

Engender Parliamentary Briefing: Stage 1 Debate: Gender Recognition Reform (Scotland) Bill

27th October 2022

SUMMARY:

- Engender broadly supports and welcomes the provisions set out in 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.
- The proposed reforms to the Gender Recognition Act 2004 will not negatively impact women's equality and rights.
- We urge MSPs to support the general principles of the Bill in the Stage 1 Debate.

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 expressed the view that the current process of acquiring a GRC is overly complex, expensive, and burdensome for applicants.

We fully support the Bill's proposed changes to the Gender Recognition Act 2004 (GRA) and 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 2018.¹ We restated this support in evidence provided to the Equalities, Human Rights and Civil Justice Committee's inquiry into the Bill and welcome that the Committee recommends, by a majority, that the Bill's general principles be approved.²

We are aware of the links that have been made between the reform of the application process for a GRC and women's equality and rights. After years of extensive consideration of this legislation, we remain convinced that the proposed reforms will not negatively affect women's equality and rights.

¹ 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>

² Available at: <https://www.engender.org.uk/content/publications/Engender-Response-to-Committee-inquiry-into-the-Gender-Recognition-Reform-Scotland-Bill-May-2022.pdf>

SPECIFIC CONSIDERATIONS

1. 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 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.³ 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.**

While we consider the requirement for an applicant to “live in their acquired gender” for a prescribed period to be arbitrary and unnecessary, **we do support the move to a statutory declaration-based system.** This has the potential to reduce the social burden of seeking “sufficient evidence” that a person has suitably “lived in the acquired gender”. This is particularly important for trans women from further marginalised groups, including those who are disabled, Black and minority ethnic, migrants, homeless or experiencing domestic abuse, who may face additional barriers in securing the necessary documentation, such as utility bills.

In addition, **Engender supports the Bill’s removal of the Gender Recognition Panel (GRP) from the GRC process** and the proposal for applications to be overseen instead by the Registrar General. This is a welcome move as the GRP model is outmoded and discriminatory. We are aware that panels have previously made decisions about a person’s gender recognition based on harmful gender stereotypes; for example, by asking about the types of toys a person played with as a child. These types of questions are irrelevant and reinforce sexist gender norms that contribute to women’s oppression and marginalisation.

2. The Interaction between Gender Recognition Reform and Women’s Equality and Rights

We know that some elements of the public discourse and reporting around this Bill have been polarised and beset with inaccuracies. This has led to a false perception that the Bill is fundamentally in conflict with the aims of women’s equality. Engender does not share

³ World Health Organisation, Transgender Health in the Context of ICD-11 <https://www.euro.who.int/en/health-topics/health-determinants/gender/gender-definitions/who-europe-brief-transgender-health-in-the-context-of-icd-11> (last accessed 16/05/22).

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.** We are confident that reform of the GRA 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.

Engender has previously commissioned a report on legal protection against discrimination on the grounds of sex and gender reassignment under the Equality Act 2010. This research demonstrated that protection from discrimination on the grounds of gender reassignment under the Act is not contingent on having a GRC and can currently be based on self-identification.⁴

Furthermore, the Equality Act contains certain 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. **Therefore, the Gender Recognition Reform (Scotland) Bill will not affect the provision of single-sex services.**

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 general principles of this Bill at Stage 1.

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.

⁴ Available at: <https://www.engender.org.uk/content/publications/ON-THE-BASIS-OF-SEX-Protection-against-discrimination-on-the-grounds-of-sex-and-gender-reassignment-under-the-EA-2010.pdf>