



7 November 2022

Dear Pam,

Following our meeting on 2 November 2022 I undertook to provide you with further details on the process an applicant for a Gender Recognition Certificate would need to follow.

The Statutory Declaration

Under the terms of the Bill as introduced, any application to the Registrar General must include a statutory declaration made by the applicant. In the statutory declaration, the applicant must declare that they:

- are aged at least 16,
- are the subject of an entry in a birth or adoption record kept by the Registrar General for Scotland, or are ordinarily resident in Scotland,
- have lived in their acquired gender for at least the previous 3 months; and
- intend to live permanently in their acquired gender.

A statutory declaration is an existing feature of the process for obtaining legal gender recognition, and the retention of this requirement has been a feature of the Scottish Government's plans for reform of the process for obtaining legal gender recognition since the first public consultation in 2017. We are of the opinion that retaining the requirement for a statutory declaration ensures the process will continue to be as serious and significant a step as under the current system.

A statutory declaration is similar to an affidavit, and is a formal statement that something is true to the best of the knowledge of the person making the declaration. The relevant legislation on statutory declarations is the Statutory Declarations Act 1835. Statutory declarations under the Bill will be made in the presence of a notary public (most solicitors in Scotland are notaries public) or a justice of the peace.



Guidance is provided by the Law Society of Scotland to solicitors on acting as a notary public, including both in relation to the identity of the person making a declaration, and in relation to their understanding of the declaration:

“Identity of the deponent. It is essential that the notary must be satisfied as to the identity of the deponent. If the deponent is unknown to the notary, the notary should ask for proof of identity, e.g. passport, medical card, etc.

The deponent understands the document. It is essential that the notary is satisfied that the deponent understands what he or she is signing. If the document is short, it is prudent to read over the document to the deponent and ask if he or she understands what is written. Strictly speaking this is not necessary, but if the document is lengthy the notary must endeavour to paraphrase or summarise the contents before signature.”

In essence therefore, the notary must be satisfied as to the identity of the applicant, based on evidence if the person is not known to them, and they must be satisfied that the applicant understands the contents of the statutory declaration.

It is an existing criminal offence to knowingly make a false statutory declaration, and the Bill also introduces a new offence of knowingly making a false application. The maximum penalty for these offences is imprisonment for up to 2 years or an unlimited fine or both.

The process to be followed by the Registrar General

Once a person has made the required statutory declaration, they can then apply to the Registrar General for Scotland for a Gender Recognition Certificate providing them with their statutory declaration. The Registrar General must issue a Gender Recognition Certificate if the applicant meets the requirements of the Bill, or otherwise reject the application.

Section 8 of the Bill as introduced sets out the information which the Registrar General must provide to the applicant in relation to the handling of the application. This includes certain information as to the effect of the issue of a GRC (for example that in accordance with section 12 of the 2004 Act, obtaining a GRC does not affect a person’s status as the ‘father’ or ‘mother’ of a child). Section 8 also provides that the Registrar General must not determine the application unless, after the end of a 3 month reflection period, the applicant confirms that they wish to proceed with it.

The intention of the statutory period of reflection is to further affirm the seriousness of the process and provide further assurance that applicants have fully and carefully considered their decision. The Bill as introduced does not however require applicants to confirm that the facts and circumstances set out in their application and statutory declaration remain unchanged since their application was submitted for consideration, or to provide any evidence, as a pre-condition of their application being granted after the expiry of the reflection period.

If the applicant has not, within 2 years of the reflection period ending, given the Registrar General written notice of their intention to proceed the application is treated as having been withdrawn. This provides administrative certainty in a case where the applicant fails to confirm they wish to proceed, as it gives an end date for the application.

I trust that this information is of assistance to you in your further consideration of the details of the Bill. I am sending a copy of this letter to the Convener of the Equalities, Human Rights and Civil Justice Committee.

Yours sincerely,

SHONA ROBISON

