

## Engender Parliamentary Briefing: Stage 3 Debate: Gender Recognition Reform (Scotland) Bill

19<sup>th</sup> December 2022

### SUMMARY:

- Engender continues to support the Gender Recognition Reform (Scotland) Bill.
- We support the overarching aims of the Bill to remove unnecessary and disproportionate barriers to legal gender recognition and realisation of equality and human rights for trans people.
- Over years of detailed consideration of the Bill, including reviewing concerns raised in public debate, and close consultation with colleagues providing services to women experiencing violence, we have been assured that the proposed reforms will not negatively impact women's equality and rights.
- This is echoed by the Commissioner for Human Rights of the Council of Europe, who in a country report on the UK last week, stated that the progressive realisation of the rights of trans people, including self ID, are not in conflict with the realisation of the rights of women.<sup>1</sup>
- This was further affirmed by the Office of the High Commissioner for Human Rights in a public statement last week raising concerns over the lack of evidence to support claims 'that allowing legal recognition of gender identity based on self-identification hinders efforts to combat violence against women.'<sup>2</sup>
- This Bill is supported by Women's and Human Rights organisations across Scotland, as set out in our joint letter sent to the UN Special Rapporteur for Violence Against Women and Girls.<sup>3</sup>
- **We urge MSPs to support the passing of this legislation at Stage 3.**

### BACKGROUND

The Gender Recognition Reform (Scotland) Bill seeks to change the process by which an individual can obtain a Gender Recognition Certificate (GRC). Engender has consistently recognised that the current process of acquiring a GRC is overly complex, expensive, and burdensome for applicants, and based on outdated and discriminatory pathologisation of trans identities. **This Bill presents a significant step forward in progressing the realisation**

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<sup>1</sup> Dunja Mijatović, Commissioner for Human Rights of the Council of Europe: Report following her visit to the United Kingdom from 27 June to 1 July 2022, 18 November 2022. Available at: <https://rm.coe.int/report-on-the-visit-to-united-kingdom-from-27-june-to-1-july-2022-by-d/1680a952a5>

<sup>2</sup> Public Statement by OHCHR. Reporting available at <https://www.bbc.co.uk/news/uk-scotland-63993415>

<sup>3</sup> Available at: <https://www.amnesty.org.uk/blogs/scottish-human-rights-blog/womens-and-human-rights-organisations-restate-support-gender>

**of human rights in Scotland and is a chance for MSPs to demonstrate their commitment to bringing Scotland in line with existing international human rights standards.**

We have previously outlined our position in detailed consultation responses to the Scottish Government, in 2020 and in coalition with several of our partners in the women's rights sector in 2018.<sup>4</sup> We have previously shown our support for this Bill in evidence provided to the Equalities, Human Rights and Civil Justice Committee's inquiry into the Bill and welcomed the support for the Bill from MSPs across the chamber for the Bill's general principles at Stage 1.<sup>5</sup>

We know that public discourse and reporting around the Bill has at times been emotive and fraught. We acknowledge that concerns have been raised regarding potential conflict between the aims of the Bill and women's safety and equality. We have considered these views in detail, looked at evidence from around the world in countries that have introduced similar legislation on self-identification, and have consulted closely with colleagues who are long-standing, leading experts on the provision of services to women experiencing violence in Scotland. After several years of work, we have concluded clearly that these concerns are not sufficiently evidenced, that the Bill does not change the status quo for women accessing services and does not represent a risk to women's equality, rights or safety in Scotland.

We are saddened that aspects of the debate have given the impression that women's and trans persons rights are somehow in conflict. Engender does not share or uphold this view. **Rather, we see the paths to equality and the realisation of human rights for women and trans people as being deeply interconnected and reliant on shared efforts to dismantle systemic barriers.**

Another feature of the debate we are concerned by relates to the inference that trans inclusion, and as such trans people, pose a threat to women's safety and experience of services. These claims are not borne out by evidence of women's experience of services or violence at the hands of men, here in Scotland or internationally. They also risk stigmatisation and associated harm to trans people; a group who are already at increased risk of discrimination and violence. **We therefore urge MSPs to reflect carefully on the progress of the Bill at Stage 3 and to avoid the arbitrary stigmatisation of trans people.**

As part of our consideration of the Bill, Engender commissioned a report on legal protection against discrimination on the grounds of sex and gender reassignment under the Equality Act 2010. This report details how the Equality Act contains exceptions which allow single-sex services to provide a different service to trans people, including those with a GRC, where there is proportionate means of achieving a legitimate aim. **As such, we**

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<sup>4</sup> Available at: <https://www.engender.org.uk/content/publications/Engender-response-to-the-Scottish-Government-consultation-on-the-Gender-Recognition-Reform-Scotland-Bill.pdf>; <https://www.engender.org.uk/content/publications/Scottish-Womens-Sector-response-to-the-consultation-on-proposed-changes-to-the-Gender-Recognition-Act.pdf>

<sup>5</sup> Available at: <https://www.engender.org.uk/content/publications/Engender-Response-to-Committee-inquiry-into-the-Gender-Recognition-Reform-Scotland-Bill-May-2022.pdf>

**are clear that the Gender Recognition Reform (Scotland) Bill will not affect the provision of single-sex services.**

**We are also confident that the GRRB will not have any adverse effect on the capacity of the Equality Act 2010** and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to protect women from discrimination and advance women's equality and human rights.

Below we have outlined key considerations for MSPs when approaching the Bill at Stage 3 and urge all MSPs to vote to pass the Gender Recognition Reform (Scotland) Bill.

## **SPECIFIC CONSIDERATIONS**

### **International Human Rights Standards**

Recently, the United Nations Special Rapporteur for Violence Against Women and Girls wrote a letter raising concerns on women's safety in relation to the GRR Bill. We actively support the principle of ensuring women's rights and safety are central in all policymaking in Scotland and we continually advocate for this as an organisation.

However, through years of close consideration of the evidence related to the Gender Recognition process, we know the concerns on women's safety raised by the Special Rapporteur are not based in the evidence on Gender Recognition or linked with any existing practice of self-ID internationally. For example, the concerns identified in the proposed Bill about the threat of fraudulent use of gender certificates are unsubstantiated. There are currently upwards of 14 countries<sup>6</sup> where gender recognition laws based on self-identification have been implemented without any evidence of negative consequences in the last decade.

Internationally, there is an evolving consensus that affirms that trans women are women - a position common to several UN Special procedures mandates and the CEDAW Committee.<sup>7</sup> In addition, international human rights law on the notion of discrimination being prohibited on the grounds of "sex" has evolved considerably to address

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<sup>6</sup> Argentina (2012), Belgium (2018), Brazil (2018), Chile(2018), Colombia (2015), Costa Rica (2018) Denmark\* (2014) [Self-ID, however: granted only after a 6-month "reflection period" at the end of which applicants must "confirm" their application], Ecuador (2016), Greece\* [Self-ID, however: married applicants must divorce because there is no same-sex marriage], Iceland (2019), Ireland (2015), Luxembourg (2018), Malta (2015), New Zealand (will enter into effect in 2023), Norway (2016), Pakistan (2018),Portugal (2018), Switzerland (2022), Uruguay (2018).

<sup>7</sup> In its General Recommendation 35 on gender-based violence against women, the CEDAW Committee cites being trans among the factors that affect women's lives and are inextricably linked to the discrimination they face. [CEDAW/C/GC/35](#), para. 12

discrimination based on the social construction of sex and gender, rather than based purely on physiological characteristics.<sup>8</sup>

Passing the GRR Bill will ensure Scotland is aligning with the progression of human rights law internationally.

## Violence Against Women and Women-only Services

We are aware of the links that have been made between the reform of the application process for a GRC and women's safety. Engender has considered the proposed reforms over many years of consultation and remains convinced that this Bill will not negatively affect women's rights and equality. This is a view we share with many national women's equality and violence against women (VAW) organisations in Scotland.

As a sector, we have a strong history of shaping world-leading national policies and legislation relating to violence against women and girls in Scotland, such as the Domestic Abuse (Scotland) Act 2018 and the Equally Safe Strategy. We have welcomed the opportunity to share our knowledge and expertise on this issue again throughout the development of this Bill.

We recognise there have been specific concerns raised about access to women-only spaces. The Equality Act 2010 contains certain exceptions which already allow single-sex services to provide a different service to trans people, including those with a GRC, where there is a proportionate means of achieving a legitimate aim. This Bill does not change these provisions, nor does it extend the role of a GRC.

Many violence against women services in Scotland already operate in a way that includes trans women while providing excellent support for all women affected by gender-based violence. These specialist services have safeguarding procedures in place which include risk assessment at the point of service delivery.

We are not aware of any specialist VAW service in Scotland which requires a GRC or sight of a birth certificate to gain access. In the 15 years that rape crisis services in Scotland have been inclusive of trans women, there has not been a single incident of anyone abusing this.

This is why we restated our support for the GRR Bill in a recent joint letter in response to the UN Special Rapporteur for Violence Against Women and Girls, alongside JustRight Scotland, Scottish Women's Right Centre, Scottish Women's Aid, Amnesty International Scotland, and Rape Crisis Scotland.<sup>10</sup>

## The Need for Reform

One of the key changes made by the Bill is the removal of the requirement for medical evidence or diagnosis of gender dysphoria. This is an important shift as the current process

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<sup>8</sup> In its General Recommendation 35 on gender-based violence against women, the CEDAW Committee cites being trans among the factors that affect women's lives and are inextricably linked to the discrimination they face. [CEDAW/C/GC/35](#), para. 12.

for obtaining a GRC is not in-step with evolving human rights norms or global health and diagnostic policy. In 2019, the World Health Organisation (WHO) removed “gender identity disorders” from the mental disorders list in the International Classification of Diseases (ICD-11) and replaced it with recognition of “gender incongruence” in the section on sexual health.<sup>9</sup> This move has been widely welcomed as a necessary step to end the systematic pathologizing and stigmatisation of trans people’s identities.

As advocates for women’s equality, we are acutely aware of the harm that disproportionate or unnecessary medical barriers can cause to realisation of people’s rights, including requirements for corroboration by medical practitioners. This is particularly true when burdensome and arbitrary medical requirements are enforced around deeply personal decisions and create barriers to people exercising self-determination and autonomy. **We fully support the removal of the requirement for medical diagnosis and evidence of gender dysphoria from the Gender Recognition Certificate process.**

## CONCLUSION

The reforms set out in the Gender Recognition Reform (Scotland) Bill have great potential to improve the lives, wellbeing and realisation of rights of trans people in Scotland. It will also bring Scotland’s gender recognition process in line with international best practice and human rights standards.

Engender strongly believes that the paths to equality for trans people and women are interconnected and dependent on shared efforts to dismantle patriarchal systems of oppression. It is only by working together, that we can build a society where we all experience equality and full enjoyment of our human rights.

**Engender urges MSPs to support the passing on this Bill at Stage 3.**

## FOR FURTHER INFORMATION

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## ABOUT US

Engender is Scotland’s feminist policy and advocacy organisation, working to increase women’s social, political and economic equality, enable women’s rights, and make visible the impact of sexism on women and wider society. We work at Scottish, UK and international level to produce research, analysis, and recommendations for intersectional feminist legislation and programmes.

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<sup>9</sup> World Health Organisation, Transgender Health in the Context of ICD-11. Available at: <https://www.euro.who.int/en/health-topics/health-determinants/gender/gender-definitions/whoeurope-brief-transgender-health-in-the-context-of-icd-11>.