

Official Response

Subject: Gender Recognition Reform (Scotland) Bill Stage One Call for Evidence
Requested by: Scottish Parliament Equalities, Human Rights and Civil Justice Committee
Date: 16 May 2022
Prepared on behalf of: The Faith Impact Forum

1. The removal of the requirement for a medical diagnosis of gender dysphoria and supporting medical evidence.

Our primary approach to this question, and indeed our view on the Bill as a whole, is one which promotes the dignity and well-being of all individuals. We have a calling to pastoral care and service, and it is with this in mind that we offer a contribution to the discussion. As a Church we regularly pray for people who are marginalised, misunderstood or who are subject to prejudice and discrimination. We do not claim any particular expert medical or mental health knowledge, or special understanding of the legal implications; instead our care and concern is for how people are treated, especially those who feel vulnerable and trying to navigate an administrative process.

A great deal of time has passed since the 2004 legislation, and there have been significant developments in the public understanding of the issues facing transgender people.

The context of the 2004 legislation was very different from today; a key driver for the Act was to ensure UK compliance with human rights judgements. In the light of the past 18 years of experience, we think it is right that Scotland should consider a new approach to the process, one which puts greater emphasis on the pastoral and emotional needs of the person applying for a Gender Recognition Certificate, and which brings Scotland's process into line with that of an increasing number of other jurisdictions internationally.

We are convinced of the evidence that the removal of the medical diagnosis is needed; the understanding of the World Health Organisation that transgender or diverse gender identity is not a mental or behavioural disorder needs to be recognised. Ending the medical diagnosis will reduce stress and have psychological benefit for individuals applying. It will make things easier such as getting married or having a death recorded respectfully. The current long waiting times at NHS gender identity clinics means waiting for a diagnosis can prolong the period that someone has to wait for an outcome.

2. Provisions enabling applicants to make a statutory declaration that they have lived in the acquired gender for a minimum of three months (rather than the current period of two years) and that they intend to live permanently in their acquired gender.

The Church of Scotland does not have a single view about the time period involved. We would encourage the Committee to scrutinise this question: why three months, rather than six, or nine, or twelve etc. Why not one month? Why have a waiting period at all?

We think that this issue is linked to the minimum age eligibility proposal and we comment further on this below.

Some members of the Faith Impact Forum suggest that the idea of “living in an acquired gender” uses outdated terminology, and it is not clear what this means in practice. It may be suggested that gender identity is about how a person feels about themselves, and the expression of this identity should be up to them to decide; outward manifestations (how to dress, what name to use) might be understood by some people as indicators of gender, but we have increasingly seen how fluid and flexible these expressions have become. Is there a better form of words than “living in an acquired gender”? A trans person does not “acquire” a different identity, it is inherent in who they are; this process is about state recognition. The use of the term acquire suggests it is a choice or something new to the person. This is language taken from the 2004 Act, and we ask that consideration be given to whether it should be updated.

3. Proposals that applications are to be determined by the Registrar General after a further period of reflection of at least three months.

Generally we feel the proposal to have a three month reflection period is a good idea. It emphasises the seriousness and legal formality of the process, and should be an opportunity to reflect on the permanent nature of being granted a GRC.

We ask the Committee to explore further with the Scottish Government and other organisations providing evidence to provide a clear rationale both for the benefit of a reflection period, as well as why the duration of 3 months is the length of time which has been proposed.

It would be helpful if the Committee could seek clarification about the reflection period and process. Will there be secondary legislation prescribing how information should be communicated between the applicant and the Registrar? Will draft guidance be published while the Bill is being considered?

4. Whether applications should be made to the Registrar General for Scotland instead of the Gender Recognition Panel, a UK Tribunal.

[No response]

5. Whether the minimum age for applicants for obtaining a GRC should be reduced from 18 to 16.

We have concerns that three months living in an acquired gender is too short a period, if the eligibility to apply is extended to 16 and 17 year olds. Exploration of self and identity at this age can be fluid as people consider different aspects to their personality and gender, and that a statutory declaration to live in a new gender for the rest of the person’s life is too solemn and important an undertaking to make before the age of 18.

We question whether it is appropriate for 16 to be the age at which this, and other, activities can be undertaken, rather than at 18. We note that a recent change in England and Wales is raising the minimum age for marriage to 18, and that the Scottish Government may also be considering following suit.¹ The Church of Scotland supports a minimum armed forces recruitment age at 18. We also note that the UN Convention of the Rights of the Child defines a child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. There are reasons why 16 year olds should not be treated as adults in the criminal justice system. There will be many in the Church who would feel that application for a Gender Recognition Certificate is similarly serious and a level of maturity is expected, and that in our society it is commonly understood that reaching the age of 18 years is the point at which people become responsible for decisions.

¹ <https://www.parliament.scot/chamber-and-committees/written-questions-and-answers/question?ref=S6W-00899>

However, there are other members of the Church who would see the issue as one of prioritising the reduction of harm, and the risks for a trans 16 or 17 year old denied eligibility on the basis of their age could result in mental ill health, increasing the risk of loneliness, self-harm and suicide.

We invite the Committee to carefully consider these arguments and to explore whether applications made by 16 or 17 year olds should be followed by a reflection period which lasts until they turn 18 (maintaining a minimum reflection period of 3 months if they made the application after they were 17 years 9 months).

6. If you have any comments on the provisions for interim GRCs.

[no response]

7. If you have any comments on the provisions for confirmatory GRCs for applicants who have overseas gender recognition.

[no response]

8. If you have any comments on the removal of powers to introduce a fee.

We support the removal of the powers to introduce a fee.

9. If the Bill's intended policy outcomes could be delivered through other means such as using existing legislation or in another way?

[no response]

10. If you have any suggestions for how this Bill could be amended. If so, please provide details.

How will it be made clear to people making an application that it is a solemn and legal declaration they are making? Will they be able to access guidance and advice to fully understand what it means? For instance, when a Church of Scotland minister conducts a wedding, they will meet with the couple to talk about marriage and living together. How might all GRC applicants be given the opportunity to talk through the pastoral, emotional and legal implications of their decision?

While the inclusion of an offence to make a false declaration is necessary to deter the system from being abused, might this create a sense of fear if someone subsequently regrets their decision and wishes to revert to their original gender identity?

11. Any other comments on the Bill.

The Church of Scotland General Assembly has not considered in detail issues around transgender rights or reform of the Gender Recognition Act previously. The comments made in this response have been agreed by the Church's Faith Impact Forum, the national committee that has responsibility for making contributions to public policy making. As part of its report to the General Assembly 2022, the Faith Impact Forum has included a section on Gender Recognition Act reform. This is copied below.

Other comments:-

- Through the work of Integrity, the Church of Scotland's violence against women task group, we have particular concern for ensuring that sex- and gender- based harm and violence is tackled. We must listen to the concerns and needs of trans people, including trans Christians, whose lives

would be affected by the proposals in this Bill. A lot has been said and written about the threat that this Bill poses to the protection of women and girls. It is our understanding that there is nothing in the Bill which changes or erodes existing rights for single-sex protected spaces such as female prisons, female refuges and female survivor groups and we welcome the endorsement of these protections set out in the guidance for providers of single-sex services issued by the Equality and Human Rights Commission in April 2022.

- We acknowledge that application for a Gender Recognition Certificate will not be dependent on diagnosis or treatment, and nor will the granting of a GRC be part of a medical assessment or lead to treatment. It may be helpful for the general public to understand that this Bill is not a ‘self-id’ route to medicine or surgery.
- We would be prepared to give oral evidence to the Committee if that would be helpful.

Faith Impact Forum – Report to the General Assembly 2022

Extract:

7.6 Gender Recognition Act Reform

7.6.1 The Scottish Government have indicated that they will soon begin legislating to reform the Gender Recognition Act. The General Assembly has not considered the question before, and there is likely to be a wide diversity of opinion among the membership of the Church. The legislation is likely to lead to two debates in wider society.

7.6.2 The first is on the detail of the actual legislation, which will be about amending the process by which someone can apply for a Gender Recognition Certificate and whether or not it should be made easier for people in this situation. The second will be on much more general issues not addressed in the Bill itself, around diverse gender identities, trans rights and the acceptance (or discrimination) of difference within society as a whole. The two conversations are connected, but the Bill only deals with the former.

7.6.3 On the first debate about the Bill, the Faith Impact Forum will seek to consult and engage constructively on the issues that will soon come before Holyrood and where the views of the public will be invited. We urge individual ministers, elders and members to consider the ideas for reform themselves, and if they are so moved, to make representation to their own MSPs. The Scottish Churches Parliamentary Office will publish a briefing on the issues once the legislation is introduced.

7.6.4 The second debate around gender and transgender issues more generally has, regrettably, often become a battleground for controversy and angry disagreement. This is not a helpful atmosphere for the consideration of people’s identities and a topic that is possibly new or unfamiliar to a large part of the general public.

7.6.5 The Church of Scotland published a very helpful resource *Diverse Gender Identities and Pastoral Care* <https://www.churchofscotland.org.uk/resources/learn/publications/diverse-gender-identities-and-pastoral-care>, and recognises the need for further thought and study of the issues of human identity. The publication of the very helpful resource speaks to the matter from a pastoral care perspective, but we have been missing serious and considered theological reflection and we have not done enough to resource meaningful and serious conversations at a local church level.

7.6.6 The debates around the Bill are likely to generate controversy, and we urge prayer for those who feel afraid, misunderstood or marginalised on both sides of the argument. We hope that as legislation is brought forward, its consideration can take place in an atmosphere of empathy, kindness and co-operation. Campaigners, politicians and those commenting on public life have a role in contributing to this culture, and no one on neither side of the debate

should have to face personal attacks for expressing their thoughts, feelings, opinions or experiences.

7.6.7 The Bill also creates an important opportunity for many people to learn more about the issues involved. The conversation about trans issues will not be confined to legislative scrutiny and we feel the time is right for the Church of Scotland to begin to address issues of gender and transgender identity. The starting point for this thinking is reflected in the work of the Equality, Diversity and Inclusion group, set up by the Assembly Trustees in 2021: who are asking the question about Church practice and policy: what does “All God’s People” and “All Are Welcome” mean?

7.6.8 The Church of Scotland, through the Faith Impact Forum, should seek to remain proactive in considering the transgender debates, as it does for many public issues in society. We ask the General Assembly, through receiving this report, to note that we will keep gender and transgender questions on the agenda over the coming months, especially in relation to the Bill in Holyrood. We hope that this may allow for conversations to develop with the Equality, Diversity and Inclusion group and the Theological Forum and others in the Church to deepen our understanding and to come up with some responses to an ongoing dialogue – within the Church and to wider society. Our hope is that we will be known as a Church where all people can speak and be listened to in a safe space and a respectful manner. The Church has a role as reconciler and healer on an issue which has generated so much controversy and hurtful comment.