the same thing. We would issue GRCs in Scotland, update the birth or adoption register in Scotland and inform the Registrar Generals in the other administrations. It would be up to those Administrations to decide how to act based on that information”.⁷

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**
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.**
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.**

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

129. A key issue of focus for the Committee were the proposals in the Bill to remove the requirement for medical evidence of gender dysphoria which is defined under the GRA as a condition that includes gender identity disorder and transsexualism.^{xiv}
130. Under the current system there are three routes for application. The “standard track” is the process that most applicants would go through. Applicants for a GRC must provide the following medical evidence^{xv}:
- Two reports, one from a medical practitioner practising in the field of gender dysphoria and another from a registered medical practitioner, who may, but need not, practise in that field or;
 - Two reports, one from a registered psychologist practising in that field and a report made by a registered medical practitioner who may, but need not, practise in that field.
131. The medical reports must include details of the applicant’s gender dysphoria and details of any medical treatment where the applicant has undergone, is undergoing, or will undergo to modify sexual characteristics. The applicant may also be required to provide additional evidence.
132. The Committee heard support for the proposal to remove the requirement for medical evidence from a number of witnesses including LGBT organisations, The Children’s Commissioner, NUS Scotland, Engender, Amnesty/JustRight, Rape Crisis Scotland, Church of Scotland, the Humanist Society, and the SHRC amongst others. The majority of witnesses we spoke to from the trans community also supported its removal.
133. The requirement to provide such evidence to the GRP was seen by many as one of the main problems with the current system. It was reported that not every trans person experiences gender dysphoria and therefore a diagnosis is irrelevant to their identity.
134. One witness who had transitioned did not support this. She said “I am still as male as I ever was, I have male chromosomes. But society has made concessions and accommodations for me in the knowledge that there is a real psychological condition going on here. The removal of medical requirements is wrong. Being trans is being reduced to a whim or a fad. I see trans rights as being belittled”.
135. Those opposed to the Bill considered that a diagnosis of gender dysphoria was a key requirement to be retained. It was argued that, without it, the GRA was significantly changed extending the GRC process to a larger and more diverse group. It was suggested that this process would be open to abuse from criminals, particularly predatory men, risk leaving those transitioning without medical support and increase the chance that other conditions may go undiagnosed or unexplored.
136. In written evidence, the Scottish Trans Alliance described the requirement for a

^{xiv} Section 25 Gender Recognition Act 2004.

^{xv} Section 3 of the Gender Recognition Act 2004.

diagnosis of gender dysphoria as “intensely pathologising and stigmatising”. They said “Fundamentally, being trans, who we are, and our identities are not mental health conditions, and it unfairly stigmatises us to require us to provide a psychiatric diagnosis to be legally recognised as who we are”.


137. Many witnesses referred to WHO’s removal of ‘gender identity disorder’ from the mental health chapter of the International Classification of Diseases 11th Revision.
138. Victor Madrigal-Borloz’s view was that the process of de-pathologisation is “crucial in the promotion of deconstruction of social stigma around trans and non- binary identities” and he therefore welcomed that element.
139. Mr Madrigal-Borloz referred to evidence from other countries that have adopted legal recognition based on self-declaration such as Belgium, Denmark, Ireland, Luxembourg, Malta, Portugal and Argentina and who have eliminated a pathologising requirement. He told us “The numbers and outcomes in terms of social inclusion and decrease in violence against trans persons are remarkable”. ³
140. Colin Macfarlane of Stonewall agreed “removing the panel system and replacing it with the Registrar General will make it a far more humane and less intrusive system and will allow trans people to flourish and thrive”. ²
141. The removal of the requirement for medical evidence would consequently remove the significant period of time applicants spend waiting for an appointment at a gender identity clinic. This was welcomed by many as we heard trans people often choose only to transition socially and never seek medical intervention as part of their transition.
142. Dr Crawford told us that many young trans people are currently “in limbo” as, although work is under way to reduce the waiting times at gender identity clinics, the current waiting time for a first appointment is expected to be over four years and there are more than 1000 people under the age of 17 on the waiting list in Scotland. She explained that young people are less likely to be able to access private healthcare to accelerate the process for a GRC so remain on the waiting list for years.
143. Other witnesses emphasised the lack of autonomy and individual rights associated with the current system and considered the removal for medical evidence would not only bring Scotland in line with international human rights standards but would also promote inclusion more broadly for trans people.
144. Naomi McAuliffe said “Medical gatekeeping puts the power in the hands of medical professionals who are obviously there in a support capacity and to meet the needs of individuals. That approach says individuals are not able to define their own trans status which is at odds with bodily autonomy and the protection of rights of individuals”. ⁴ She added–

” It is a key human rights principle of many treaties or declarations that they are living instruments and that they develop over time. Whereas the GRA served its purpose at that time and place, we are now seeing a change in practice, and the Bill is about keeping up with that.

Source: Scottish Parliament, 2022⁴

145. Fraser Sutherland agreed that “part of what the humanist movement champions is personal autonomy. The ability for people to make that decision for themselves is quite important”.⁶
146. In a written submission the British Psychological Society said—
- ” The BPS supports the purpose of the Bill to make the process of obtaining a gender recognition certificate less intrusive, distressing and stressful for trans people. There is psychological evidence suggesting that access to gender-concordant documents is associated with positive mental health indicators for transgender people (Scheim et al., 2020). While there are few practical benefits of obtaining a GRC, there may be significant personal sense of fulfilment in knowing that one’s gender identity is recognised by the State (Richards & Barrett, 2020).
147. Dr Dietz spoke from an international perspective. He said “purely within a legal frame, taking a diagnosis such as gender dysphoria out of legislation would have a significant impact on people’s inclusion, at least on a symbolic level”³ and, whereas there is no standardised approach from other jurisdictions, there are basic minimum human rights standards that we need to follow according to our international obligations. He explained that the introduction of legal gender recognition as a human right under article 8 of the European Convention on Human Rights is another human rights standard that we now have.
148. In her evidence, Dr Duffy said it was standard that medical documents are not required in countries who have adopted a self-declaration process. She told us “It works on the autonomy of the person themselves as opposed to the authority of doctors or judges”.³ She considered self-declaration to be the most human rights compliant system.
149. However, there are countries such as Croatia, Finland and Germany where a medicalised model has been retained. Dr Dunne’s view was that those decisions were based on the standards of the time and that context for decision making is important. He said “Our understanding of society and our understanding of human rights norms has changed”.³
150. One country which has adopted self-declaration is Denmark. Dr Dietz explained that the decision was made based on a direction in which things were moving. There was also a sense, he told us, that Denmark wanted to ensure its legislation would be fireproof in the face of developing international human rights standards and would not fall short. There were practical reasons too he said as self-declaration was cheap and easy to implement as the responsibility lies with the individual and there are not a lot of bodies, organisations and panels involved.
151. Naomi McAuliffe of Amnesty International told us that they had examined international evidence on the impacts of self-declaration in the six countries who had adopted it. She said “We have not found a negative impact in any of the surveys. If anything, we have found evidence that the reforms could have gone further. Our evidence is not taken from newspaper reports or blogs but independently verified and we have not found self-ID to be a huge problem”. She added “It is important to balance the harm that the current process causes individuals with the potential harm that self-ID might bring. We do not see that as

comparable with the actual harm done to trans people who are not able to obtain a GRC through as self-ID process”.⁴

152. Dr Duffy agreed stating “The international movement in gender recognition law is towards de-pathologisation and self-ID” and although “highly polarised” concerns had been aired in the UK, other countries with this model had not encountered an unexpectedly large number of applications nor had there been reports of abusive use by men to access women’s spaces.
153. Many witnesses were not persuaded by these arguments. One witness with lived experience believed that self-declaration may make things worse for trans people. She told us “I believe self-ID is a catastrophic error which risks the safety and rights of trans people” and will not be the solution. She viewed its removal as a belittling of trans rights and considered it made gender reassignment a more meaningful process. She added “Having medical evidence shows that transition is needed and that those who don’t need it won’t”. She had not chosen to apply for a GRC but did not accept that the process in place was cumbersome. However, she emphasised that the lengthy waiting times were a problem.
154. MBM, FWS, LGB Alliance and KPSS amongst others all wished to retain the diagnosis of gender dysphoria as did certain faith groups.
155. The Catholic Bishops Conference of Scotland were concerned that it would leave an already vulnerable group more vulnerable. In written evidence they said—
 Gender dysphoria has been associated with low self-esteem, depression and the taking of unnecessary risks. To de-medicalise the process would deprive a most vulnerable group that is disproportionately affected by suicidality of much needed contact with health professionals.
156. In acknowledging that the GRP do not see the applicants, they called for an improvement in the system so that medical contact was ensured. They accepted that there are people who do not necessarily have a diagnosis of gender dysphoria but said “the point is to capture the people who do and give them appropriate support and treatment”.⁶
157. In a written submission, the British Psychological Society said that medical pathways are not regulated by the GRA. Trans people will have assessments and diagnosis, as well as assessments for readiness/appropriateness before receiving any medical treatment. Part of this would identify any co-existing mental health issues.
158. Chris Ringland of the Evangelical Alliance agreed “we have significant concerns about the Bill as it is drafted. Rather than improving the lives of those in the trans community, the changing of the GRC application process could have unintended consequences to the contrary, as well as affecting the protected characteristic of sex under the Equality Act 2010”. They thought that the current system is “fair, balanced and adequate”.⁶
159. The removal of any sort of “gatekeeping” was also a concern expressed by Naomi Cunningham as it “opens up the process and the availability of a GRC to a group of unknown size and characteristics”.⁵ She considered that doing so changed the intention of the 2004 Act. She said “Simply to say that anyone who asks for it

without any sort of proof that they have the real need for it that the 2004 Act was passed to provide for, seems to be radically rewiring the nature of the task that the 2004 Act does".⁵

160. The size of the potential qualifying group for a GRC was also raised by Karon Monaghan. She said "There is very little way to check whether a person meets the requirements to satisfy the GRC. If we do not have a medical diagnosis what do we mean by living in the opposite gender? ... How do we know whether a person is meaningfully trans without any objective assessment?"⁵
161. The LGB Alliance referred to clinics in England and said there are "soaring numbers of children who are so confused and troubled that they are being referred to gender identity clinics with gender dysphoria—there has been a 4,400 per cent increase in such referrals in 10 years, among girls in particular".
162. Malcolm Clark of LGB Alliance thought a medical or psychological barrier would be helpful. He said "If gender dysphoria is an issue it should be explored in a therapeutic and caring way". He did not consider the current process to be demeaning or intrusive.⁴
163. MBM spoke of the 'decoupling' of legal and medical gender transition, referring to research on the self-declaration system in Denmark. This argues that what is happening in Denmark is a desire to make access to the medical treatment pathways self-declared as well. They said "From our point of view, the medical gatekeeping connects the two and avoids that dislocation. It also creates oversight".⁴
164. Dr Dietz responded to this analysis of his research—

” That is not quite the point that I make in my research. The point that I made previously ... was more to do with the fact that provision of healthcare had been more accessible in the private healthcare sector in Denmark than it had been in the public healthcare sector. Around the time that Denmark enacted self-declaration, it also closed down some of the private provision of healthcare, which was based on an informed consent or shared-decision-making model. In a previous evidence session, David Parker mentioned that that is at least the aspiration for Scottish healthcare for trans people. I also heard about the wait times and so on. Those issues are making things inaccessible for people—there is plenty of room for improvement.

Source: Scottish Parliament, 2022³
165. David Parker of the National Gender Identity Clinical Network said he could not see that approach [medical treatment based on self-declaration] as something Scotland is heading towards. On the distinction of medical and legal transition he said "A GRC is absolutely relevant and important for a person, but it will not change the direction of their clinical care".⁵
166. MBM suggested that the Bill could remove the requirement for evidence of physical medical treatment, since no physical treatment is required to obtain a GRC. They state that this is the most obviously intrusive evidence required.
167. Lucy Hunter Blackburn of MBM also argued that no alternatives to self-declaration

had been explored by the Scottish Government. She said “One could be to reduce the amount of medical evidence that is needed. I can see why some of that might be intrusive. There are things that could be done to streamline the Act. A lot of territory has gone unexplored”.⁴

168. The Committee also heard conflicting evidence from parents’ groups on this issue.
169. One parent told us that their child “should not need the approval of a panel of strangers to confirm to the world who he is. He’s been telling us for years, all we had to do was listen”. They said that, for their child, obtaining a GRC before turning 18 would mean their son could start his adult life without the burden of administrative confusion and “he would see that the Scottish Parliament officially recognises and respects his identity and his rights”.
170. Another group voiced concerns about a move to self-declaration and felt it could undermine the possibility for children to access proper assessment and psychological support. They told us that many of their children who identified as trans had complex backgrounds which included trauma, bullying and mental health issues. And while it was important to support children with gender identity issues, the influence of a child’s peer group and contacts online on their decision-making process should not be disregarded.
171. We heard that some children “express a sense of real urgency” to transition, requesting hormones and puberty blockers and that parents were the “voice of caution”. They felt that children of 16 and 17 were still developing and may not have the maturity to make these decisions. They worried that removing the waiting period for a GRC might enhance their sense of urgency to medically transition and encourage them to do so more quickly. On this point, the Committee took evidence from David Parker who told us that the number of young people who moved to puberty blockers was very low and averaged around seven a year.

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.**
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.

Live in the acquired gender for three months

175. Section 4 of the Bill provides grounds on which an application for a gender recognition certificate may be granted. It reduces the period for which an applicant must have lived in their acquired gender^{xvi} before making an application from two years to three months. It also requires applicants to make a statutory declaration that they have lived in the acquired gender for three months and intend to do so permanently.
176. Witnesses including LGBT organisations, Engender, SHRC, JustRight, NUS Scotland and Amnesty and others welcomed the reduction of the time period from two years, but expressed disappointment that a three-month period remained for reasons which had not been clarified by the Scottish Government.
177. Many considered the three-month period arbitrary and stated that trans people would have been living in their acquired gender for a long time before deciding to apply for a GRC. Those with lived experience told us this was often the last stage in their transition. Dr Mhairi Crawford of LGBT Youth Scotland stated “Young people tell us that, before they come out, they have already done an awful lot of reflection to understand their true gender. Then they come out, usually to a safe group, and they build up from that. By the time they look to apply for a gender recognition certificate, they have been living in their acquired gender for quite some time”.²
178. Concerns were raised by Mhairi Crawford of the impact on those at the end of their lives who may not have time to obtain a GRC, so their death certificate could reflect their other documentation. She said “They would not be able to be buried or cremated with their true gender”.²
179. Vic Valentine told us the statutory declaration was sufficient stating “The fact that it is a statutory declaration, that it will be permanent and that it is a witnessed legal oath in itself is the safeguard that ensures that people choose to apply only when they are ready”.²
180. In his evidence, the Children’s Commissioner agreed that time periods were arbitrary unless linked to an entitlement to access other support services during that period.

^{xvi} As indicated previously, the Committee recognises that some people have objections to this term. The Committee is using this and other disputed terminology in this report as this is the wording used in the Bill and accompanying documents.

181. Jen Ang agreed stating “As a matter of good law, if there is no evidence or compelling reason to show that the time period achieves anything in particular, it would be worth considering proceeding without it”. ⁴
182. Others including Dr Duffy cited international comparisons, stating, “The two-year waiting period is very much out of line with international standards on the issue”. ³
183. Witnesses from the trans community considered the three-month period to be unnecessary. While they welcomed the reduction in the period from two years, some felt it was condescending. There were calls from these witnesses too for a provision which would enable applications for terminally ill patients to be fast-tracked.
184. Those opposed to the Bill broadly rejected a reduction in the time period and expressed views that the current two-year period is sufficient and provides safeguarding.
185. Anthony Horan of the Catholic Parliamentary Office of the Bishops’ Conference of Scotland expressed concern that any reduction in the timeframe would risk a failure to provide space and support for people who were impacted by gender dysphoria. He said “Three months seems remarkably short for a decision of such magnitude”. ⁶
186. In oral evidence, Chris Ringland of the Evangelical Alliance agreed. He considered that a reduction in the time period could have unintended consequences that may negatively affect the trans community and referenced the Cass review as another reason for retaining the two-year period if the age limit for applicants was reduced to 16.
187. MBM referred to evidence received by the Committee which suggested that the three-month period of living in the acquired gender would be a barrier to those who find it unsafe to be “out” and argued that applicants may look to a GRC as a validation to obtain before making changes to how they present.
188. In their supplementary submission, they argued that there are conflicting views of how applicants might think about gender identity in relation to the Bill. For example, they may consider it a lifelong commitment to living in the acquired gender, or experience “gender fluidity” and therefore may not want to commit to a lifelong change or may wish to change their legal status more than once. They said that expectations and understandings are changing and there should be consideration of what this means for how legislation might be used.
189. Other jurisdictions have measures in place which include and exclude a time period. Senator Doherty explained that the [Gender Recognition Act 2015](#) in Ireland does not include time periods. The reasons she gave for excluding it echoed much of what the Committee heard in previous evidence.
190. She said “There is usually a long, protracted and difficult journey for a person, first to self-acceptance and recognition and then to determine how they will tell family and friends. For most people the journey is not smooth. It will take years” ⁸. She added that “We felt if an adult came to the state and wanted to change their gender, it was not for us to make sure that they had to dance a particular dance before they would get the legal entitlement that we were putting in the legislation” and “We were

adamant that it was going to be as easy as it needed to be".⁸

191. The Cabinet Secretary said the decision to include a three-month period represented the Scottish Government's view of "what is balanced and proportionate". Ms Robison considered it provides both assurance that the applicant has, for a time, been living in the acquired gender before applying, but without imposing lengthy barriers and considered it "helps to demonstrate the applicant's commitment to living in their acquired gender for the rest of their lives".⁷
192. Ms Robison clarified that those who had already been living in their acquired gender for months or years could affirm that in their statutory declaration and consequently, there would not be a delay imposed on their application.

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.**

"Acquired gender"

198. Several witnesses and written submissions including those from Engender, For Women Scotland and MBM questioned the term 'acquired gender' and described it as regressive and reinforcing sexist stereotypes.
199. In oral evidence, MBM said "It is one of the few points of agreement that you will hear among witnesses who are on different sides of the debate."⁴
200. In their written submission, Engender stated "We are also concerned that some of the requirements would rely too heavily on gender stereotypes, certain behaviours and so on. We have a genuine question about what it would look like to prove that you had lived in your acquired gender for three months and had had three months of reflection".
201. Rev Karen Hendry said the Church of Scotland also queried the term and their view was that a person does not acquire a gender, it is inherent and there is a process of revelation and of becoming comfortable in your own skin.
202. Dr Duffy commented that she tended to use the terms "true gender" or "lived

gender” as her view is that trans people do not “acquire” an identity. They have always had that identity.

203. Other witnesses were more comfortable with the term “acquired gender” if its use was restricted to a legal recognition for those who have transitioned.
204. In oral evidence, the SHRC said it would defer to trans people on this. However, they considered that the main intention of the term ‘acquired gender’ in the GRA is to describe acquiring legal recognition of the gender. They added “If the term is limited specifically to the legal point we can see why it might be necessary” they said. However, “perhaps more care can be taken with how it is used”.³
205. Victor Madrigal-Borloz agreed stating “If the term is an enabling term to ensure that the legislation can function, it works. But if it is meant to refer to the lived experience of trans persons, I would say that the evidence is that that way of describing a person’s deeply felt gender identity is perhaps more conducive to perpetuating stigma and minimising their own self-perception”.³
206. A joint written submission from LGBT organisations commented—

” The Committee has heard evidence from a range of witnesses that some interpretations of “living in the other gender” (or “living in the acquired gender”) could lead to the reinforcing of gender stereotypes, by implying that there are specific ways to “live as a man” or “live as a woman”. This would be an unacceptable and sexist idea to enshrine in law. We agree that this is an important point. We note that this is what sometimes happens with the existing arrangements for gender recognition, for example the Gender Recognition Panel may demand information about details of the toys a person played with as a child, or their sexual orientation, as part of their psychiatric diagnosis report.

207. They stated that trans people make material and concrete changes in their lives, in order to ‘live as’ the gender that they are—

” without taking any of these steps, other people would have no way of knowing that our identity was different from the sex registered on our original birth certificate and would assume that we were happy to be seen and treated in that way. None of these steps require performing, or reinforcing, gender stereotypes, which trans people do not do to any greater extent than anyone else.

208. On this basis, they supported the term “acquired gender” as it reflects the fact that legal gender recognition is intended.
209. The Cabinet Secretary clarified that the term “acquired gender” is language used in the 2004 Act and other existing legislation. Ms Robison told us there are practical considerations in replicating the language to ensure that provisions being inserted into the 2004 Act can function with the rest of the Act. Doing so prevented changing existing references to the term in provisions which remain unamended. Ms Robison said the Scottish Government would consider the Committee’s recommendations on this point but expressed uncertainty on what alternative language could be used to accurately describe legally changing your gender.

210. Ms Robison gave examples of what living in a person's "acquired gender" might mean and these included "consistently using titles and pronouns in line with the acquired gender, updating official documents such as a driving license or passport, updating utility bills or bank accounts, updating the gender marker on official documents and using a name associated with their acquired gender".⁷

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.**

Procedure after an application for gender recognition

Three-month reflection period

214. The Bill provides for 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.

215. Many witnesses including LGBT organisations, NUS Scotland, JustRight, Engender, Amnesty and the Humanist Society and others did not support this provision and questioned what the justification was. It was criticised for being arbitrary given that most trans people will have reflected on their gender identity for a significant time.

216. Vic Valentine told us only Belgium and Denmark have a reflection period in place. They said, "By the time you have come out to your family and friends and figured out who you are and what rights you are able to access and have learned what a GRC is you probably do not need another three months to reflect on this".²

217. Dr Crawford told us that young trans people also feel the period is unnecessary or too long and the fact that it is an offence to provide a false declaration is “more than enough” for young people to take that decision very seriously.
218. An alternative suggestion was put forward by the SHRC who considered the reflection period to be “a further burden on trans people” and that there would have to be a very clear justification for its legitimate aim and purpose, for example, a process of signposting to relevant support. They said–

” I wonder if it would be more proportionate for the trans person applying to be able to withdraw their application, if they wished to, within those three months without any burden on them to reapply or reaffirm their application. We think that a bit more thought needs to be given to the purpose of the requirement.

Source: Scottish Parliament, 2022³

219. The position in Denmark was clarified by Dr Dietz. He said the trans community considered the six-month reflection period patronising and were unsure on what they should be reflecting. Dr Duffy agreed. Her view was if what the Bill was trying to do was to return agency and autonomy over legal status to trans people “It seems to be an interposition of yet another standard of authority if we impose a waiting period on them as well. It is like we are saying “You don’t know your own mind you need to think about it for another three months” That is not in keeping with the spirit of some of the other proposed reforms”. ³
220. Other witnesses, such as the Church of Scotland, broadly supported a period of reflection. They considered it emphasised the seriousness and formality of the process and expressed concern for 16- and 17-year olds were it not put in place. They suggested the Committee should explore the rationale for why that particular duration was proposed.
221. The Evangelical Alliance welcomed the three-month reflection period but considered it too short for such a life-changing decision. Anthony Horan of the Catholic Parliamentary Office of the Bishops’ Conference of Scotland told us that studies suggest that the majority of young people with gender dysphoria will desist and become settled in their biological sex. They said “A reflection period would be logical but the fact that it is time limited raises questions about other provisions in the Bill”.
222. In their written submission, FWS said that this reflection period acknowledges that some applicants may change their mind. They said “However, without any balanced external input from a medical practitioner or therapist, this is effectively a waiting period only and many applicants may proceed with a permanent legal change that may not be right for them”.
223. MBM said they are concerned about the risk that some people may make rushed decisions they later regret. They referred to the [interim Cass review](#) which they said has shown that a lack of routine and consistent data collection means it has not been possible to accurately track the outcomes and pathways taken by children and young people. They suggested a delay between initial application and granting a GRC, in the form of a single period of delay of some length, perhaps the overall six months in the Scottish Government model.
224. In oral evidence, the Cabinet Secretary told us “In our opinion, the reflection period

represents a balanced and proportionate time before taking what is an important and life-changing decision". Ms Robison explained that it would provide additional assurance that applicants have considered carefully what they are doing in making a serious lifelong choice. Ms Robison added "It is important that we try to strike a balance in respect of a range of concerns".⁷

225. In response to a suggestion that the period of reflection should be longer for younger applicants, the Cabinet Secretary told us that, for fairness, the reflection period for all applicants should be the same. "There will be additional guidance and support around 16- and 17-year olds. We think that that is the more appropriate additional support which someone over the age of 18 may not require".⁷

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.**
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 "de-transitioning". 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.**

Eligibility for a GRC

231. Sections 2-7 of the Bill make provision for the application process.
232. Section 2 of the Bill inserts a new section in the GRA and provides that a person may apply to the Registrar General for a GRC "on the basis of living in the other gender" if:

- they are aged at least 16
- they have either a Scottish birth or adoption certificate or are ordinarily resident in Scotland.

Lowering the age of eligibility for applicants from 18 to 16

233. The Scottish Government consultation asked whether the minimum age at which a person can apply for legal gender recognition should be reduced from 18 to 16. Overall, 56% of those responding to this question supported lowering the age. The Bill proposes to lower the minimum age for a GRC from 18 to 16.

234. The Scottish Government has said it will consider the need for further guidance for 16- and 17-year olds "to ensure they understand and have carefully considered their decision". In her Ministerial Statement, the Cabinet Secretary said—

” We have concluded that the minimum age should be reduced to 16, with support and guidance being provided to young people through schools, third sector bodies and National Records of Scotland. Under the oversight of the registrar general, National Records of Scotland will routinely give additional, careful consideration to applications from 16- and 17-year-olds. It will provide support on the process and, when necessary, will undertake sensitive investigation, which could include face-to-face conversations with applicants. Every 16- or 17-year-old who applies will be offered and encouraged to take up the option of a conversation with NRS to talk through the process.

235. The Children’s Commissioner indicated support for lowering the minimum age provided that appropriate support is in place. He expressed the need for young people to be involved in that process. He said—

” Protection and participation rights are not mutually exclusive, and we are looking for a process that recognises not only the growing autonomy of young people but the need to support and protect them.⁹

236. He explained that when you put something in place for protection—

” say in relation to the justice system, you will look for a very high age for things such as the age of criminal responsibility. Where a minimum age is necessary to correct for potential abuses in relation to things such as sexual consent, you will need to make sure children’s rights are not damaged in the process. Where age restrictions do not serve a protective purpose and potentially curb children’s rights in relation to their development and their freedoms, minimum ages should be avoided. Where there is tension between protection and autonomy, which is something that comes up a lot in relation to for example medical treatments we should be looking at capacity as the deciding factor.

Source: Scottish Parliament, 2022⁹

237. In relation to other countries that require parental consent for under 18s seeking legal gender recognition, none of the examples are directly analogous to the Scottish proposals. He said that in many of those countries, parental consent is needed for a lot more things, particularly in relation to accessing health services and other services. Further, that Scotland takes a different approach regarding

autonomy compared to the paternalistic approach of other countries, and that this paternalistic approach does not properly recognise rights under the UNCRC.

238. The SHRC supported the reduction in age. In their written submission they said–

” We find that the age of 16 is in line with Scots law in terms of the Age of Legal Capacity (Scotland) Act 1991^{xvii}, which permits young people to enter into significant legal transactions. If the bill were to lower the age to 16, it would be in line with existing Scots law, which permits children to make decisions of such a nature.

239. Many witnesses cited rights already available to 16-year olds; such as the right to get married, join the army, work and vote in Scottish Parliamentary and local elections.

240. Vic Valentine explained that many 16- and 17-year olds have completely socially transitioned. Not allowing them to apply would not prevent them coming out to their families and friends in education settings and at work, but they would be living in their gender yet unable to update the sex on their birth certificate. This would leave them open to a lack of privacy around their trans status.

241. Those with lived experience broadly supported the reduction in age if the appropriate support was put in place. Many told us that they had known who they were from a very young age and had already faced enormous challenges. Some witnesses felt the Bill did not go far enough and that provision should be made for younger applicants. One witness described the lack of provision for under 16s as a “missed opportunity” and believed that, with appropriate support, those under 16 should also be able to apply for a GRC.

242. Ellie Gomersall of NUS identified specific challenges faced by students when their legal documents do not match the way they live and that this could cause “real distress”. She said if a trans student is forced to register with their institution in the wrong gender, it can also cause confusion and trigger unnecessary fraud investigations by student finance.

243. Fraser Sutherland of the Humanist Society said that young people were able to make life and death decisions about medical treatment and end of life care and he therefore supported the provision. Engender agreed citing “existing rights for 16 and 17-year-olds [...] while also recognising that appropriate safeguards, developed with trans young people, will be required”.⁶

244. Amnesty/JustRight said that they support an “appropriate process” of legal gender recognition for 16- and 17-year-olds, “whilst recognising that this may differ from the process for people over 18, and will require to take into account both the principle of evolving capacities of young people” as set out by the Committee on the Convention on the Rights of the Child.^{xviii}

245. Reference was made by the Children’s Commissioner to Article 12(2) UNCRC which requires that the “child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child” and said

^{xvii} Age of Legal Capacity (Scotland) Act 1991

^{xviii} (General Comment No.20, para 18).

further explanation will be needed on what consideration will be given to young people.

246. Mr Adamson also questioned whether the Registrar General has the expertise to support young people and how they would be resourced to do so. He said it was not clear from the available detail whether the proposed statutory powers of the Registrar General would ensure sufficient protections for children's rights.
247. Furthermore, he told us there was not sufficient clarity in the Bill around children's rights to privacy in data protection in terms of what investigative or scrutiny role the Registrar General might have in assessing a child's understanding or capacity. He told us "In general in other areas of children's lives, that role would only be appropriate for a suitably qualified medical professional. We are interested in what additional resource and support will be put in place for the registrar general in order to ensure that the information that is being assessed is appropriate".⁹
248. The Registrar General detailed the kind of support it would be able to offer which would include phone and potentially face to face conversations of a support nature. He said "the individual would not need to take the offer up—but, as a matter of course, we would make contact and offer that as part of the process".⁶
249. Other witnesses disagreed with lowering the age limit. In its written submission, The Catholic Bishops' Conference referenced the UNCRC which defines children as those under 18.

” In that regard there are good reasons to protect children from making permanent legal declarations about their gender. There are also good reasons to question sex reassignment surgery or other irreversible elective interventions for children.

Source: Scottish Parliament, 2022⁶

250. In oral evidence, the Evangelical Alliance, MBM, FWS and LGBA all expressed significant concern about whether 16- and 17-year olds are mature enough to give informed consent for life-changing decisions in the formative phase of their social development.
251. They referenced rights that are restricted until 18 years of age, for example: getting a tattoo, buying alcohol or tobacco, getting a credit card or entering into a legal contract.
252. Susan Smith highlighted work that has been done around criminal responsibility which suggested that people are not cognitively mature until they are around 25. Her view was that puberty had significant psychological and physiological effects and affects brain development. She said—

” The crucial thing here, which I know that the Children's Commissioner pointed to, is the work that has been done around criminal responsibility and the idea that people are not cognitively mature until they are about 25. From a psychological and physiological perspective, puberty has great effects on people as they mature- it affects brain development. You ask whether children know what gender they are. The point is that one of the things that the Committee has to bottom out is what is meant by gender. There are no definitions of gender – the Scottish Government does not have a definition of gender.

253. Chris Ringland agreed based on findings of the interim Cass report stating “The report says that young people’s gender identity can remain in flux until their mid-20s”.⁶
254. Reference was also made to the [Scottish sentencing guidelines](#) for those under 25. These reflect scientific evidence that a young person will generally have a lower level of maturity, and a greater capacity for change and rehabilitation, than an older person^{xix}.
255. Other witnesses noted that in England and Wales under the Marriage and Civil Partnership (Minimum Age) Act 2022^{xx} (yet to come into force) the minimum age for marriage in England and Wales will be increased to 18.
256. Concern was also expressed that the Bill makes no provision for parental consent for those aged 16 and 17 who wish to make an application but that such additional requirements are mandatory in other countries.
257. The requirement for parental consent was supported by Naomi Cunningham. She told us “The people who know a child best and who can be best trusted to keep that child’s interest are parents. However, that seems to be a very inadequate safeguard against the invitation to children to make life-changing decisions that they may subsequently regret, or which may set them on a path to harm.” Her view was “there should not be a reduction in the age at all”.⁵
258. There was a sense in some of the evidence we heard that empowering 16- and 17-year olds to make this decision may reinforce, crystallise or accelerate feelings that are not fully developed or reflected upon, due to their age and maturity.
259. Malcolm Clark of LGB Alliance said “if the state steps in to validate the feelings of a 16-year-old girl who thinks that she is a boy, it risks crystallising an identity that is just temporary”. He added “Loads of celebrities are coming out as non-binary or queer. There is a culture through celebrities, peer pressure and loads of social media nonsense that kids are receiving that is likely to confuse them. All we are asking is that we are aware of the confusion in young people’s minds”.⁴
260. There were conflicting views expressed by parents of children who identify as trans about how best to support their children.

xix [The development of cognitive and emotional maturity in adolescents and its relevance in judicial contexts \(scottishsentencingcouncil.org.uk\)](#)

xx [Marriage and Civil Partnership \(Minimum Age\) Act 2022 \(legislation.gov.uk\)](#)

261. One parents' group expressed concern over the level of maturity to make life changing decisions and that "we need to acknowledge the influence of social media and other pressures". They were of the view that young people often do not always understand implications of their actions and said that many young people identifying as trans have mental health issues or are autistic. And while changing their name or pronouns was not life changing, it could set a child on a path with consequences they would later regret.
262. Some parents said they felt scared to speak out about their concerns as they feared being branded "transphobic".
263. One parent felt that solidifying their child's social transition solidifies in their mind that they need to change their body and that having a GRC would "cement" that position. They argued that a great deal of fear exists amongst health practitioners and that many feel compelled by society, or by the risk of a complaint, to affirm gender and that "CAMHS Scotland^{xxi} is overwhelmed.
264. Other parents told us that when their child's school or doctor immediately affirmed them as the opposite gender they felt it was confusing for their child to have adults in authority disagreeing with their parents. They called for more support for parents and for schools who "are not currently equipped to deal with this". Some parents felt the Bill should be postponed until the Cass review is published.
265. Another parents' group provided a contrary view. They spoke of "ludicrous lies" they had experienced such as criticism that they were taking gay children and "making" them trans so they would not be gay. They advocated supporting a child in their transition journey however that might look and referred to the low numbers of young people accessing gender affirming hormone treatment and the very small number of trans people who wish to access surgery.
266. They also spoke of the "storm of controversy" they faced, and that media and politicians had used their platform to make their children's lives harder. They said they have "no voice in the angry debate that rages around us" which they felt was both damaging and terrifying for young people and their families. One parent said "Human rights are not an apple pie where everyone gets less if you share it out. By lifting everyone, we all benefit".
267. One family spoke of their son's positive experience of socially transitioning four years ago and having only one document - left to be amended - his birth certificate. They said, for him, obtaining a GRC before 18 would allow him to "start his adult life without the burden of administrative confusion" and he would see that the Scottish Parliament officially recognises and respects his identity and rights.
268. They disagreed that the Bill should be paused to wait for the publication of the Cass review because "getting a GRC is nothing to do with healthcare".
269. One adult witness who has transitioned socially and medically was opposed to lowering the age restriction. She felt it puts medical professionals in a difficult position if 16- and 17-year olds can obtain a GRC based on self-declaration. She said "It makes it much more difficult for them to deny medical intervention to the patient. Young people will get a GRC and then have an expectation that they will

receive medical treatment". She agreed it would be prudent to wait for the Cass report and take it on board before progressing with the legislation. The Committee later heard evidence from David Parker of the National Gender Identity Clinical Network on the decision-making procedures for accessing medical treatment. This is discussed in detail in this report at paragraphs 297-302.

270. Dr Dunne told us there was no standard internationally but some jurisdictions such as Malta, Norway and the Netherlands have taken out a diagnosis requirement and provided one system for all people over the age of 16. In Ireland, Portugal and Belgium he said they have made it slightly more difficult for young people who are 16 and 17 to access legal gender recognition. Countries such as Malta and Norway have allowed access but have done it with a conservative process which involves parents and sometimes the court.
271. Senator Doherty explained that in Ireland someone cannot get married or get a driving license or vote until they are 18 so it was easy for them to make that the cut-off point. She said "You do not become an adult until you are 18 and when you become 18 you make your own choices".⁸
272. In oral evidence, the Cabinet Secretary told the Committee that the lowering of age was one of the areas to which the Scottish Government gave most consideration as it was a "significant step". That decision was reached after looking at international comparisons, the Scottish legal context under the Age of Legal Capacity (Scotland) Act 1991 and the consideration of young trans people themselves.
273. The Cabinet Secretary told us that evidence from young people was when they were about to enter college, university or work, they wanted to be able to do that in a way which aligned with the way they were living their lives. Ms Robison added that "They wanted their documentation all aligned instead of it differing. I thought that argument was quite powerful".⁷

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.**
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.**
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.

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.**

The Cass Review

279. Some witnesses raised concerns about increasing numbers of children who are questioning their gender identity and seeking services from Gender Identity Clinics. They referred to the Cass Review which was 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.
280. It was suggested that simplifying the GRC process would make it more likely that young people would go down medical pathways that are “generally irreversible”.
281. The Interim report has said:
- The rapid increase in the number of children requiring support and the complex case-mix means that the current clinical model, with a single national provider, is not sustainable in the longer term.
 - More needs to be known about the population being referred and outcomes. There has not been routine and consistent data collection, which means it is not possible to accurately track the outcomes and pathways.
 - There is lack of consensus and open discussion about the nature of gender dysphoria and therefore about the appropriate clinical response.
 - Because the specialist service has evolved rapidly and organically in response to demand, the clinical approach and overall service design has not been subjected to some of the normal quality controls that are typically applied when new or innovative treatments are introduced.
 - A fundamentally different service model is needed which is more in line with other paediatric provision, to provide timely and appropriate care for children and young people needing support around their gender identity. This must include support for any other clinical presentations that they may have.
282. FWS suggested that the reforms in the Bill are out of step with Cass findings, and Scotland should wait for the final report before proceeding with any changes to legislation. LGB Alliance and the Evangelical Alliance agreed in oral evidence that

reforms should be delayed until the final report from the Cass review is published.

283. Naomi Cunningham referred to the Review's comments on social transition, which it described as a serious intervention—

” given that legal transition must be a step even further. If you crystallize a child's legal identity as the opposite sex at the age of 16 or 17, how difficult will it be for that child, as they mature—I believe that human brains do not mature fully until the age of 25—to say that they got it wrong?

Source: Scottish Parliament, 2022⁵

284. The EHRC has, in a letter to the Committee, indicated support for pausing reform until the Cass Review makes its final conclusions.

285. The SHRC did not think the Bill should be paused in relation to the Cass review. It said the findings, for England, are relevant for the provision of gender identity healthcare but that it was not clear how this relates to provisions in the Bill, although there might be useful learning in relation to the provision of medical services. Barbara Bolton said—

” We heard very clearly from the evidence of the National Gender Identity Clinical Network for Scotland that whether or not somebody has a gender recognition certificate is not determinative of access to gender identity health services. The network treats everybody as though they have a GRC, which seems appropriate. It says that a GRC absolutely is relevant and important, but it does not change the direction of the person's clinical care.

Source: Scottish Parliament, 2022³

286. Jen Ang of JustRight shared this view. She told us—

” the implication is that somehow reforming legal gender recognition will have an impact on whether young people seek medical intervention in their treatment. The important thing about reform is that it seeks to set apart a decision about any form of medicalisation from the simple legal procedure of applying to change your birth certificate. It was the clarity that we are seeking to divide those two matters rather than conflate them that I am struggling with in understanding why we require that evidence. The evidence is important in other contexts, but I do not see the connection to the impact that the proposed legislation could have.

Source: Scottish Parliament, 2022⁴

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.**
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.**

Gender identity clinics in Scotland

290. The [National Gender Identity Clinical Network for Scotland](#) (NGICNS) was established on 1 April 2014 to support the Gender Reassignment Protocol for Scotland which incorporates the recommendations from the 7th edition of The World Professional Association for Transgender Health (WPATH) Standards of Care, September 2011.
291. There are four gender identity clinics in Scotland. They are in Glasgow, Edinburgh, Aberdeen and Inverness.
292. The Sandyford Clinic in Glasgow caters to the largest number of patients in Scotland and is the only provider of gender identity services for young people in Scotland. it offers services for adults and young people. There is a four year waiting list for adults and a three year waiting list for young people.
293. Information provided by the clinic explains that you can change your passport or driving license without the need for hormone therapy or treatment, “All that is needed is your statutory declaration of change of name and a doctor’s letter stating either that you are ‘a female to male transsexual person who is living permanently as a man’ or that you are ‘a male to female transsexual person who is living permanently as a woman’”.
294. For a legal change of gender, applicants must apply for a GRC, which a person must show they have been diagnosed by a gender identity clinic as having gender dysphoria and that they have been fully living in their acquired gender for at least 2 years.
295. For young people under 19, there is a service provided by a consultant child and

adolescent psychiatrist. Following an assessment, some young people may be referred to an endocrinologist for further assessment to consider if puberty blockers would be helpful. They will only be considered if puberty has already started, and the young person is experiencing “clear, persistent and consistent” gender dysphoria. Hormone therapy is available to young people aged at least 16.

296. Gender identity treatment at Sandyford is monitored and run in accordance with the World Professional Association for Transgender Health (WPATH) guidelines: ‘[Standards of Care](#)’, and in the [Gender Reassignment Protocol for Scotland](#) (2012). The Gender Reassignment Protocol is currently under review, which began in July 2021 at the request of the Chief Medical Officer.

297. The Committee heard evidence from David Parker, lead clinician at NGICNS who referred to the significant waiting times for a first appointment and that a third of patients they see have already sourced private treatment. David Parker supports the Bill’s proposal to separate the medical process from the legal process. He said—

” The current process to obtain a GRC is seen by many people as being a complex system to navigate in order for them to be properly recognised as their authentic selves. We welcome the proposals to make the process more accessible; I cannot overstate the positive impact that that will have on the wellbeing and esteem of, and the sense of equality for, trans people.

Source: Scottish Parliament, 2022⁵

298. On whether a GRC has an impact on a person being able to receive medical treatment, he said—

” it is not irrelevant, because it is an absolutely important part of a person’s journey, but it will not make a significant difference to their ability to receive treatment.

Source: Scottish Parliament, 2022⁵

299. He did not accept that not enough data was collected on the number of young people accessing services who move forward with treatment. He told us—

” In Scotland the number of people who move forward to treatment is extremely small. It might be impossible to give the data because of how small the numbers are. The average number of young people who have moved on to puberty blockers in the past seven of eight years has been about seven a year. In some years, the numbers are at such a level that none of the data can be reported let alone being reported to sex, gender or health boards.

Source: Scottish Parliament, 2022⁵

300. In a supplementary letter, David Parker said that—

” at the end of quarter four 2021/22 (end of March 2022) there were 4,040 people waiting for a first appointment. Quarter four figures are not available for 20/21, but at the end of quarter four in 2019/20, 2,071 people were waiting for an appointment. Numbers have increased in a steady, incremental fashion.

301. In response to whether someone with a male gender designator in their CHI number could access cervical screening or be referred to gynaecology he said—

” People who change their CHI to a ‘male CHI’ after June 2015 may still be at risk from cervical or breast cancer and are automatically entered for screening programmes; they can then opt out if desired. If they changed their CHI before then or have come into the country from abroad, they can still register for and access the screening programmes.

People assigned female at birth with a ‘male CHI’ can be and are referred to gynaecology, although this may occasionally require a manual work around for older or stand-alone. IT systems that have not been programmed to accept a male CHI – this will be checked.

302. He also said that data is not collected on the number of patients who seek to obtain a GRC, stating “Provision of healthcare at Gender Identity Clinics is not directly linked to any individual trans person’s decision to apply for a GRC (or not)”.
 303. In response to questions on privacy, he told us “Privacy is covered by Section 22 of the GRA. My colleagues and I have always taken the position that we treat everybody as if they have a GRC because that affords people the right amount of privacy”.⁵
 304. In a [written submission](#), the Royal College of General Practitioners Scotland described the overall role of the GP in providing care to patients with gender dysphoria which includes referral of patients to a gender identity clinic and working with gender specialists to provide appropriate care.
 305. The submission stated that GPs face significant challenges in accessing advice from specialists and there are limited CPD programmes available for gender identity and trans health issues. It said there is a lack of robust comprehensive evidence around outcomes, side effects and long-term consequences of such treatments for children and young people and that this needs to be addressed.
- ” There is an urgent need to increase the capacity of gender identity specialists and clinics and expand the understanding of gender variance issues across the entire health system, including more definitive knowledge about the causes of rapidly increasing referrals and the outcomes of interventions or wait and see policies. Furthermore, a major issue facing this area of healthcare is the significant lack of robust, comprehensive evidence around the outcomes, side effects and long-term consequences of such treatments for people with gender dysphoria, particularly children and young people.
306. In a written submission from MBM, they referenced a newly formed group – the Clinical Advisory Network on Sex and Gender (CAN-SG) which is a group of UK and Ireland based clinicians calling for greater understanding of the effects of sex and gender in healthcare. It aims to enhance professional and public understanding of the nature of sex, gender, gender roles and identity with respect to healthcare and medicine and improve knowledge about the causes, consequences and treatments of gender dysphoria to promote respectful discourse on sex, gender and gender identity between healthcare professionals.
 307. MBM referenced evidence from NHSGGC which raised concerns that the Bill could increase expectation of medical treatment and evidence from RCGP which said there is an urgent need to increase the capacity of gender identity specialists and

clinics. They said the Committee must be satisfied that the reform will not increase demand.

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.**
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.**
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.**

Ordinarily resident

311. According to the [Policy Memorandum](#) accompanying the Bill “Whether a person is ordinarily resident in Scotland will depend on their individual circumstances. Broadly speaking, a person is ordinarily resident in a place if they live there on a settled basis, lawfully and voluntarily”.
312. The Committee was keen to explore this definition further and whether issues were likely to arise.
313. Just Right said that the definition could exclude people who have chosen to make Scotland their home but are not yet ordinarily resident with regard to their migration status. It was also said that it is a term that is used differently in different parts of legislation, “so when it is included in a piece of legislation, it is important to define what it means specifically”.
314. Vic Valentine said their main concern was about refugees and people waiting for their asylum claims to be heard and that they would not be considered ordinarily resident.
315. Jen Ang agreed. She told us—

” I am quite focused on the idea of "ordinary residence" as a legal term. It is used differently in different parts of legislation and it is important to define what it means specifically. It is not even to avoid unintended consequences it is just to make it clear to everyone who is physically in Scotland whether the procedure is available to them. That can be done in the primary legislation or by way of policy and guidance. We want to make sure we are not accidentally locking people out of the process unintentionally for a period of time.

Source: Scottish Parliament, 2022⁴

316. FWS, MBM and KPSS all called for clarity on what is meant by ‘ordinarily resident’ and the cross-border implications. For example, whether young people moving to Scotland for a short time could apply for a GRC.
317. In their written submission, MBM said that there appears to be nothing to stop anyone arriving in Scotland from any other part of the UK or the rest of the world from accessing the GRC application process.
318. They also expressed concern whether a GRC issued in Scotland will be recognised elsewhere in the UK where the criteria for acquiring a GRC is stricter. A lack of cross-border recognition, they argued, could have a practical implication of a person being one sex in Scotland and the other sex in the rest of the UK. They suggested that the cross-border situation is unprecedented and, furthermore that it could impact the prison estate in England and Wales because Ministry of Justice policy means that a person with a GRC is treated in terms of their “acquired gender” except in very exceptional circumstances as based on case law.
319. The Children’s Commissioner told the Committee that—

” We would have to ensure that the idea of being “ordinarily resident” in the country was properly interpreted. The idea of people coming as tourists for that specific purpose has not come up in the discussions that we have had with our international colleagues—they have not raised it with us.

Source: Scottish Parliament, 2022⁹

320. A letter from the EHRC highlighted the need for clarity on how GRCs issued in Scotland will be recognised in other parts of the UK. They said—

” This will in part depend on UK Government decisions on whether or how to recognise GRCs granted in Scotland, as it does with those from other jurisdictions. However, we would be concerned about the potential implications for individuals whose legal sex might be recognised differently in different parts of Britain. We are considering the implications of potential divergence within Britain for the operation of the Equality Act 2010 on, for example, cross-border employment, education and service provision, and on the single-sex service exceptions. We are also exploring the potential impacts of having a younger cohort of people eligible to change legal sex in Scotland than in England and Wales.

321. However, the SHRC said—

” The commission’s view is that it is sufficiently specific to rule out what is being referenced as a concern. The requirement to be ordinarily resident rules out somebody coming for a weekend or a longer holiday or for a temporary stay purely to obtain a GRC—the law simply would not cover that. However, we heard and agree with the points that were made by JustRight Scotland about the need to make that sufficiently clear to avoid inadvertently excluding people who you intend to include. Therefore, using the term “ordinarily resident” without providing further detail would not tell us whether we seek to cover those who do not have citizenship but are located in Scotland.

322. The Cabinet Secretary confirmed that “ordinarily resident” means that a person lives in Scotland and that residence must be voluntary for settled purposes and lawful. Were someone to make a false statutory declaration that they were ordinarily resident they would be committing a criminal offence. Ms Robison said NRS will provide guidance to applicants to ensure that is fully understood.
323. In response to issues around refugees and asylum seekers, the Cabinet Secretary advised that, as immigration is reserved to the UK government, this area may be reserved. Ms Robison said “There would be potential competence issues with the Bill legislating for asylum seekers specifically to have access to gender recognition as well as practical issues that would need further consideration. Competence issues would need to be considered carefully”.⁷
324. On whether the UK Government will recognise Scottish GRCs, the Cabinet Secretary said the “UK Government’s recognition of Scottish GRCs will be a matter for it to consider”⁷, Scottish Government officials said “The UK Government, in considering the recognition of Scottish certificates, will obviously also need to consider how it recognises certificates and gender recognition processes that have been gone through elsewhere in the world. Currently, it has processes in place for that and a list of recognised territories.^{xxii} That has not been updated for at least a decade, but we understood that the UK Government was in the process of reconsidering that list. I imagine that it will want to think about that list alongside recognition of Scottish certificates, which will be quite a challenging and substantial project”.⁷

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”.**
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.**
327. **The Committee particularly notes the concerns raised by witnesses in relation to refugees and asylum seekers who may be living in Scotland and**

xxii The list of recognised territories can be found here.

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.**

Overseas gender recognition and confirmatory GRC

329. At Section 8, the Bill makes provisions about recognition in Scotland of gender recognition obtained by a person in the rest of the UK, or 'overseas gender recognition'. In both cases, they will be treated as if they have been granted a GRC by the Registrar General.
330. A person who has obtained overseas gender recognition can apply to the Registrar General for a confirmatory GRC, but there is no obligation to do so.
331. They must provide evidence of overseas gender recognition or make a statutory declaration in relation to that recognition including the place or register where the details of the recognition would have been available, and the reasons why the evidence cannot be provided.
332. In their written submission, Amnesty/JustRight supported this provision but sought confirmation from the Scottish Government that the process is only intended to provide the applicant with a confirmatory Scottish GRC if they have a particular wish to possess one.
333. MBM and KPSS expressed concern that the overseas provisions could have far reaching consequences. MBM said the provisions "look to enable any person who asserts a change of legal gender overseas, irrespective of evidence, to readily conceal their identity, with attendant risks for identity fraud".
334. Their concerns are twofold. Firstly, that the process for overseas recognition - a confirmatory GRC – is not required by the Bill, and as such trans people with legal gender recognition from outwith Scotland would be considered as if they have been granted a GRC by the Registrar General.
335. The second issue concerns an amended definition of what is meant by 'Protected Information' under section 22 of the GRA. Section 22 makes it an offence for a person who has acquired protected information in an official capacity to disclose the information to any other person, although there are some exceptions. "Protected

information” means information which relates to a person who has made an application for a GRC and which concerns that application or, if the application is granted “otherwise concerns the person’s gender before it becomes the acquired gender.”

336. KPSS stated that the Schedule of the Bill potentially broadens this definition to include trans people without a GRC.
337. The Cabinet Secretary told the Committee that, as a general principle, a GRC obtained overseas would be recognised in Scotland and confirmatory GRCs should not in theory be widely needed. Ms Robison explained that the Bill provides for them in cases in which someone is having difficulty obtaining that recognition or wants clear evidence of the legal recognition of their lived gender which might apply to someone fleeing a war-torn country where they do not have access to their record. She said “It will be a tiny number of cases but the provision has that in mind.”⁷
338. Scottish Government officials clarified that “no substantive change is made to section 22 by the schedule of the Bill. Protected information still relates to an application for a GRC or a person’s acquired gender before the GRC is issued.”⁷
339. However, in cases where there might be criminal investigations or concerns about criminality, that information would be disclosed. One of the purposes of Section 22 of the GRC. Scottish Government officials explained, is that one of the exceptions to the prohibition concerns disclosure for “the purpose of preventing or investigating crime”.⁷


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.**
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.**

Spousal consent and interim GRCs

342. Interim GRCs are granted where the applicant is in a marriage or civil partnership, and their spouse/civil partner does not consent to the marriage/civil partnership continuing after the issue of a full GRC.
343. The interim GRC is issued to enable the applicant and their spouse to end their marriage or civil partnership. It has no legal significance beyond this use. When the marriage or civil partnership is ended, a full GRC will be issued to the successful

applicant.

344. A person with an interim GRC can apply for a full GRC if the circumstances relating to their marriage or civil partnership change within 6 months of the interim GRC being issued.
345. It is also possible for applicants in a Scottish protected marriage (a marriage solemnised in Scotland) or Scottish protected civil partnership (a civil partnership registered in Scotland), with an interim GRC to apply to the sheriff court for their full GRC, without first ending their marriage, irrespective of whether the couple wish to remain together post gender recognition (under [section 4E of the Gender Recognition Act 2004](#)).
346. The Bill's provisions restate current aspects of the GRC process. This includes the granting of a full GRC where an interim GRC has been issued.
347. In written evidence, the STA told the Committee that these replicating provisions are—

 ...a fair balance between ensuring that people are able to leave their marriages or civil partnerships if they are unhappy with their partner and ensuring that a spouse or civil partner cannot block a trans person from accessing their legal rights.
348. FWS argued that the Scottish Government has not given sufficient thought to “how fast-tracking GRCs will impact on the families of applicants, and the necessary time required to exit a marriage”.
349. In a supplementary submission, MBM also highlight that the Bill no longer refers to Scottish protected marriage or civil partnerships and what this will mean in practice requires to be explored further.

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.**

Person with interest

351. The Bill provides that a ‘person with interest’ (such as a spouse, civil partner, or child of a person who has obtained a GRC) in a full or interim GRC may apply to a sheriff to revoke the GRC on various grounds.
352. These grounds are:
 - the wrong type of GRC was issued
 - the application was fraudulent
 - the applicant was incapable of understanding the effect of it, or

- the applicant was incapable of validly making the application.
353. The Committee heard concerns from LGBT organisations and others about the possibility of vexatious complaints under this provision. Vic Valentine considered it reasonable for a certificate to be challenged if it had been applied for fraudulently, but questioned what the burden of proof would be for the challenging party and how they would demonstrate that their case was worthy of consideration.
354. Others sought more clarity from the Scottish Government on who a person with interest would be. Colin Macfarlane of Stonewall questioned whether groups who were opposed to the Act could be considered a person with interest.
355. The Children’s Commissioner had concerns about what this provision might mean for ‘looked after’ children, and who a person with interest might be in such cases. He told us there are practical questions about who would have the ability as the person with interest to make such a request. He said “There is potential for local authority staff to be involved in that care” and that “more clarity is needed on the potential for a larger pool of people to be captured” under the provision.⁹
356. Naomi McAuliffe agreed that the provision is too widely drawn. She said “The Registrar General would certainly be a person of interest, and a current spouse or partner could potentially be one, too. Anyone else should have to apply to the Registrar General who would then decide whether to intervene”.⁴
357. The question was raised with Senator Doherty about the experience in Ireland and whether a person with interest should have a say in the matter. Senator Doherty told us that this was debated in the review and they concluded that for under 18s parents would be the only interested parties and the state would not have a role in the decision.

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.**

Criminal offence to make a false statutory declaration or application

361. The Bill proposes that it will 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.

362. The Children's Commissioner expressed some concern that children could be criminalised under this section, and suggested the Bill be amended to prevent this. He said—

” There is a risk that by including a criminal penalty for making a false statutory declaration, children will be unnecessarily criminalised. The children's rights and wellbeing impact assessment statement does not evidence any assessment of the potentially negative impact of that. Children are entitled to additional protection under article 40 of the UNCRC. It is for the Government to show why it is necessary to criminalise children in those circumstances and it has not done that.

Source: Scottish Parliament, 2022⁹

363. Amnesty/JustRight and Engender did not support the creation of an additional offence. They argued that it is already a criminal offence under the Criminal Law (Consolidation) (Scotland) Act 1995 to make a false statutory declaration. This point was also raised by Ellie Gomersall of NUS Scotland and a number of written submissions.

364. With reference to review and appeals, Jen Ang expressed concern about the broadening of the venue for such actions to the sheriff court from the court of session. She said “I would point out that there is a different cohort of people who would be taking decisions which suggests that there might be a larger volume of cases. It is worth having more of a discussion about whether that is necessary and the thinking behind it”. ⁴

365. The Church of Scotland said that while inclusion of an offence is necessary it is concerned that this might “create a sense of fear if someone subsequently regrets their decision and wishes to revert to their original gender identity”.

366. In response, the Registrar General did not view the inclusion of the offence as unusual and stated it felt “relevant” and is “proportionate” to what is seen in other legislation. He told us “it is not uncommon for there to be specific criminal sanctions in founding legislation in relation to applications, whether for marriage or in other aspects of life”. ⁶

367. There were differing views on whether “bad faith” actors might apply for a GRC for nefarious purposes. Many discarded this notion. The Church of Scotland said “a crime is a crime. Nothing man-made will be totally proof against the potential for a crime. That is a different issue. That is not the core purpose of the Bill”.

368. In written evidence Professor Cowan said “There should be consequences for making a vexatious application in the same way as, for example, there would be for applying for a driver's licence under a false name but these penalties should be

administrative in nature and not criminal".

369. In written submissions, FWS, MBM, LGBA and the Evangelical Alliance amongst others each suggested that a false application or false information will be difficult to prove. MBM said "the weight being placed on this provision as a safeguard is out of all proportion to its likely effectiveness." There were also questions about whether de-transitioners would be subject to a criminal offence. Dr Duffy agreed and emphasised that, for many, gender identity is often not a fixed quantity and can be fluid. She called for further clarification on this point.
370. Dr Dietz told us that Denmark carried a threat of penal sanction which trans people had spoken about as being a level of suspicion from the state. He viewed it as "heavy handed" in the Bill and thought it could be subject to criticism. Dr Dunne questioned how the clause would operate stating "Does it mean that person has to engage in a very stereotypical performative expression of their gender identity and if not, they have committed fraud?".³
371. The Cabinet Secretary responded to concerns raised that those who decide to de-transition may face a criminal penalty for making a false statutory declaration. Ms Robison said, in circumstances where someone wanted to de-transition, the simplest and best way would be to submit another application. She explained that "the offence is about knowingly making a false statutory declaration. If, at the time, you intended to live permanently in your acquired gender, you would not be committing an offence if for whatever reason your intention to do so subsequently changed".⁷

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.**

Removal of power to introduce fee and other

powers

375. The Bill provides powers for the Registrar General to make regulations on, for example, the form and manner in which GRCs are to be made and the information to be included in an application. It does not include a power for the Registrar General to impose a fee for applications under the GRA.
376. The Policy Memorandum states that—
- ” The Scottish Government is of the view that financial barriers should not stand in the way of applicants for gender recognition and that therefore no fee should be charged. The provision in the draft bill conferring power on the Registrar General to prescribe a fee has therefore been removed before introduction.
377. Many of those in support of the Bill including LGBT organisations, Amnesty/JustRight and Zero Tolerance welcomed this provision. They said that it would remove the financial barrier and make it more accessible to those with socio-economic disadvantages. In their written submission, Scottish Trans/Equality Network stated “Legal recognition of your gender identity is a human right, and we do not think that anyone should incur a fee for accessing their human rights”.
378. Some submissions said that a nominal fee should be maintained for reasons such as, covering the administrative costs or to allow for some further reflection. Fair Play for Women commented that the UK Government already reduced the fee from £140 to £5 and questioned what evidence there is to show that £5 remains prohibitive.
379. MBM and FWS referred to the UK Government’s reduction of the fee from £140 to £5 and said it had an impact on application numbers. FWS noted that since the fee reduction there has been a: “...72% increase in GRC applications in the following three-month period”.
380. MBM also argued that the Scottish Government’s estimate of the increase in applications to obtain a GRC was poorly evidenced. They referred to a Freedom of Information response that showed the Scottish Government has not modelled the “potential impact of removing the medical diagnosis on the number and nature of GRC holders.” The Financial Memorandum to the Bill indicates that the Scottish Government based its estimates of application numbers by comparing jurisdictions with similar systems for legal gender recognition and comparative population sizes.

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

Reporting duty

382. The Bill makes provision for the Registrar General to report annually on the number of GRC applications and the number of GRCs granted. This is a new provision that was not in the draft bill. The Cabinet Secretary said that the aim with this provision was to monitor the impact of changes with this legislation.

383. The UK Government's Ministry of Justice publishes quarterly statistics on GRCs. However, it only provides data for the UK as a whole. To date, 6505 GRCs have been granted^{xxiii}.
384. The [UK Government's Ministry of Justice](#) publishes quarterly statistics on GRCs. It publishes GRC data on:
- Applications received and disposed of by the Gender Recognition Panel, by outcome
 - Applications received by the Gender Recognition Panel, by type of track
 - Applications disposed of by the Gender Recognition Panel, by type of track and outcome
 - Gender at birth, year of birth and marital status for full Gender Recognition Certificates granted
 - All interim certificates converted to full certificates, by time taken.
385. FWS stated that this duty falls far short of the data published by the UK Government. MBM considered it should follow the Ministry of Justice approach, as a minimum.
386. In written evidence, the SHRC said it previously made a strong recommendation that the Scottish Government should commit to reviewing the Act. This will allow an assessment of how the legislation is working in practice. This is considered necessary, in tandem with annual reporting.
387. They also recommended post-legislative scrutiny which could address concerns about any negative impacts arising from the Bill. They said—
- ” One of the functions of that would be to identify whether any of those concerns, or evidence to support them, has materialised. The fact that we have not found such evidence so far does not mean that it does not or cannot exist, so we think that there would be an important role for a post-legislative review in considering whether any of those concerns are playing out, or whether it is more, as Victor Madrigal-Borloz said, that they have not actually transpired.

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.**

xxiii [Tribunal Statistics Quarterly: January to March 2022 - GOV.UK \(www.gov.uk\)](#)

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.**
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.**

Wider issues arising in evidence

393. The Committee heard evidence on a number of issues that do not relate directly to the Bill and are not directly associated with provisions in it. Nonetheless, in many such instances, there are concerns which require to be addressed or on which further clarification is needed. These issues are considered below:

- EHRC's change of position on gender recognition reform;
- Impact on women and girls;
- Impact on prisons;
- Trans inclusion in sport;
- Impact on data collection;
- Non-binary recognition; and,
- De-transition.

EHRC's change of position on gender recognition reform

394. Despite previously indicating support for proposed reform of the GRA to both the Scottish Government consultations and the UK Government consultation, the EHRC has now changed its view.
395. In a letter to the Cabinet Secretary on 26 January 2022, Baroness Falkner, Chair of the EHRC called for more detailed consideration before any change is made to the provisions of the GRA. The letter refers to concerns from "some lawyers, academics, data users and others" about the potential implications of changing the current criteria for obtaining a GRC.
396. There has been further correspondence between Baroness Falkner and the Cabinet Secretary. This includes a letter on [21 February](#) where Ms Robison sought "a more detailed explanation of the evidence base, consultation activity and legal considerations that informed EHRC's significant policy change on gender recognition reform." After receiving a response, the Cabinet Secretary wrote to the EHRC on [19 May](#) again seeking information on the evidence base for the EHRC's change of view. In oral evidence, the Cabinet Secretary confirmed that correspondence continues. EHRC also provided supplementary evidence on which the Scottish Government are seeking further detail.
397. On 24 February 2022, SHRC issued a [statement](#), clarifying the mandates of the SHRC and the EHRC and confirmed SHRC's unchanged position of support for reform of legal gender recognition in Scotland, which is based on its human rights analysis of the Scottish Government's draft bill proposals.
398. In oral evidence, the SHRC told the Committee that they have not been able to identify an equalities law analysis or a human rights analysis that underpins the

EHRC position and had sought further detail from the EHRC. They said–

” if you are a human rights body and you oppose a proposed piece of legislation that would further the rights of a marginalised group, there is a considerable burden on you to set out clearly the basis for that.

Source: Scottish Parliament, 2022³

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.**
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.**

Impact on women and girls

402. Much of the debate in opposition to GRA reform has focused on the potential impact on women and girls, that it might pose a threat to women-only spaces such as toilets, changing rooms, refuges and hospital wards potentially being open to abuse by men who wish to gain access. More broadly, there are concerns that it could undermine measures aimed at promoting female representation by allowing trans women to take up places on all-women short lists, on public boards, or in sport.
403. Some witnesses indicated that there is no comprehensive evidence to show that legal gender recognition based on self-declaration negatively impacts women and girls. Others argued that just because there is a lack of research evidence does not mean there has been no negative impact. Evidence from Ireland suggests that concerns of a negative impact has only been raised recently rather than when the system was introduced and later reviewed.

Equality Act 2010: Separate and single-sex exceptions

404. Under the Equality Act 2010, it is unlawful to discriminate because of the protected characteristic of sex. However, under [Schedule 3, para 26 and 27](#), there are a

range of exceptions which allow for separate and single-sex services. These exceptions will not change if the Bill passes.

405. Under [Schedule 3, para 28](#), service providers can provide a different service or exclude a trans person from the service who falls under the gender reassignment definition (someone who is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex. This applies whether or not the trans person has a GRC. This exception will not change if the Bill passes.
406. However, the EHRC's [Equality Act 2010 Code of Practice: Services, public functions and associations](#), para 13.57, explains that–
- ” If a service provider provides single- or separate sex services for women and men, or provides services differently to women and men, they should treat transsexual people according to the gender role in which they present.
407. Service providers can exclude trans people from separate or single-sex services, but this will only be lawful where the exclusion is a proportionate means of achieving a legitimate aim.
408. Following calls for further guidance on these exceptions, and how they might practically be applied, the EHRC published guidance on '[Separate and single-sex service providers: a guide on the Equality Act sex and gender reassignment provisions](#)' in April 2022.
409. The guidance provides examples of a legitimate aim. This could be “for reasons of privacy, decency, to prevent trauma or to ensure health and safety. You must then be able to show that your action is a proportionate way of achieving that aim”.
410. The guidance also states the service providers must balance the impact on all service users and show there is a sufficiently good reason for excluding trans people or limiting or modifying their access to the service.

Equality Act 2010: Other exceptions

411. The Equality Act 2010 includes further exceptions.
412. Sport - [section 195](#) allows for restrictions on trans people participating in sport to be imposed if necessary to uphold fair competition or the safety of competitors. This provision will not change if the Bill passes.
413. Occupational requirements - [Schedule 9](#) sets out exceptions in relation to work.
414. Paragraph 1 of Schedule 9 provides a general exception to what would otherwise be unlawful direct discrimination, including a requirement that the person not be a trans person, where there is an occupational requirement due to the nature or context of the work, and this is a proportionate means of achieving a legitimate aim. These provisions will not change if the Bill passes.
415. There has been some concern raised about whether [section 22 of the GRA](#), on prohibition of disclosure of information, could make it harder to use the general

occupational requirement exception.

416. Section 22 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 which relates to a person who has made an application for a GRC and which concerns that application or, if the application is granted “otherwise concerns the person’s gender before it becomes the acquired gender”.
417. [The Gender Recognition \(Disclosure of Information\) \(Scotland\) Order 2005](#) sets out additional circumstances where the disclosure of protected information does not constitute an offence. These concern disclosure for the purpose of obtaining legal advice ([article 3](#)), religious purposes ([article 4](#)), disclosure for medical purposes ([article 5](#)), disclosure by or on behalf of a credit reference agency ([article 6](#)), and disclosure for purposes in relation to insolvency or bankruptcy ([article 7](#)).
418. The Scottish Government’s consultation on the draft Bill said it would consider whether further exceptions should be made. However, the Cabinet Secretary responded to a question on this during the Ministerial Statement on 3 March 2022 and said there would be no change to the general occupational requirement exception. In oral evidence, this was confirmed by the Cabinet Secretary. Scottish Government officials said “On the section 22 exceptions, it is probably true that we are generally open to conversations about whether additional exceptions are needed in section 22. However, our view is that this Bill would probably not be the best way to do that, given that it is focused on the process for obtaining a GRC, not on the effect of a GRC”.⁷
419. The Scottish Government’s 2019 consultation on the draft Bill covered the range of exceptions in the Equality Act and concluded that reforming the GRA would not adversely affect women’s rights.
420. MBM state that further work in this area is needed. They argue that the Bill widens the effect of section 22 because it covers more people including those from overseas. In their view, the Bill extends the application of section 22 privacy protections for two years from application, whether or not the application proceeds or is successful and that the detail of that effect should be reviewed.
421. A written submission from Disclosure Scotland explained the process for disclosures in Scotland, where employers vet potential employees working with vulnerable groups and children. The submission stated—

” The Disclosure Scotland process protects an individual’s right to a private life. It does not afford the opportunity for any party to conceal any past criminal behaviour or any names the person may have previously used. Any criminal history information, including convictions and other relevant information, that the law says must be disclosed will be, even if that information predates the current name or gender of the applicant. This is the case whether or not a person has changed their gender or name. No impact is anticipated on Disclosure Scotland resulting from the changes proposed in the GRR Bill. Gender is not a category we use to carry out vetting checks. Our systems are already designed to find people who have changed their names for any number of possible reasons.

422. The Committee heard from LGBT organisations that the Bill would have no impact on the existing provisions in the Equality Act 2010. This view was shared by NUS Scotland, the Children's Commissioner, SHRC, Leap Sports Scotland, sportscotland, Engender, Rape Crisis Scotland, Amnesty/JustRight Scotland and the Church of Scotland and others.
423. Colin Macfarlane of Stonewall said "As far as we are aware there have been no negative impacts from introducing systems of self-declaration in other jurisdictions around the world and no diminution of rights for women and girls. The proposals in the Bill are about de-medicalising an intrusive process and allowing trans people to have a simpler system of self-declaration. Nothing changes around single sex spaces, single sex exemptions or the Equality Act 2010".²
424. The Children's Commissioner agreed "We should have a lot of discussion about strengthening protections against individuals who are a risk rather than implying a whole category of people poses a risk and restricting their rights"⁹. He advocated close monitoring to ensure there are not unintended consequences or impacts.
425. Catherine Murphy of Engender said—
- ” Polarisation and inaccuracies in some areas of public discourse around this Bill have led to a perception that the Bill and the broader aims of trans inclusion and rights are fundamentally in conflict with the aims of women's equality. Engender does not share or uphold that view. We are confident that reform will not have an adverse effect on the capacity of the Equality Act 2010 and the United Nations Convention on the Elimination of All Forms of Discrimination against Women to protect women from discrimination and advance women's equality and rights. We do not believe that women's rights and trans rights are in competition with each other. We see their paths to equality as being deeply interconnected.
- Source: Scottish Parliament, 2022⁴
426. Many witnesses emphasised that, in Scotland, most systems already operate under a process of self-declaration. Naomi McAuliffe of Amnesty said "People are not asked for a GRC to access most services, go into toilets or changing rooms or to access various other single sex spaces. The international picture is similar to the UK. There are already safeguards and opt outs on a single sex basis but those exemptions must be justified on the basis of stringent criteria".⁴
427. This was a view echoed by Sandy Brindley of Rape Crisis Scotland who explained that single-sex services like theirs have never required a GRC nor asked someone to provide any proof of their gender. She told us their service had been trans inclusive for 15 years. She said "I can reassure people that the service is very private and confidential. It is unlikely they would see anyone except their counsellor or support worker".⁴ She said that their responsibility was to be inclusive of anyone who needs them which includes the trans community who are also at risk of sexual violence.
428. The EHRC explained the interaction between the GRA and the Equality Act—

” Broadly, the relationship between the 2004 Act and the 2010 Act is that the gender recognition certificate has the effect of changing how someone’s sex is recognised in law, including under the sex discrimination provisions of the 2010 Act. A trans woman with a GRC would be treated as a woman for the purpose of the sex discrimination provisions of the 2010 Act. A trans woman without a GRC would be legally male under those provisions. That is how the two pieces of legislation interact.

Source: Scottish Parliament, 2022²

429. They also said the “evolving jurisprudence” around sex and gender could have implications for “proposed changes on policy making, data collection, sport, sex-based rights issues and so on”.²

430. However, the EHRC is “...not aware of any legal cases about the provision of single-sex services that have turned on the possession or not of a gender recognition certificate”.²

431. In written evidence, the SHRC referred to the two Court of Session cases that some witnesses raised in evidence. These have considered the terms ‘sex’ in the context of the census, and ‘woman’ in the context of legislation for gender representation on public boards.

” Both Court of Session cases considered the application of the terms “sex” and “woman” in specific contexts. Both were very clear that they did not address the impact of the GRA. Neither provides a basis for analysing concerns about the impact of GRA reform. Rather, we consider that the effect of these cases is to demonstrate the nuance of which the law is capable – allowing for trans status to remain legally relevant where necessary, even once a GRC has been granted.

432. In oral evidence Cathy Asante of the SHRC explained—

” There has been concern about the recent cases being contradictory or confusing. I believe that the cases show that the law already has sensitive and careful ways of applying concepts of sex and gender. Where it is necessary for a person’s trans status to be taken into account such as in the public boards case, the law is capable of accommodating that. Where it is not relevant, as in the census case, a person’s trans status will not be taken into account in law. Neither case was about whether a person had a GRC. The court made it clear that that was not a determining factor in either of the conclusions it arrived at.

Source: Scottish Parliament, 2022³

433. The Committee heard from a range of legal experts who each offered different opinions on the interpretation of ‘sex’ in the Equality Act.

434. Naomi Cunningham said there are three views of the meaning of sex in the Equality Act. The first is that it is self-defined, the second is that it is legal sex which is biological sex except when modified by a GRC and the third is that it is based on biological sex.

435. She told the Committee “The protection from gender reassignment discrimination

does not provide protection from exclusion from services and spaces that are provided for the opposite sex. There is a wide belief that if you are trans you are entitled to use services that are provided for the opposite sex. There will be an expectation created and bitterly fought litigation on these questions. My expectation is that the final outcome will be that all those people who have been given a GRC and who had something they much wanted will be disappointed".⁵

436. The result of the Bill, she concluded, will be the creation of a greater level of uncertainty both as "to the nature of the new GRC holders, we simply do not know who they will be, and the size of that group".⁵

437. Karen Monaghan explained the concept around legal sex which includes trans women with a GRC. She said—

” If a person has a GRC, they are to be treated for all relevant purposes as being of the legal sex that is recorded on their GRC. If a trans woman with a GRC seeks to access a women-only service they cannot be excluded because they are legally female unless their exclusion or a policy excluding trans women can be justified. That requires a proportionate and legitimate aim be shown. The starting point is that if you do not have a GRC you can be lawfully excluded. If you do have a GRC you cannot be lawfully excluded unless it is justified.

Source: Scottish Parliament, 2022⁵

438. Robin White's written submission referred to the recent guidance by EHRC on the operation of single-sex spaces and services. She described it as a "shockingly poor piece of work" and called for it to be withdrawn. Her principal concerns are that the guidance is not statutory and does not make that plain nor explain the importance of that, it was put in place with no apparent consultation, it contradicts existing statutory guidance in the statutory code, and continues a pattern of trans exclusory behaviour by the EHRC.

439. The SHRC said that it has looked in detail at the potential impact of the Bill. They said that—

” Obtaining a GRC affects highly personal aspects of life such as birth, death, marriage and obtaining benefits. It does not affect the way that an individual goes about their daily life and it therefore does not affect how they access spaces, toilets, changing rooms, showers or gym classes, whether in school, at work or when out shopping. It also does not affect access to single-sex services or separate-sex services and it does not affect the protection that a person has against discrimination on account of their gender identity or gender reassignment. They have the same protection at work, in school and in society at large whether or not they have a GRC.

Source: Scottish Parliament, 2022³

440. They said a human rights test should be applied so that any potential risks can have an appropriate response—

” When we are talking about concerns, we have to be that concrete; if we are not that concrete, we cannot go on to the next part of the test to find out what is a proportionate response. That is perhaps why, in this discourse, we are often going from very generalised concerns to the suggestion that the Bill should not proceed.

We need to identify a very specific harm and accept that it is objectively evidenced.

441. The UN Independent Expert supported this view. They said “it is not supported by evidence that there is any systemic identifiable pattern or risk in the very nature of the situation that is created by legal recognition based on self-identification”.³
442. From an international perspective, Professor Cowan said “There is no evidence from other jurisdictions that there is a sudden mad rush of thousands of people to get GRCs. My understanding of the Equality Act is that it does not matter whether someone has a GRC or not they can still be excluded from a single sex space because it does not say in the Equality Act that someone must have or not have a GRC in order to be excluded”.⁵
443. She referenced research from the University of California which looked at reported violence and “indicates that there is no connection between opening up anti-discrimination laws and reports of violence in those spaces”.⁵ Those with lived experience were not persuaded that criminals go to the trouble of applying for a GRC for nefarious reasons.
444. Senator Doherty, Leader of Seanad Éireann also gave evidence to the Committee. She said “The notion that women now have to fear a man dressing up as a woman and getting a gender identity certificate so that he can threaten women in a dressing room or single sex toilet is fanciful when you recognise that in the Irish state, women have safety issues because of male violence. A man who wants to be violent towards a woman does not need to go to the extent of changing his gender through a certificate. It is a false argument”.⁸
445. One witness explained that trans people are very aware and considerate of single-sex spaces and, in relation to women’s refuges, measures are already in place where assessments are made on the basis of the person, not on whether they are trans. They did not think there would be a huge increase in numbers making applications for a GRC.
446. A contrasting view was put forward by one witness who had transitioned. She said “If there is any loophole in safeguarding, those on the lookout will take advantage of it. Most men won’t abuse this loophole but some will” and this would have consequences for the whole trans community in that “trans people will suffer as all of us will be treated with suspicion”. She said that the GRA was designed for a small group of around 5000 people who had been through a meaningful process of gender reassignment but that now “half a million people identify as trans; you are dealing with a larger and different group of people”.
447. In a supplementary submission, MBM stated that there is no fully settled position on the relationship between the GRA and the Equality Act. They reference the differing opinions expressed to the Committee by legal experts each of whom had different

views on the relationship between the two Acts and whose opinion differed from the view of the Cabinet Secretary. In their opinion, the SHRC and the Scottish Government do not understand “that what sex a person is under the Equality Act will matter for the operation of that Act, due to the material difference between being able to bring a claim under the Equality Act 2010 by direct rather than indirect discrimination”.

448. MBM also did not accept the Scottish Government’s position that there is no evidence of an impact on women and girls in other jurisdictions. They argued that the Scottish Government do not hold information on single-sex spaces in other jurisdictions and that many jurisdictions who have adopted self-declaration have a poor record on women’s rights. They also stated that there appears to be no systematic impact monitoring or evaluation of the effects on women and girls as the focus of discussion has been on evidence of abusive behaviour rather than wider impacts for example loss of confidence in using single-sex spaces. They said sexual offending is under reported and the fear of being accused of transphobia may further reduce those who are willing to report an offence against them.
449. In oral evidence, the Cabinet Secretary emphasised what the Bill would and would not do. Ms Robison said “The Bill will not change the protections that are set out in the Equality Act 2010. It will not change the exceptions of the Act that allow single sex services to exclude trans people where that is a proportionate means of achieving a legitimate aim. It will not change or remove women’s rights or make changes to how toilets and changing rooms operate. It does not redefine what a man or a woman is or change or expand trans people’s rights. It will not change the effect of a GRC and will not change the policy or laws in England or any other country” (28 June col 4). The Cabinet Secretary further reiterated the points made by the SHRC that no body of evidence from countries who have adopted self-declaration points to “bad faith actors” using the process to abuse women and girls.
450. On access to single-sex spaces, Ms Robison referred to the exceptions provided by the Equality Act 2010, stating “Other spaces such as toilets and changing rooms which have received a lot of attention do not require and have never required a GRC. As people in the trans community go about their daily lives, they will use or not use those spaces. If that had been an issue, we would probably have been aware of it before we got to the confines of the debate around this Bill”.⁷

Self-exclusion

451. The Committee heard from some witnesses concerned that some women may simply “self-exclude” from services as a result of the Bill or are already doing so. Those likely to do so may have broad concerns about sharing a space with a trans women who may be biologically male, or for reasons associated with their faith. Groups most affected are likely to be those already marginalised in society.
452. Susan Smith of FWS told the Committee that women would start self-excluding from, for example, a gym as they could not guarantee that “women only sessions”, held on the basis of self-declaration, would truly be women only and, as a result, women, were being “pushed out of the public sphere”. She said this would “hurt the most vulnerable women from ethnic minorities and victims of abuse”.⁴

453. When asked about self-exclusion, Sandy Brindley of RCS said “Our services have been trans inclusive for 15 years, and this issue has come up very recently, probably triggered by the debate around the bill. The number of survivors and women who use our services increases every week—there has definitely been no reduction in demand”.⁴
454. The SHRC said they had not seen any objective evidence for that but that it would not be affected by whether someone has a GRC or not.
455. However, Naomi Cunningham thought this is an area which had been insufficiently examined. She told the Committee that the Bill was liable to create a situation in which women from particular faith groups are excluded from public life and who may no longer go to the swimming pool, the gym or the library as they cannot be confident that accessing changing rooms or toilets are single-sex spaces.
456. She suggested a solution may be to provide fully private toilet facilities for everyone with both unisex and single-sex available. “If we did that, sex would not arise. There could be a third space”.⁵
457. The issue of potential litigation was also raised. MBM said that if you have a change in sex in law, it will be much easier to bring a direct discrimination case and providers will take that into account when they set their policy.
458. Lucy Hunter Blackburn said employers would look at what represents the bigger risk, the direct discrimination case brought by a trans person or the indirect discrimination case brought by a Muslim woman saying they are not able to use that space. She said “The direct discrimination case will worry providers more”. She added “If the GRC has that effect on the Equality Act 2010 which is contested, it is a messy situation”.⁴
459. The Cabinet Secretary reiterated SHRC’s position that, internationally there has been no evidence of widespread self-exclusion. Ms Robison said “None of the protections in place are affected by this Bill in any way whatsoever” and added that “GRCs are not necessary for accessing areas such as toilets and changing rooms. Trans women and trans men have been using these spaces for many years”. However, Ms Robison was open to reviewing these concerns, stating “If the Committee feels that having a review that is able to take stock of all of these issues is important and recommends doing that it is something that I would look favourably on”.⁷

Religious sensitivities

460. The impact the Bill could have for certain faith groups was explored both in broad terms and more specifically, for example for accessing medical treatment. The Committee heard that this was an area where tensions may arise between rights to freedom of faith and rights for trans people to self-declare. Concerns had been raised by some minority ethnic groups and some religious groups as to any impact self-declaration may have to request a female doctor to prevent them from breaching aspects of their faith.
461. Catherine Murphy of Engender stressed that this was the current situation with

accessing doctors and the Bill would not change that. While acknowledging that further work could be done on the issue, she told us “in all our public services we need to work to ensure we have more inclusive, sensitive public services that meet the needs of a wide range of minoritized groups but I want to underline that is the current situation in relation to accessing doctors and it will not substantively change if the Bill passes”.⁴

462. This view was shared by Naomi McAuliffe of Amnesty who pointed out that health professionals are already dealing on an everyday basis with people who have certain views that affect who they wish to be treated by. She said “The right to freedom of faith is also about freedom of thought so, for example, someone with racist views may not want to be seen by a doctor of colour. The NHS will have procedures in place for such situations”.⁴
463. Sandy Brindley of Rape Crisis Scotland agreed. She explained that there are good practice examples from specialist organisations that work with Muslim women in Scotland as to how to provide culturally sensitive services that meet the needs of women. She said “It is absolutely possible to do that by looking at how services are delivered. Crucially, those discussions are not impacted by a GRC”.⁴
464. Fraser Sutherland of the Humanist Society added that the NHS has a long history of being aware and sensitive to individual’s religious beliefs. He said it has guidance on treatments such as blood transfusions and there should be no difficulty in the NHS having the same for this issue. He said “It is important to look at how we strengthen protections against individuals who are at risk without implying that a whole category of people should have their rights restricted in order to achieve that”.⁶
465. One witness, whose organisation represents women of faith, welcomed the reforms in the Bill but told us that women she represents suffer from worse health outcomes and are more likely to experience domestic abuse and attempt suicide so it was important to consider these conflicting rights.
466. She voiced concerns that these women already struggle to speak up for their rights and are unlikely to say anything in a medical setting as they are already worried as to how they will be perceived. She feared they may withdraw from a service altogether if they have concerns.
467. She believed that with self-declaration, more trans women are likely to use women’s toilets but she said there is a “balancing act” as trans women may feel uncomfortable using a male toilet. She echoed views that more gender-neutral toilets should be made available “so that women, men and trans people feel comfortable”.
468. The Committee asked Senator Doherty how Ireland managed these balancing rights. She said “each person has to be respected and treated with dignity and the person who has religious beliefs has a right to be treated by a woman if she wants to be treated by a woman. There is nothing wrong with asking to be treated by a female woman doctor. There is something distinctly different between a woman and a trans woman because a trans woman was born physically a man and I think that any woman presenting to a doctor in that scenario has the right to know that”.⁸

469. When asked about these concerns, the Cabinet Secretary told us that the patient rights charter sets out the preferences, culture, beliefs, values and level of understanding that will be taken into account and respected when using NHS services. This means that people's wishes will be accommodated where possible. Moreover, she said the EHRC published statutory codes of practice and guidance to help employers understand the relevant issues including the religious issues raised.
470. Ms Robison explained that there is also the occupational requirement exception which can provide that a person appointed must not be a trans person where there is an occupational requirement, due to the nature or context of the work. She added "There is a lot of what might be described as safeguards in this area" and that "Most people, particularly in caring professions, would not want to do anything other than respect the person's wishes. The aim in the NHS is to ensure that people's wishes are respected as far as possible."⁷

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.**

Impact on prisons

474. The Committee heard evidence on what impact, if any, the Bill's proposals would have on decisions taken on where to house transgender people in Scotland's

prisons. The Committee took evidence from both Keep Prisons Single Sex (KPSS) and the Scottish Prison Service (SPS) on this issue.

475. The SPS has had a [policy on trans prisoners in place since 2014](#).
476. It allows for trans prisoners to be accommodated based on how they self-identify their gender, but this must follow a risk-assessed gender reassignment case management conference.
477. Trans prisoners are accommodated according to the outcomes of the risk assessed gender reassignment case management conferences and these decisions are not dependent on them having a GRC.
478. In oral evidence SPS said—

” in our gender identity and gender reassignment policy, we take an individualised approach—in other words, things are taken on a case-by-case basis. As members will be aware, the divulging of a GRC is completely voluntary. Although we would ask people the question, they are under no obligation to share that information with us.

Source: Scottish Parliament, 2022⁶

479. As to decisions as to where people are housed, we heard this is based on a consideration of a range of issues, one of which is a GRC, if declared. Other issues include the wishes and welfare of the person concerned; a consideration of those who might live around them; the placing of the person in the prison estate and the appropriateness or not of cell sharing; and their access to services in prison.
480. SPS told the Committee that, as of 31 March 2022, there were 16 transgender people in custody, compared with a prison population of around 7,400, and that—

” 75 per cent of transgender males are held in the female estate and 25 per cent in the male estate, while with transgender women, the split is 50:50—in other words, 50 per cent are held in the female estate and 50 per cent in the male estate.

Source: Scottish Parliament, 2022⁶

481. They told us it is difficult to predict if more prisoners will apply for a GRC if the Bill is passed but do not anticipate large numbers and are confident that they would be able to respond to any increase.
482. A [review was announced in 2019, and then there has been a delay due to COVID](#). However, the SPS has been undertaking research and more recently, carrying out engagement including a call views on what should be retained or amended in the policy. The current timeline is to publish in summer 2022.
483. SPS were able to provide some observations on the review to date which were that the spirit of the review has been positive, that steps have been taken to be more transparent with quarterly reporting on the trans population, and that everyone they have spoken to wants people's rights respected with risks managed effectively. The divergence comes from how that can be achieved.
484. KPSS are opposed to the Bill and have concerns both of the impact of it on women

in prison and on data collection. It does not agree that in respect of data collection or service provision, sex registered at birth should be overwritten by legal gender, gender assignment or self-declared gender.

485. In oral evidence, Dr Kate Coleman of KPSS raised concerns about the legal implications of prisoners who are born in Scotland and are housed in the prison estate in England and Wales being able to obtain a GRC with a reduced criteria to those born in other areas of the UK. She argued there is the possibility that legal challenges will be made by non-Scotland born prisoners because it would change the operation of the Ministry of Justice’s prison policy by introducing differential treatment based on place of birth. She said—

” The Scottish Prison Service’s “Gender Identity and Gender Reassignment Policy” is currently under review and may well be revised to also give priority status, as it were, to GRC holders. Policy decisions that refuse to allocate and manage GRC holders on the basis of their acquired gender might be subject to challenge, including in the courts. We have certainly seen that south of the border, in the English courts.

Source: Scottish Parliament, 2022⁴

486. Her view was that, while SPS policy currently operates on the basis of the gender in which the prisoner currently lives with no preferential status given to those with a GRC, there have been three policy revisions south of the border by the UK Government’s Ministry of Justice. The direction of movement therefore is moving away from allocation on the basis of self-declared gender identity and towards making decisions that treat those with a GRC as if they are of the sex that corresponds to their acquired gender. Her concerns are that Scotland may adopt a similar approach. She said “The ability to make flexible case by case decisions which the SPS claims to be able to do is removed when you privilege GRC status and that presents a risk”.⁴

487. Lucy Hunter Blackburn of MBM agreed. She explained that even if SPS revised its policy to keep itself “GRC blind” it remains vulnerable to legal challenge as the number of people with GRCs increase. She said we should look at data from south of the border and be “wary of it”. MBM were not persuaded that the current approach taken in Scotland would be robust enough to withstand legal challenge or the increased risk of legal challenges.

488. While acknowledging it is not presently an issue because the threshold for a GRC is high and prisoners require a medical diagnosis, she argued that once self-declaration is adopted, it will be much more accessible. She argued that there is a solution—

” It is one of the easiest things to fix. The Bill could be amended to say that a GRC is not effective in prison allocation decisions. That would leave things back where we want them to be—in the hands of the people who make those decisions. It is a relatively fixable part of the Bill.

Source: Scottish Parliament, 2022⁴

489. In oral evidence, KPSS spoke of their concerns about the cross-border effect of the Bill and said “there are urgent questions to be asked about the status of confirmatory GRCs throughout the United Kingdom, and the limits of automatic

recognition of overseas GRCs".⁴

490. SPS responded to concerns about individuals making an application for a GRC for nefarious purposes, for example, choosing to identify as trans in order to be housed in the female estate. James Kerr told us—

” Yes, that is possible but the GRC is only one aspect of the consideration that we would give to the care and placement of that individual in custody. I am confident, and we anticipate that the outcome of the review will be that our individualised, multidisciplinary, open case conference, risk assessment approach will still be able to respond to that. Risk assessment is a well-trodden path for the SPS and we use a number of factors in placing and managing people in prison.

Source: Scottish Parliament, 2022⁶

491. Further, he explained that SPS was engaging with other prison services as part of their review which included looking at international experiences to see what it could learn. He told us that anecdotal evidence of the lived experience of people in their care is that the individualised approach is working well.
492. In supplementary evidence, SPS confirmed that it was not aware of anyone in their care who has requested a GRC, as individuals are not obliged to advise SPS if they have requested a GRC or if they hold one. They also clarified that individuals can currently obtain statutory declarations for a variety of reasons whilst in custody including declaration as to parentage by a father or a change of name.
493. In response to concerns, the Cabinet Secretary emphasised that, whether or not someone has a GRC, the SPS already places people in the most appropriate estate, whether that is for their own safety or for the safety of others.

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.**
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.**

Trans inclusion in sport

497. One of the wider issues raised by some during scrutiny related to trans people's participation in sport. A key focus of the debate is whether trans women athletes should compete in women's sport, given the balance of inclusion, sporting fairness and safety.
498. Trans women have to follow a number of rules to compete in specific sports, which in some cases include, for example, the lowering testosterone levels to a certain amount, for a set period of time, before competing.
499. However, there are concerns that trans women retain a biological advantage from going through male puberty that is not addressed by measures such as lowering testosterone. Sports, at various levels, have been encouraged to come up with their own policies suitable for each sport.
500. In 2021, Sportscotland published: [Guidance on transgender participation in sport](#) which investigated the views, knowledge, and experience of hundreds of people with a lived experience in sport, including trans people. It also explored the background to current policies domestically and internationally and considered the latest scientific findings affecting the inclusion of trans people in domestic sport.
501. Two divergent groups emerged amongst respondents:
- One group believed wholly in the value of inclusion over and above anything else and that transgender people should be able to take part in sport at every level with limited to no restrictions.
 - The second group believed in what they would describe as fair sporting competition and adherence to rules which give sport validity – and therefore, they believe that transgender participation should be subject to regulation.
502. The review concluded that the views of these two groups could not be reconciled within the existing structure of sport and that the system requires a reset and fresh thinking.
503. The conclusion said–

- ” This Guidance concludes that for many sports, the inclusion of transgender people, fairness and safety cannot co-exist in a single competitive model.

Each NGB [National Governing Body] and SGB [Scottish Governing Body] should use the framework provided to define the priorities for their sport, and whether the current format of their sport will provide a focus on either inclusion or fairness (and safety where relevant). This is a choice.

Where a governing body considers that transgender inclusion, fairness, and safety are all priorities, then a model for decision making around the best options and opportunities should be developed.

Some governing bodies will need to create a mechanism whereby domestic competition can lead to an international competition pathway.

The Sports Councils will work with NGBs and SGBs in order to find the optimal outcome for their sport. Education and training in policy development will be offered to facilitate best practice and the greatest opportunities for inclusion in sport.

504. In oral evidence, Hugh Torrance of Leap Sports Scotland told the Committee it supported proposals in the Bill and that section 195 of the Equality Act addressed concerns about trans people’s participation in sport. This was irrespective of whether someone has a GRC or not. He said—

- ” That addressed concerns that the 2010 Act could override the ability of sports governing bodies to restrict transgender people. .If a sports body enacts such restrictions, it does not matter how someone identifies or whether they have a gender recognition certificate. Clearly, it was the intention of the lawmakers to recognise that the continuation of such restrictions on transgender people was necessary and to ensure a continued legal mechanism for that.

Source: Scottish Parliament, 2022⁹

505. He told us the vast majority of trans people have been taking part in sport for many years without the need for a GRC and are welcomed by other participants and team members.
506. We also heard that gender recognition certificates are not used in sports’ eligibility processes, regardless of whether or not section 195 of the Equality Act 2010 is being used.
507. Malcolm Dingwall-Smith of sportscotland said—

- ” Legislative provision currently exists to allow sports bodies to place restrictions on trans people participating in sport in certain specified circumstances if that is necessary to uphold fair competition or the safety of competitors. Those provisions are set out in section 195 of the Equality Act 2010 and they will not be impacted by the Gender Recognition Reform (Scotland) Bill. Our view is therefore that the bill in its current form would not impact significantly on sport.

Source: Scottish Parliament, 2022⁹

508. Hugh Torrance explained that a trans person’s participation in sport starts off with

them making a self- declaration on their gender which is how sports bodies would identify which category that person would enter. At no point would a GRC be requested. As to other criteria, those would be “whatever the sports body in question had outlined which might include documentation around testosterone or physique”.

509. Malcolm Dingwall Smith explained that the way in which governing bodies look at the issue will vary sport by sport. They have to look at how gender affected their sports, and in what ways, and make decisions on different elements of the sport, different levels of the sport and whether they want to take a different approach to that balance.
510. Hugh Torrance explained that many people were under the impression that trans people currently have unrestricted access to all participation categories in sport and wanted that to stop or that the Bill’s proposals would create that position. He said “Both those descriptions are clearly and demonstrably untrue”. Having examined the proposals in the Bill he said “they have not been able to find any direct impact that these reforms will have on sport”.⁹
511. For Women Scotland was not persuaded that the Bill would have no impact. In oral evidence, Susan Smith argued “All the scientific evidence is that there are physical differences between males and females. Once you make it harder to work out who has a GRC and who is genuinely male or female you make it harder to prevent people from accessing those sports”.⁴
512. This was a view shared by MBM who said that more discussion of this area was required particularly in respect of Section 22 of the GRA.
513. The Committee also received and responded to letters from Sharon Davies and Mara Yamauchi on the wider impact of trans inclusion in sport. Ms Davies believes that men and women’s sports categories should be retained so that biological females “get the same right to fair sport and the same opportunities of success as their male counterparts” and more broadly highlighted that there is a drop off in young girls in sports participation from around the age of 15. She said it is vital to maintain sport and physical activity for young females for good mental health. Ms Yamauchi voiced similar concerns stating that self-declaration would make it impossible for sports authorities to enforce single-sex sports and that only females would be impacted. She also raised concerns that girls may self-exclude from sports at an elite level as a result of the Bill.

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.**

Impact on data collection

- 519. The EHRC told the Committee that it had concerns about the potential consequences of the Bill in relation to the collection and use of data. It referred to the litigation about the census in Scotland and the census in England and Wales, where the courts came to different views on the meaning of 'sex' in the census. The EHRC said it was keen that public bodies develop public policy on the basis of good data.
- 520. The Committee heard two different academic views of how data on sex is currently collected:
- 521. Dr Kevin Guyan explained that the vast majority of public sector and private sector research exercises questions are about self-declared sex so they allow respondents to answer the questions as they wish. They are not, he said, about someone's legal sex or biological sex or the sex on your birth certificate. Accordingly, he did not see the change in position on data collection but rather a maintenance of the status quo.
- 522. When he reviewed major data collection activities which capture information on sex "including quantitative social research, reporting requirements for the public sector equality duty in the Equality Act 2010, gender pay gap reporting, crime and police records and census data. All those data collection activities follow a self-identification approach that acknowledges that individuals are best placed to describe themselves".⁶
- 523. Those in opposition to the Bill raised concerns about the lack of data regarding young people seeking medical treatment from gender identity services.
- 524. Professor Alice Sullivan disagreed with the views of Dr Guyan. She said in response—

” He was quite disingenuous there, because he tried to make out that, because we ask people their sex, so sex is self-reported, that is the same thing as gender self-ID. That is not the case. We ask people to self-report their age, but we do not tell them that they can make up whatever age they like; we ask them for accurate data. I just want to make that distinction: there is a difference between self-report and self-ID.

Source: Scottish Parliament, 2022³

525. Her view is that the unintended consequence of self-declaration is that it will cement reluctance to collect data on sex across a whole range of areas.

526. She argued that reducing the age and removing all gatekeeping meant opening up the process from a small group “suffering particular psychological distress” to a potentially much larger and more diverse group of people. That she considered, would have an impact on data collection.

527. She said “It decouples sex, biological or natal sex from legal sex for a larger group of people. We do not know how many people that will be or how they will be distributed. That means when orgs chose to collect data on legal sex rather than biological sex, the impact will be large because there will be a much larger group of people for whom those two things are decoupled”.³

528. Dr Guyan did not accept this potential outcome stating “Whether we are asking someone about work in the public sector, collecting employee data for gender pay gap reporting or asking someone to participate in a survey or research exercise, none of the questions asks what is on their birth certificate, what their biological sex is or whether they have a GRC. In my view, the reform that the Bill proposes will make no impact on how we collect data in Scotland at present”.⁶

529. The importance of administrative data for research purposes was discussed. Professor Sullivan considered that problems were arising in a number of areas and gave an example that the Government equalities office was guiding employers to exclude non-binary people from gender pay gap data. Her view was that “We cannot test the hypothesis that non-binary people are not affected by their sex in terms of their pay unless we have data on both their gender and their sex”.³

530. In their written submission, Close the Gap focussed on the impact of the Bill, specifically around gathering analysis and use of data and on measuring the gender pay gap. They said—

” It has been suggested by a small group of those who are opposed to reform that enabling trans people to self-declare will artificially narrow the gender pay gap because some men will self-identify as trans women. Although there is very little detail around this notion it is likely to be because men on average earn more than women and therefore pay data of a male employee will then be recorded as pay data for a female employee once they have identified as a trans women which in turn will have the effect of narrowing an overall gender pay gap, meaning employers will take no further action. It is Close the Gap’s view that self-declaration will not adversely affect efforts to address the causes of the gender pay gap.

531. Further concerns were raised on the collection of accurate data for health and crime. On health, Professor Sullivan feared trans people would not be called for routine screenings and the consequences could be fatal. On crime, she said “we know that some police services are recording crimes by male suspects as though they were committed by women if the perpetrator requests that. That can lead to massive bias”.³
532. Robin White disagreed stating “If a trans person has been living in their affirmed gender and they are burgled why should they have to reveal their natal sex to a police officer”. The unintended consequence may be that an individual is less likely to report a crime against them. On health considerations, she said “Frankly trans people are ready and able to deal with those (biological) differences where they impact on us and are able to speak in privacy with their doctor”.³
533. Both Dr Guyan and Professor Sullivan referred to the guidance published by the Scottish Government’s [working group on sex and gender in data](#). The working group considered what guidance should be offered to public bodies on the collection, disaggregation and use of data on sex and gender, including what forms of data collection and disaggregation are most appropriate in different circumstances.
534. The report ‘[Sex, gender identity, trans status - data collection and publication: guidance](#)’ (September 2021) said that while most public bodies are collecting and analysing data about sex or gender–
- ” these terms are sometimes used interchangeably in the questions used in data collection, and there is typically limited guidance on exactly what is being asked for. This has the consequence that in reality people answering this question may be interpreting it in different ways.
535. The Working Group said that there was no standard approach to collecting data on sex and gender identity, in Scotland, the UK or internationally. It was also clear that little data is collected on trans status or history in Scotland, and no definitive international standards for how to do this.
536. Given that there are no international standards for how to ask questions on sex and trans status they said–
- ” it is assumed the vast majority of official data is collected on the basis of self-defined sex. For example, some questions ask “what is your sex?” others ask “are you male or female?” with no guidance on how people should interpret the question”
- The guidance proposes that public bodies ask questions on both sex and trans status as standard questions.
537. The Committee also explored whether issues around data collection had materialised in countries that have self-declaration models in place.
538. Senator Doherty acknowledged that Ireland had a long way to go to learn about working with a lot of their data. Her view was that data for people who have changed their identities should be collated and acted upon. Currently, she said the only report compiled detailed the number and the identities that people have

changed from and to.

539. The only change to data collection in Ireland she said was in the census where people could be male, female or neither of the above. However, all that was collected was that someone might not see themselves as male or female “we lost the opportunity to capture how they recognise themselves. The only way that we have of knowing that is through a person going through the gender recognition act and changing their certificate”.⁸
540. Her view was that it is important in the collection of data to capture the identities of people in order to develop good policy and services. She said “I believe that if we do not recognise and capture in data sets the identities of the people that we are talking about we are not going to devise good policy and services for those people. If we accept that there are those genders, we should recognise that, name the genders, collate the data, look at the people who are servicing and the services that those particular genders need”.⁸
541. On whether trans people have fallen through the cracks on screening, Senator Doherty said “We do not have data on that. We had the opportunity that we could provide better services, but we did not capture it. I hope we will be able to do so in the next census”. She said the next census will include all genders “so that we can capture where they are in the country, who they are and what age they are. We do not have any of that data”.⁸

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.**

Non-binary recognition

545. The Committee heard from the LGBT organisations that the lack of recognition for non-binary people in the Bill was a matter of disappointment for all trans people.
546. Colin Macfarlane of Stonewall described the failure to include non-binary people as a “missed opportunity” which meant Scotland would not be in line with international best practice.
547. However, there was an understanding of the complexities regarding non-binary recognition. Witnesses welcomed the work of the working group. Vic Valentine said they would like something in the Bill that ensures meaningful progress can be made within a set period of time and “take us forward” from “a bit of an impasse”.
548. This call for a fixed time period for progress was echoed by Dr Crawford who told us that over half of the under 24 trans respondents to the UK Government’s 2018 national LGBT survey identified as non-binary—

” They are being let down by this Bill. We would like the legislation to include a requirement for ministers to review the recommendations of the non-binary working group and investigate how we can ensure that non-binary people can receive legal recognition in the timescale that was set out. In our submission we said that the maximum timescale should be five years from enactment of the Bill.

Source: Scottish Parliament, 2022²

549. Amnesty/JustRight said that a lack of non-binary inclusion leaves a significant portion of the trans population without any legal recognition.
550. However, the LGB Alliance disagreed. Malcolm Clark said there is a lack of understanding of what non-binary means. He said—

” We also have to be cognisant of the culture that young people are growing up in. As we all know, loads of celebrities are coming out as non-binary or queer—I have no idea what “queer” or “non-binary” means, so I have no idea how a 16-year-old is supposed to know.

Source: Scottish Parliament, 2022⁴

551. The SHRC said it looks forward to the outcome of the Non-Binary Working Group and its recommendations on gender recognition processes. It added that another aspect post-legislative scrutiny could consider is legal gender recognition for non-binary people.
552. The Cabinet Secretary explained the complexities the Scottish Government had faced in addressing this issue. She said “The first consultation on gender recognition reform discussed legal gender recognition for non-binary people and the extent to which it would require significant changes to devolved areas such as parentage, marriage and registration law and to reserved areas such as the Equality Act 2010 as well as requiring financial and administrative resources for implementation. It would be very complex and would require further consultation. We decided not to extend legal gender recognition to non-binary people in this Bill”.

553. However, Ms Robison said that the Working Group on Non-Binary Equality had recently made its recommendations to the Scottish Government and that these will be considered and responded to and that a report will be published shortly.
554. Since concluding the Committee's evidence taking on the Bill, the Working Group on Non-Binary Equality published its [recommendations](#) and the Scottish Government responded. Both the recommendations and the Scottish Government [response](#) were published on 13 July 2022.

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.**

De-transition

558. One issue which arose during scrutiny was whether people who transitioned but later chose, for whatever reason, to reverse that decision had been adequately considered in the Bill. Sometimes these individuals are referred to as “de-transitioners” albeit several witnesses we heard from did not support this terminology.^{xxiv}
559. Both LGB Alliance and KPSS said that de-transitioners should be considered in the Bill. In written evidence, FWS stated that the Scottish Government had ignored the needs of this group, who had requested a pathway to revoke a GRC but this had been denied. They said “Not only will those who change their mind be possibly charged with making a false declaration, but this Bill would see those who are still legally children permanently trapped in their acquired gender”.
560. In written evidence, Engender stated that cases of de-transition are low but even if that is the case “The legislation and subsequent enforcement must provide for the possibility that a person may subsequently come to a decision that the process was not the right one for them”.
561. One issue raised was whether this group could face sanctions for making a false declaration in the Bill. Engender were opposed to the inclusion of a separate

^{xxiv} As with some other disputed terms, the Committee is using this word in the report as it is used commonly in the debate around the Bill.

offence in the Bill and said they “strongly encourage the Committee to consider whether the creation of a separate, specific offence is necessary”.

562. In oral evidence, Catherine Murphy of Engender said “we want to ensure that the laws are not used against the people who choose to do so (de-transition). It is worth the Committee considering whether a duplicative criminal law is needed and what safeguards can be built into the Act”.⁴
563. This was a view shared by Amnesty International. However, Naomi McAuliffe told us they had found little evidence from other jurisdictions that this was a problem because occurrence was rare. She said “Even if it happens to one person in Scotland there needs to be a proper process for reapplying for a different gender certificate voiding one or whatever to ensure that the individual is protected from any kind of prosecution”.⁴
564. The Committee heard from two individuals who had transitioned socially and medically several years ago and had subsequently changed their minds. One witness now identifies as non-binary and one witness has subsequently re-transitioned. Neither witness liked the term “de-transitioning”.
565. They told us that transitioning was a commitment which was intended to be lifelong but then if life takes a different path than you anticipated you may decide to change direction. They said “That doesn’t mean it shouldn’t be taken seriously. Those who wish to transition do so sincerely but sometimes later on they realise how they see themselves has started to change”.
566. These witnesses supported the removal of the diagnosis of gender dysphoria as they said the relationship between trans people and doctors can be quite distrustful where information can be withheld or misconstrued. They considered it would be a positive step to remove that decision and responsibility from doctors. They said:
- ” Certainly, in the past there was a sense that you had to conform to certain gender stereotypes to be approved (for treatment). As more people socially transition and do not ever seek medical treatment it seems right the paperwork reflects the reality.
- They also emphasised that a non-binary option needs to be addressed as many people’s gender is fluid and this can change throughout people’s lives.
567. Both witnesses had undergone surgery and emphasised that having a GRC does not impact the checks that are done before someone is approved for hormones or surgery nor would it reduce the requirement for a doctor to carefully assess that the person is psychologically ready and informed.

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.**

Recommendation on the general principles of the Bill

569. The Committee would like to thank everyone who engaged with this Stage 1 scrutiny of the Bill.

570. By a majority of five to two, the Committee recommends that the general principles of the Bill be approved.^{xxv}

^{xxv} The majority who support the general principles are Joe FitzPatrick, Maggie Chapman, Karen Adam, Fulton MacGregor and Pam Duncan-Glancy. The minority who do not support the general principles are Pam Gosal and Rachael Hamilton.

Annex A

The Committee received a significant amount of written evidence from organisations and individuals during the course of its Stage 1 inquiry. Submissions which have been accepted as written evidence by the Committee have been published online: [Published responses for Gender Recognition Reform \(Scotland\) Bill \(Detailed\) - Scottish Parliament - Citizen Space.](#)

Minutes and the Official Reports from the relevant Committee meetings where oral evidence was taken can also be found online for:

- [17 May 2022](#)
- [24 May 2022](#)
- [31 May 2022](#)
- [7 June 2022](#)
- [14 June 2022](#)
- [21 June 2022](#)
- [22 June 2022](#)
- [28 June 2022](#)

Notes relating the private sessions undertaken by the Committee can also be found online for:

- [15 March 2022](#)
- [26 April 2022](#)
- [3 May 2022](#)
- [7 June 2022](#)
- [20 June 2022](#)
- [27 June 2022](#)

- [1] Scottish Parliament. (2022, June 28). Official Report of the Equalities, Human Rights and Civil Rights Committee. Retrieved from <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13858>
- [2] Scottish Parliament. (2022, May 17). Official Report of the Equalities, Human Rights and Civil Justice Committee. Retrieved from <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13752>
- [3] Scottish Parliament. (2022, June 21). Official Report of the Equalities, Human Rights and Civil Justice Committee. Retrieved from <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13837>
- [4] Scottish Parliament. (2022, May 31). Official Report of the Equalities, Human Rights and Civil Justice Committee. Retrieved from <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13796>
- [5] Scottish Parliament. (2022, June 14). Official Report of the Equalities, Human Rights and Civil Justice Committee. Retrieved from <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13823>
- [6] Scottish Parliament. (2022, June 7). Official Report of the Equalities, Human Rights and Civil Justice Committee. Retrieved from <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13806>
- [7] Scottish Parliament. (2022, June 28). Official Report of the Equalities, Human Rights and Civil Justice Committee. Retrieved from <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13858>
- [8] Scottish Parliament. (2022, June 22). Official Report of the Equalities, Human Rights and Civil Justice Committee. Retrieved from <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13847>
- [9] Scottish Parliament. (2022, May 24). Official Report of the Equalities, Human Rights and Civil Justice Committee. Retrieved from <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13770>

