

## **Fair Play For Women**

### **Questions**

**1 Do you have any comments on the proposal that applicants must live in their acquired gender for at least 3 months before applying for a GRC?**

Yes

**If yes, please outline these comments.:**

There is no evidence that the requirement to 'live in the acquired gender' for 3 months prior to application would have any meaningful impact on who proceeds with an application. 'Living in the acquired gender' may be nothing more than changing the name and pronouns on a utility bill or driving license. These changes can be completed by anyone based on self-declaration.

**2 Do you have any comments on the proposal that applicants must go through a period of reflection for at least 3 months before obtaining a GRC?**

Yes

**If yes, please outline these comments.:**

There is no evidence that the '3 month period of reflection' would have any meaningful impact on who proceeds with an application. This is simply a 3 month waiting period after the application is received and the GRC is issued.

**3 Should the minimum age at which a person can apply for legal gender recognition be reduced from 18 to 16?**

No

**If you wish, please give reasons for your view.:**

Changing legal sex status should be reserved for adults only. It should not be opened up to children under the age of 18 years old.

**4 Do you have any other comments on the provisions of the draft Bill?**

Yes

**If yes, please outline these comments.:**

Why is demedicalisation the only option?

In the consultation document for the draft Gender Recognition Reform bill the Scottish government has stated there are strong reasons for reforming the GRA. The 'strong reasons' include that, according to some members of the trans community, the current procedure is demeaning, intrusive, distressing and stressful and that

there is a need for simplification (para 3.44) and that the process takes too long, is too difficult or too expensive (para 3.24).

Only one solution is now being proposed as the solution to these problems which involves the removal of medical evidence. However there will be many ways to make a procedure less intrusive, less stressful, shorter, less expensive and less difficult that does not include the removal of medical evidence requirement. There is no information in the consultation document about the advantages or disadvantages of these other options and why removal of medical evidence was considered the best option.

The Scottish government was asked using a Freedom of Information Request to publish their analysis of other options and the reasons why they rejected them. The answer received confirmed that the "Scottish Government did not consider proposing a reformed system of legal gender recognition which retained the requirement to provide medical evidence."

The proposed reform (full demedicalisation of the application process) is not the only way to 'make the process easier' for trans people but is the root of many concerns for women. The GRA 2004 was created to support people with gender dysphoria. Removing medical gatekeeping opens the process up to people without gender dysphoria and significantly increases the number of people who can apply. This was not one of the 'strong reasons' for reform. The Scottish government should also consider reforms that retain the need for some medical evidence while achieving the stated aim of making it easier for trans people. There are many ways to make the GRC process easier and less expensive for transgender people. These options must be fully explored before society is asked to accept the removal of all medical gatekeeping as the one and only solution.

The current process is reviewed here in detail and raises a number of points the Scottish Government should be prepared to answer GRA reform: Is the legal gender recognition process really too intrusive, too costly and too difficult?  
<https://fairplayforwomen.com/grcprocess/>

## **5 Do you have any comments on the draft Impact Assessments?**

Yes

**If yes, please outline these comments.:**

Comment 1: Evidence missing from the EQIA.

FOI response confirm that the Scottish Government Library was asked on 21st August 2019 to a literature search to identify "Evidence on legitimate basis on which trans women might need to be excluded from some women-only services, locations, or provisions, or on which their presence might put non-trans women at a disadvantage."

<https://www.whatdotheyknow.com/request/632143/response/1513545/attach/html/6/Document%20Literature%20Search%20Results.pdf.html>

Fair Play For Women was identified in the Key Results section labelled "The following results may be particularly relevant". However, none of the material published by FPFW was quoted in the EQIA or listed in the references. The omission of evidence from FPFW means that a full and comprehensive search for evidence was not conducted for this EQIA and casts doubt over its validity. The following references include information regarding the need for female-only services and should be reviewed and incorporated into the EQIA.

1) Supporting women in sexual and domestic violence services: Giving a voice to silenced women - evidence from professionals and survivors.

[https://fairplayforwomen.com/wp-content/uploads/2018/09/FPFW\\_report\\_19SEPT2018.pdf](https://fairplayforwomen.com/wp-content/uploads/2018/09/FPFW_report_19SEPT2018.pdf)

2) Half of all transgender prisoners are sex offenders or dangerous category A inmates

<https://fairplayforwomen.com/transgender-prisoners/>

3) Probation hostels: GRA reform raises safety concerns for women residents and local communities

<https://fairplayforwomen.com/impact-gra-reform-community-probation-hostels-safety-concerns-women-residents-local-community/>

4) A mother's account of why mixed-sex toilets don't work for women and girls

<https://fairplayforwomen.com/stags/>

5) Sorry Wagamama I love your food but I hate your mixed-sex toilets

<https://fairplayforwomen.com/wagamama/>

6) Miscarriages in pub toilets. Is gender-neutral ready?

<https://fairplayforwomen.com/miscarriages-pub-toilet-gender-neutral/>

7) Lowering Testosterone for 12 months does not reduce strength in males: The implications for trans eligibility rules in female sport

<https://fairplayforwomen.com/thighstrength/>

8) The results of the Populus on-line survey following the UK Gender Recognition Act consultation 2018

<https://fairplayforwomen.com/poll/>

9) It's now or never to defend female rights – here's why

<https://fairplayforwomen.com/backgrd/>

10) Sex self-ID and what it means for privacy, safety and fairness for women

<https://fairplayforwomen.com/examples/>

11) Only 18% of UK support unregulated sex self-ID

<https://fairplayforwomen.com/you-gov/>

12) Trans rights do not exist in isolation: A fair society balances the rights of all and acknowledges difference.

<https://fairplayforwomen.com/legal-basics/>

13) Full list of signatories to the open letter to Girlguiding published in Sunday Times on 15th April 2018

<https://fairplayforwomen.com/guiding/>

Comment 2: Reforms could make it more difficult to implement the single-sex exceptions.

In the consultation document for the draft Gender Recognition Reform bill the Scottish government has stated it has "carefully considered whether moving to a statutory declaration-based system for obtaining legal gender recognition, as outlined in the draft Bill, would impact adversely on the rights of women" (Paragraph 5.57) and "has concluded that it would not" (paragraph 5.58). Although it is made clear that "The exceptions to the 2010 Act will remain in place after the GRA has been reformed" (paragraph 5.14) nowhere is there any information on whether there will be an adverse impact on implementation of the exemptions. The exemptions allow a person whose legal sex is female by virtue of a GRC to be treated differently to a person whose legal sex is female by virtue of birth, if this is a proportionate means to achieve a legitimate aim. However, when a person legally transitions to female by obtaining a GRC under section 22 it becomes a criminal offence for an official to reveal someone's birth sex (and hence trans history) and the subject themselves are not obliged to reveal their trans history. This makes it difficult for a service provider to distinguish between the two types of females and therefore implement the exemptions. Both types will have identical documentation (a female birth certificate). This problem with implementation is discussed in more detail here [https://fairplayforwomen.com/fws\\_speech/](https://fairplayforwomen.com/fws_speech/)

A freedom of Information Request was made to ask the Scottish Government if implement of the exceptions has been properly assessed and whether service providers who wish to use the exceptions have been consulted.

FOI: <https://fairplayforwomen.com/wp-content/uploads/2020/01/finalResponse-202000013019.pdf>

The answer received was incomplete. The answer related only to the 'Occupational requirements' exception and confirmed that NHS Health Scotland had been consulted. No reference was made to how the single or separate sex services exceptions would be implemented by service providers (Schedule 3 Part 7 Paragraph 26-28).

The impact assessment must include whether service providers will find it more difficult to implement the single-sex exemptions on the ground. The FOI response suggests that this has not been done.

Comment 3: No assessment of the cross-border impacts of GRRB

The GRA 2004 is a devolved law for Scotland so the Scottish government is free to amend the application process for its citizens. However this means that in the future Scotland may be running a self-ID application system while the rest of the UK continues with a medical gate-keeping system. Since the Scottish application will be

open to people born in Scotland (who may now live elsewhere in the UK) and to people who live in Scotland (but not born there) this raises a number of cross-border consequences. None have been addressed in the consultation document. The consequences are:

a) More male-born people presenting in England and Wales with a female birth certificate.

Very few people in the UK have swapped the sex on their birth certificate. Less than 5000 Gender recognition certificates have been issued since the GRA 2004 became law. This means only a few thousand male-born people in the UK present with a female birth certificate. Most retain their male birth certificate and this enables service providers to lawfully implement the single-sex exemptions when needed and to easily distinguish between a woman (born female) and a transwoman (born male) by asking to see a birth certificate (e.g. for membership of a female-only gym).

There are about 3/4 million people who were born in Scotland but live elsewhere within the UK. These people will be entitled to use the Scottish application route while living in England or Wales to swap the sex on their birth certificate if they wished, for whatever reason. These may be genuine applications by people who identify as trans or fraudulent applications by others. Either way we can expect to see a significant rise in the number of males living in England and Wales with a female birth certificate, due to a law change in Scotland.

b) Male prisoners exploiting Sex-Self ID to access women's prisons in England. 1.5% of the population living in England and Wales were born in Scotland. It's therefore reasonable to presume that 1.5% of the 80,000 male prisoners in English and Welsh prisons will also be Scottish born. This means over one thousand male prisoners could be eligible for female sex status using the Scottish application route, with around 200 of these male prisoners having convictions for sexual offences. Ministry of Justice (MOJ) transgender policy is that if a male-born prisoner has applied for a Gender Recognition Certificate they will be housed in a women's prison in accordance with Prison Rules 12(1) and the GRA 2004.

Prison Rule 12(1) "Women prisoners shall normally be kept separate from male prisoners". GRA 2004 Section 9 "When a full GRC is issued to a person, the person's gender becomes, for all purposes, their acquired gender"

The MOJ has interpreted this to mean:

4.64 .....transgender women prisoners with GRCs must be treated in the same way as biological women for all purposes. Transgender women with GRCs must be placed in the women's estate/Approved premises unless there are exceptional circumstances, as would be the case for biological women.

The threshold for these 'exceptional circumstances' is so high that no woman or transwoman is currently considered so dangerous they can only be safely housed in a high security male prison. Instead, the MOJ has decided to locate any 'high risk' transgender prisoners in their own overnight accommodation block at Downview Women's prison with access to communal activities within the main site alongside

other women. The following extract is from their trans unit policy obtained by Freedom of Information.

10.3 [Trans]Women will have access to the following activities within the main site alongside other women in line with their individual care plans; • Off unit activities i.e. gym, education, religious study and faith awareness, substance misuse courses, employment. Access to these activities and level of supervision required will be part of the individual's risk assessment. • Access to offending behaviour programmes. • Faith services.

Under these rules, the existing Gender Recognition Act has already forced the UK government into the position of having at least four male sex offenders living in a women's prison.

How many of the 1000+ Scottish prisoners will decide to use the self-declaration process to access one of the women's prisons in England? How many of the 200+ high-risk sex offenders will need to be housed in the 16-bed trans accommodation unit at Downview? Experts have already warned that a self-ID system is likely to be exploited by prisoners. " It has been rather naively suggested that nobody would seek to pretend transsexual status in prison if this were not actually the case. There are, to those of us who actually interview the prisoners, in fact very many reasons why people might pretend this. These vary from the opportunity to have trips out of prison through to a desire for a transfer to the female estate (to the same prison as a co-defendant) through to the idea that a parole board will perceive somebody who is female as being less dangerous through to a [false] belief that hormone treatment will actually render one less dangerous through to wanting a special or protected status within the prison system and even (in one very well evidenced case that a highly concerned Prison Governor brought particularly to my attention) a plethora of prison intelligence information suggesting that the driving force was a desire to make subsequent sexual offending very much easier, females being generally perceived as low risk in this regard."

By wiping away all sensible checks and balances the Scottish government is creating a loophole for predators and pretenders to exploit, not just in Scotland but across the whole of the UK. Every one of the Scottish male prisoners currently housed in England and Wales will be allowed to swap their sex on paper by simply filling in a few forms. No one could stop them and they won't need to dress in women's clothes or even shave off their beard. If they insist they are female they are, that's how self-ID works. The question to ponder is not will they exploit this opportunity. The question is why do you think they won't.

c) Trans-tourism - the transgender 'Gretna Green'

Anyone can become eligible to use the Scottish application route if they become "ordinarily resident in Scotland". We asked the Scottish government to confirm what this meant. This is the answer we received from the Family Law team.

Dear Dr Williams

Thank you for your email of 9 January about the definition of “ordinarily resident in Scotland” in the context of the draft Gender Recognition Reform (Scotland) Bill. You asked what is the minimum length of time that someone must be "ordinarily resident in Scotland" before, during and after an application for a Gender Recognition Certificate.

The term “ordinarily resident” is often used in legislation. To be “ordinarily resident” in a jurisdiction, a person must live in the jurisdiction, with only reasonably short periods (eg for holidays) away. There is no requirement to be resident for a fixed period of time, but the residence must be voluntary, for settled purposes and lawful.

The requirement in the draft Bill is for the applicant to be the subject of a Scottish birth register entry or ordinarily resident in Scotland at the time of the application. Once the application is made, there is no provision in the current draft Bill requiring an applicant to remain ordinarily resident in Scotland. This reflects that a person might have to move for employment or other reasons.

We also consulted Home Office guidance regarding the legal definition of 'ordinarily resident'.

"This does not mean that the person must intend to stay in the place indefinitely. They may have a settled purpose even though it is for a strictly limited period."

"The purpose may be general or specific, such as for education, employment, health or family."

"A person may become ordinarily resident on arrival"

"A person can be ordinarily resident in more than one country at the same time"

Based on this information is it reasonable to presume that people outside of Scotland will be able to access the Scottish application route by simply renting accommodation in Scotland for a short period of time and be able to apply on the day of their arrival. These people may then return to their original home elsewhere in the UK, bringing their new birth certificate with them.

d) Children of families living in Scotland will be able to get a new birth certificate at aged 16.

There are currently half a million people living in Scotland who were born elsewhere in the UK. They will all be eligible for sex change on demand based on their ordinarily resident status. But also, if any of these people have children living with them they will also be able to change sex status without parental consent from the age of 16.

e) All students going to Scottish universities will be eligible.

Latest figures show there are 31,745 students at Scottish Universities, with 16% of them coming from elsewhere in the UK. That means that under Scottish law 5000 students from England and Wales will become eligible to swap the sex on their birth

certificates. In practical terms this means that your son or daughter could apply for a GRC in freshers week and have a new birth certificate by the time they start the next semester in the new year.