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Joe Fitzpatrick MSP, Convener  
Equalities, Human Rights and Civil Justice  
Committee  
The Scottish Parliament  
Edinburgh  
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Dear Joe

The Committee will be aware that Reem Alsalem, United Nations Special Rapporteur on Violence against Women and Girls, its Causes and Consequences recently wrote to the UK Government about the Gender Recognition Reform (Scotland) Bill.

The Scottish Government received this letter on the evening of 22 November, after the conclusion of Stage 2 of the Bill.

I welcome the recognition in the SR's letter that the Scottish Government's proposals are intended to bring the procedure for obtaining legal gender recognition in Scotland more in line with international standards, and to address the legitimate concerns expressed by trans people in relation to the current system.

The letter also highlighted elements of the current system for obtaining legal gender recognition in the UK that needed to be addressed, including the requirement for a diagnosis of gender dysphoria, and that the process is lengthy and bureaucratic.

In line with protocol it is for UK Ministers to respond formally to the letter and for that I have provided them with the attached annex on the issues raised by Ms Alsalem.

Yours sincerely

**SHONA ROBISON**

## **Annex - issues raised in letter from the UN Special Rapporteur on Violence against Women and Girls, its Causes and Consequences**

### Development of proposed reforms

The previous Scottish Government administration first committed to reforming the Gender Recognition Act 2004<sup>1</sup> in the 2016 Fairer Scotland Action Plan and to undertake a public consultation on reform. Evidence shows that the current system can have an adverse impact on applicants due to the requirement for a medical diagnosis and the intrusive and lengthy process. There have also been international developments in best practice since the 2004 Act including the reclassification of 'gender dysphoria' by the World Health Organisation, the non-binding Yogyakarta Principles, Resolution 2048 of the Parliamentary Assembly of the Council of Europe as well as other countries introducing similar reforms.

The Scottish Government carried out two public consultation exercises on our proposed reforms. The first consultation<sup>2</sup> on the general principles of reform ran between November 2017 and March 2018 receiving over 15,500 responses. The second consultation,<sup>3</sup> on a draft Bill, ran between December 2019 and March 2020 receiving over 17,000 responses. Following these consultations, the Scottish Government introduced the Gender Recognition Reform (Scotland) Bill<sup>4</sup> to the Scottish Parliament on 2 March 2022.

As stated in the Policy Memorandum,<sup>5</sup> the Scottish Government aims to create a more equal Scotland where people and communities are valued, included and empowered and which protects and promotes equality, inclusion and human rights. In line with this, the aim of the Bill is to remove barriers to trans people's enjoyment of their human rights.

Trans people have already been able to legally change their gender since the 2004 Act came into force and while the Bill changes the process and requirements for obtaining legal gender recognition it does not change the effects of a gender recognition certificate set out in the 2004 Act.

Following consideration of the Bill by the Equalities, Human Rights and Civil Justice Committee of the Scottish Parliament (the Committee), the Stage 1 debate by the Scottish Parliament of the general principles of the Bill took place on 27 October and the Bill passed by 88 to 33 with support from members of every political party.

The Bill then underwent more detailed scrutiny by the Committee at Stage 2 where a number of amendments to the Bill have been agreed that relate to the issues raised by the SR.

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<sup>1</sup> [Gender Recognition Act 2004 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>2</sup> [Review of the Gender Recognition Act 2004: consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot)

<sup>3</sup> [Gender Recognition Reform \(Scotland\) Bill consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot)

<sup>4</sup> [Gender Recognition Reform \(Scotland\) Bill – Bills \(proposed laws\) – Scottish Parliament | Scottish Parliament Website](https://www.parliament.scot)

<sup>5</sup> [Policy memorandum \(parliament.scot\)](https://www.parliament.scot)

Stage 3, where the Bill is considered by the Parliament as a whole again and further changes can be made, is expected to take place before Christmas.

### The proposed reforms in the Bill

We have set out our approach to reform in our two public consultation exercises as well as in the Policy Memorandum. We have also set out our approach in official correspondence, through our engagement with stakeholders and in Ministerial statements. In sum, the Bill would reform the 2004 Act to establish an administrative process for obtaining legal gender recognition based on a statutory declaration.

Under the Bill, an application would be made to the Registrar General for Scotland rather than the Gender Recognition Panel. 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 born or are ordinarily resident in Scotland, have lived in their acquired gender for the required period of time before applying; and intend to live permanently in their acquired gender.

A statutory declaration 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 Scotland in the presence of a notary public, a justice of the peace or a local councillor.

Once a person has made the required statutory declaration, they can then apply to the Registrar General for a Gender Recognition Certificate (GRC) providing them with their statutory declaration and an application can only be determined by the Registrar General after a three month reflection period. The Registrar General must then issue a GRC if the applicant meets the requirements of the Bill, or otherwise reject the application.

While the Bill removes barriers to trans people accessing legal gender recognition it will continue to be a substantial and significant legal process which is reflected in the requirement to make a statutory declaration. It is a criminal offence to knowingly make a false statutory declaration or to knowingly make a false application. The maximum penalty for these offences is imprisonment for up to two years or an unlimited fine or both.

The Bill also makes provision for a person who has an interest in a GRC to apply to the sheriff to revoke a certificate on the ground that the application was fraudulent, that the applicant was incapable of understanding the effect of it, or that the applicant was incapable of validly making the application. The Bill as amended at stage 2 also makes provision for the Registrar General to apply to the sheriff to reject an application before the certificate has been issued on those same grounds.

## Calls for scrutiny of applications

What is proposed is therefore an administrative process providing legal gender recognition on the basis of self-determination. Central to the proposals is the legal undertaking made in a statutory declaration as outlined above.

The process continues to be a serious undertaking with robust safeguards in place which have been debated and reinforced by amendments at Stage 2. These include a new criminal offence for making a false application, the creation of a statutory aggravator for a fraudulent application connected with another offence, and additional requirements for applicants aged 16 and 17 to live in their acquired gender for six rather than three months and to confirm that they have discussed the implications of their application with someone whose role involves giving guidance, support or advice to young people, or someone aged over 18 who knows them personally.

We also intend to amend the Sex Offender Notification Requirements so that those on the register are required to notify the police about an application for a gender recognition certificate. This will mean the police have additional information to help identify an individual and inform their management. It will also enable a route to prevent someone on the sex offenders register from fraudulently obtaining a GRC. Provision added to the Bill by at Stage 2 allows for the Registrar General to apply to the sheriff to reject an application before the certificate has been issued on those same grounds, and if police had concerns following a sex offender notification they could contact the Registrar General.

As noted above, the Bill also makes provision for a person who has an interest in a GRC to apply to the sheriff to revoke a certificate on the ground that the application was fraudulent, that the applicant was incapable of understanding the effect of it, or that the applicant was incapable of validly making the application.

What is not proposed is for the Registrar General to make assessments and judgements based on evidence of gender identity provided by applicants. This is what is required under the current system where an applicant must provide a diagnosis of gender dysphoria and evidence that they have been living in their gender for a minimum of two years. The aim of the Bill is to establish an administrative process based on self-determination and to remove burdensome evidence requirements beyond the statutory declaration.

Other countries have introduced very similar reforms based on self-determination and while there is some variation we are not aware of other jurisdictions incorporating the scrutiny of applications referred to in your letter beyond what we have already put in place, without undermining the central aims of the Bill. An example we are aware of is Belgium, which has a mechanism for their Public Prosecutor to refer an applicant for further background checks during the three month reflection period if this is deemed necessary. We understand that this has not been widely used.

## Concerns about possible misuse of the system

The concerns raised by the SR about potential impact of the Bill's reforms on women and girls, specifically around access to single sex spaces and services, were similar to viewpoints expressed in some consultation responses, in meetings with some stakeholders, and in some of the evidence provided to the Committee, and we have carefully considered all views on the Bill in developing our policy and position.

It is imperative that we develop policy and legislate based on evidence and we have not identified any evidence that the concerns raised by the SR have materialised in any other countries that have introduced similar reforms. The Bill is in line with the approach of a number of other countries, including Ireland, Norway, Malta, Denmark, Belgium, New Zealand and Switzerland.

In Ireland, the Minister can revoke a GRC where information is received that would have led to the refusal of that certificate, had it been received prior to issue. No such revocations have been made since the Act came into force in 2015.

Giving evidence to the Committee, the Scottish Human Rights Commission stated "we have concluded, again, that we cannot identify any objectively evidenced real and concrete harm that is likely to result from the reforms. Indeed, the majority, if not all, of the concerns that have been outlined do not appear to have a relationship with the proposals that are set out in the Bill."

Likewise, the United Nations independent expert on protection against violence and discrimination based on sexual orientation and gender identity said "Belgium, Denmark, Ireland, Luxembourg, Malta, Portugal and Argentina are examples of states that have implemented systems based on self-identification and eliminated pathologising requirements and where the numbers and outcomes in terms of social inclusion and the decrease in violence against trans and non-binary persons are remarkable. At the other end of the scope of worries, so to speak, the theoretical concerns that were raised in the process of adopting those processes have not materialised."

Having considered all the evidence provided the Committee's report also concluded "the majority recognise that, when asked about evidence of abuse and concerns, no witness was able to provide concrete examples."

Legal gender recognition mostly affects aspects of our private lives and would enable a trans person to obtain an updated birth certificate. This allows people to marry in the gender in which they live and have their death recorded in the gender in which they lived. Therefore it is not apparent how obtaining legal gender recognition would enable a person to then commit another offence. Birth certificates are not photographic identification, and spaces or services do not require sight of a person's birth certificate for access or use.

## Access to single sex spaces and services

There are nine characteristics that are protected by the Equality Act 2010, including sex and gender reassignment, and it is generally unlawful to discriminate against people who have a protected characteristic as defined under the Act.

The Equality Act does allow for the provision of single-sex services in certain circumstances. There are also circumstances where a single-sex service provider can prevent, limit or modify trans people's access to the service, if doing so is a proportionate means of achieving a legitimate aim. This applies whether or not the trans person has a GRC.

It is important to be clear that responsibility for the Equality Act is reserved to the UK Parliament under Schedule 5 to the Scotland Act 1998<sup>6</sup>. Whilst the Scottish Parliament has competence to make certain types of provision in relation to equality matters in Scotland, it does not have legislative powers to alter or modify the Equality Act 2010. The Gender Recognition Reform (Scotland) Bill cannot, in consequence, have the effect of changing the existing provision made by the Equality Act in relation to single-sex services. An amendment made to the Bill at Stage 2 has added further clarification on this point, for the avoidance of any doubt.

The Equality and Human Rights Commission, who have statutory functions in relation to the 2010 Act as a reserved body, have published guidance for individuals, organisations and the public sector.<sup>7</sup> In 2011, they also published a statutory Code of Practice, which assists service providers with understanding the relevant issues.<sup>8</sup>

They also published updated guidance earlier this year on protecting people from sex and gender reassignment discrimination.<sup>9</sup> The guidance reiterates that service providers "do not need personal information such as a Gender Recognition Certificate to make a decision. Service providers only need to decide if their action is a proportionate means of achieving a legitimate aim. There is a risk of acting unlawfully whether the person has a GRC or not. The exceptions outlined in this guidance therefore do not depend on whether or not an individual has a GRC."

We have indicated that we are happy to work with the EHRC should their guidance require to be updated following the Bill process.

Giving evidence to the Committee, the Equality and Human Rights Commission again set out the existing position in law: "Decisions about single-sex services excluding or providing a different service for trans people need to be justified, regardless of whether the individual has a gender recognition certificate."<sup>10</sup>

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<sup>6</sup> Section L2 of Schedule 5 reserves equal opportunities, subject to a number of specific exceptions. See the [Scotland Act 1998 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>7</sup> [Home Page | Equality and Human Rights Commission \(equalityhumanrights.com\)](https://equalityhumanrights.com)

<sup>8</sup> [Services, Public functions and Associations: Statutory Code of Practice | Equality and Human Rights Commission \(equalityhumanrights.com\)](https://equalityhumanrights.com)

<sup>9</sup> [Protecting people from sex and gender reassignment discrimination | Equality and Human Rights Commission \(equalityhumanrights.com\)](https://equalityhumanrights.com)

<sup>10</sup> [<UNSPECIFIED> \(parliament.scot\)](https://parliament.scot)

Giving evidence to Committee, Rape Crisis Scotland stated “no service in Scotland requires a GRC to access support. All rape crisis services in Scotland are inclusive of trans women; that has been the case for 15 years; and in all that time, there has been no single incident of anyone abusing that. The Bill will have no impact on how rape crisis services are delivered.”<sup>11</sup>

In written evidence to Committee, Scottish Women’s Aid stated “As with other women, a trans woman who experiences domestic abuse should be able to access support to help her escape, and heal from, that abuse. Women’s Aid already works on the basis of self-identification in its service provision. Women’s Aid services do not require sight of birth certificates to provide services. We consider that the changes to the process for legal gender recognition contained in this Bill will not impact current practice in service delivery.”<sup>12</sup>

The SR also raised the legal gender recognition of non-binary people. We want to improve the lives for non-binary people in Scotland and established the working group on non-binary equality which has submitted its recommendations to the Scottish Government. We intend to develop an Action Plan by Spring 2023 to take these recommendations forward.

#### The duty to protect women and girls against violence

We understand the concerns about the behaviour of predatory and abusive men and are taking robust action to tackle the causes and consequences. Trans people are not responsible for the behaviour of predatory and abusive men and action taken to tackle this behaviour does not require to impinge on the rights of trans people.

Again, it is not apparent how obtaining legal gender recognition would enable a person to then commit another offence given access to spaces and services are not dependent on your legal gender or require sight of a person’s birth certificate.

Our support for trans rights does not in any way conflict with our work and commitment to protect women from discrimination and advance women’s rights and equality.

Gender equality is at the heart of the Scottish Government’s vision for a fairer Scotland, one where women and girls have and are empowered to exercise equal rights and opportunities, have equitable access to economic resources and decision making, and live their lives free from all forms of violence, abuse and harassment.

As part of our extensive gender equality work we have established the Gender Equality Taskforce in Education and Learning, published the Fairer Scotland for Women: Gender Pay Gap Action Plan, are developing plans to incorporate CEDAW into Scot’s Law and implementing the recommendations from the First Minister’s National Advisory Council on Women and Girls.

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<sup>11</sup> [Meeting of the Parliament: EHRCJ/31/05/2022 | Scottish Parliament Website](#)

<sup>12</sup> [SWA-GRR-submission-130522.pdf \(womensaid.scot\)](#)

Violence against women and girls is a fundamental violation of human rights which is why the Scottish Government is implementing the Equally Safe strategy to prevent and eradicate it in all its forms. Through the Delivering Equally Safe fund, we are providing £19m per year to support 121 projects from 112 organisations that focus on early intervention, prevention as well as support services for victims/survivors of domestic abuse, rape and sexual assault.

### Prisons – accommodation of trans prisoners

The Scottish Prison Service (SPS) use comprehensive individualised risk assessments to determine how trans prisoners are managed. Decisions taken by the SPS seek to protect both the wellbeing and rights of the individual as well as the welfare and rights of others around them, including staff.

Where possible, a trans person in the care of SPS will be managed in an establishment that reflects their gender. The SPS Gender Identity Policy 2014 states that prisoners do not need a Gender Recognition Certificate for their gender to be respected. Where it has been identified that the person may represent a risk to the safety of others or they themselves may be at risk, SPS can take the decision to hold that person in an establishment that reflects their sex recorded at birth. Whilst SPS has been successful in managing a number of trans persons in their gender, SPS considers each case individually and is prepared to take alternative decisions as required.

SPS developed its policy for individuals in custody in 2014 and a review is currently underway.

### Interaction with the UK Equality Act

The Scottish Parliament can only legislate on devolved issues in Scotland, and as the Equality Act is generally reserved to the UK Parliament it cannot be modified by the Scottish Parliament.

The Equality Act makes no specific provision about the effect of a GRC in relation to the protected characteristics of gender reassignment, sex or the single-sex exceptions. The 2004 Act came before the Equality Act so it would have been possible for legislators to make specific provision about the effect of having legal gender recognition for various provisions in the Equality Act, but it does not do so.

The amendment to the Bill agreed to by the members of the Committee on 22 November 2022 directly addresses this concern, inserting a new section into the legislation under the heading of “Impact of Act on Equality Act 2010” and states that “For the avoidance of doubt, nothing in this Act modifies the Equality Act 2010”.

The Bill amends the 2004 Act to introduce a new process for applying for legal gender recognition in Scotland, and new criteria which require to be satisfied by applicants. The Bill does not amend the legal effects of obtaining legal gender recognition which are set out principally in section 9 of the 2004 Act, with the



intention that the rights and responsibilities of those obtaining legal gender recognition would remain the same as they are now under the 2004 Act.

The effect of a GRC upon the sex of a person for the purposes of the protected characteristic of “sex” is not changed by the Bill. Again, the rules in the 2010 Act are not altered by this Bill.

### Data collection

In 2021, Scotland’s Chief Statistician published guidance for public bodies on the collection of data on sex and gender.<sup>13</sup> The scope of this guidance is about data collected and used by Scottish public bodies for operational, statistical and research purposes. In producing this guidance, the Chief Statistician has brought together a group of experts in collecting and presenting data from across the UK. An important part of the work was making sure that the guidance was informed by evidence from a wide range of individuals and organisations with views based on a lived experience of these issues.

In discussing considerations around what data to collect, the 2021 guidance notes:

“For the vast majority of people, questions on someone's sex and gender identity will provide the same response: female and woman/girl, or male and man/boy. This also means that for many uses, whether data is collected using a sex question or a gender identity question, will in reality give you data that will work for uses where you need data on either concept.

“However, a proportion of people will not answer questions on sex by thinking about their biological or legal sex, and instead will respond according to aspects such as their self-defined sex, and their innate feeling of whether they are a woman or a man.

“Given that for the vast majority of people sex and gender identity questions will provide the same result, for most issues one may want to measure, whether there is a question about sex or about gender identity, it will not skew the statistics when disaggregated by either concept.”

The guidance also highlights that the vast majority of official data is currently collected on the basis of self-defined sex. For example, some questions ask ‘what is your sex?’ or ‘are you male or female?’ without guidance on how people should interpret the question. The Chief Statistician proposed a voluntary sex question followed by a voluntary question about ‘trans status’ and a voluntary open text box for people to describe their ‘trans status’.

Further, following concerns raised that reforms might impact action to tackle the gender pay gap, Close the Gap, Scotland’s organisation working on women’s labour market equality, produced a report on the detailed evaluation they had done on this issue and found reform would not have an impact.<sup>14</sup>

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<sup>13</sup> [Sex, gender identity, trans status - data collection and publication: guidance - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/guidance-2021-01/pages/1-100.aspx)

<sup>14</sup> [Close-the-Gap-response-to-the-GRA-reform-bill.pdf \(closethegap.org.uk\)](https://www.close-the-gap.org.uk/wp-content/uploads/2021/09/Close-the-Gap-response-to-the-GRA-reform-bill.pdf)

## Fair and inclusive consultation

Fair, open and inclusive consultation is a vital component of the Scottish Government's development of policies. Our membership of the Open Government Partnership supports our commitment to openness, transparency, and citizen participation across everything we do as a government. You can read more about this and our approach to consultation on our website.<sup>15</sup>

The two consultations undertaken in developing this Bill were open to all members of the public and represent two of the largest public consultations ever carried out by the Scottish Government. Responses to the consultation were subject to an independent analysis and we have published those reports. The reports list the range of organisations that responded to our consultations including:

- Children's or Young People's Groups
- LGBT Groups
- Local Authority, Health and Social Care Partnership or NHS
- Public Bodies
- Religious or Belief Bodies
- Third sector support organisations
- Trans Groups
- Union or Political Parties
- Women's Groups
- Other

The Equality Impact Assessment also includes the list of stakeholders that Scottish Ministers and officials engaged with ahead of introduction of the Bill to the Scottish Parliament.<sup>16</sup>

Further to this, during their consideration of the of the Bill at Stage 1, the Committee issued a call for views which ran from 21 March to 16 May 2022. This call for views was similarly open to all members of the public, who could respond to either a short survey or share detailed views on specific provisions. The Committee received over 11,000 responses to this call for views and published a detailed analysis of the findings of the short survey on their website.

The Committee was responsible for agreeing its programme for the taking of oral evidence, not the Scottish Government, but they took a similarly inclusive and open approach. Twelve evidence sessions were held between March and June 2022 with a range of interested parties, several of which were taken in private, and the potential impact on women and girls was scrutinised. Full records of these sessions can be found on the Parliament website.<sup>17</sup>

In its Stage 1 Report the Committee summarised these discussions as follows:

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<sup>15</sup> [Open Government Partnership - Improving public services - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/open-government-partnership-improving-public-services/pages/consultations-in-the-scottish-government-guidance.aspx)  
[Consultations in the Scottish Government: guidance - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/open-government-partnership-improving-public-services/pages/consultations-in-the-scottish-government-guidance.aspx)

<sup>16</sup> [Gender Recognition Reform \(Scotland\) Bill: equality impact assessment - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/gender-recognition-reform-scotland-bill-equality-impact-assessment/pages/gender-recognition-reform-scotland-bill-equality-impact-assessment.aspx)

<sup>17</sup> [Meetings | Scottish Parliament Website](https://www.parliament.scot/Meetings)

“The Committee notes that there were some concerns expressed on the potential impacts of the Bill on women and girls and on single-sex spaces. The Committee notes that there were also some concerns expressed by some minority ethnic groups and some religious groups about the potential impacts of the Bill on grounds of religious belief. Further, the Committee recognises how service providers currently provide trans inclusive single-sex spaces making exceptions as allowed for by the Equality Act 2010.

“The majority of the Committee believes that the concerns raised, while recognising that such views are sincerely held, go beyond the scope of the provisions in the Bill, and is satisfied that the Bill itself will not change any of the protections or definitions set out in the Equality Act 2010, including the ability to exclude trans people from single-sex services where proportionate and appropriate. The majority is satisfied that the Bill will not change or remove women’s rights, make changes to how toilets and changing rooms operate, redefine what a man or a woman is, nor change or expand trans people’s rights. The majority is satisfied that the Bill will not change the effect of a GRC, which is that the individual is legally recognised in their acquired gender. Further, the majority recognise that, when asked about evidence of abuse and concerns, no witness was able to provide concrete examples.

“A minority of the Committee is not persuaded that the risks have been examined sufficiently and disagrees with the decision to frame these issues as separate from the Bill. They take the view that how acquiring a GRC affects a person’s definition and rights under the Equality Act 2010 and believe that this is a central issue in determining what impact the Bill might have on women and girls and seeks clarification on that from the Scottish Government.”

#### Views of human rights and women’s groups in Scotland

The Bill’s reforms are strongly supported by a number of human rights and women’s groups in Scotland and those that provide frontline support services to women.

Discussion of the Bill’s proposed reforms, and wider issues relating to trans rights in the UK, are highly polarised, so it is important to hear all relevant views in reaching a view. We understand there is a range of views on our proposed reforms and have sought to capture and consider all views through our public consultation exercises and stakeholder engagement. It would be helpful to know what consultation the SR has conducted with relevant organisations in Scotland in considering the proposed reforms.

The views of the Scottish Human Rights Commission (SHRC) are particularly relevant, as they are the National Human Rights Institution for Scotland, as recognised by the UN. Giving evidence to committee the SHRC stated:

“The commission welcomes the changes to the process for securing legal recognition of gender identity that are set out in the bill. In particular, we welcome three elements: first, the removal of the requirement for a diagnosis of gender dysphoria; secondly, the abolition of the gender recognition panel; and thirdly, the shortening of the process. Those three steps will move legal gender recognition in

Scotland significantly closer to the standards that are set out in international law in the area.”

Further, Engender, Scotland’s feminist policy and advocacy organisation, gave evidence to committee, stating:

“After several years of extensive consideration of the legislation, our headline finding is that the proposed reforms to the 2004 act will not negatively impact on women’s equality and rights.

“We are confident that reform will not have any adverse effect on the capacity of the Equality Act 2010 and the United Nations Convention on the Elimination of All Forms of Discrimination Against Women to protect women from discrimination and advance women’s equality and rights.

“We do not believe that trans equality and women’s equality are in competition with each other. Instead, we see the paths to equality for women and trans people as deeply interconnected and dependent on shared efforts to dismantle patriarchal intersecting systems of oppression that impose barriers to full equality.”

#### Office of the High Commissioner for Human Rights and UN mandate holders’ position on gender recognition

The United Nations Free and Equal campaign against homophobia and transphobia<sup>18</sup> sets out clear and strong support for gender recognition processes based on self-identification, as is proposed for Scotland.

It states that one of the key ways a government can create a trans inclusive society is to: “legally recognize the gender identity of trans people in official documents through a simple administrative process based on self-identification without abusive requirements such as forced medical diagnosis, sterilization, treatment or divorce.”.<sup>19</sup>

This was reflected in evidence given to the Committee by Victor Madrigal-Borloz, UN Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity. He told the Committee:

“The existing body of international human rights law allows for six basic standards to be identified in relation to a legal recognition process. First, it should be based on self-determination by the applicant. Secondly, the process should be a simple administrative one. Thirdly, it should be confidential. Fourthly, it should be based solely on the applicant’s free and informed consent without requiring medical and/or psychological or other certification that could be unreasonable or pathologising. Fifthly, it should acknowledge and recognise non-binary identities including gender identities that are neither man nor woman, and it should offer a multiplicity of gender-marker options. Finally, it should be accessible and, to the extent that it is possible, cost free.

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<sup>18</sup> [UN Free & Equal | About \(unfe.org\)](#)

<sup>19</sup> [UN Free & Equal | CELEBRATE TRANS VISIBILITY \(unfe.org\)](#)

“Each of those criteria has been examined by several bodies, including global bodies, many United Nations special procedures bodies, treaties bodies and European and inter-American regional human rights courts that analyse the various bodies of law and have pronounced on these matters. The approach derives from other processes, such as the declassification of gender dysphoria as a pathology—which was effected in 2018 by the World Health Organization—and processes of evidence gathering that have led to the conclusion that medical and psychological certifications are often pathologising and unreasonable. Indeed, in many countries around the world, they are still the source of significant instances of cruel, inhuman and degrading treatment and torture, including sterilisation, genital mutilation and castration.”

UN Mandate holders also wrote to the Irish Government in April 2015<sup>20</sup> ahead of the introduction of the Gender Recognition Act 2015. That Act introduced a system of gender recognition based on self-determination of gender, similar to what is proposed in Scotland. The letter to Ireland expressed concern not about a lack of scrutiny on applications under the process, but rather that the Irish approach could discriminate against trans people by imposing restrictions and “disproportionate safeguards”.

Similarly, a letter of 27 September 2021 to the Bulgarian Government signed by a number of UN mandate holders including Ms Alsalem set out obligations that they consider States have under international human rights law in regard to trans and gender diverse people’s right to legal gender recognition. This letter stated:

“In view of the aforementioned observations, we respectfully urge the Supreme Court of Cassation to take into account that the right to legal gender recognition is protected under international human rights law and that the process is required to be simple and based on self-determination.”

## Conclusion

The issues raised have been considered carefully as part of a long process of open public consultation and democratic scrutiny. The Scottish Government believes that the Bill provides for an effective gender recognition process based on self-determination, with an appropriate level of safeguards and assurances. The Scottish Government has worked with other parties to strengthen the Bill by amendment at Stage 2, and will consider further amendments at Stage 3, as is standard in Scottish Bills.

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<sup>20</sup> [AL Ireland \(ohchr.org\)](https://www.ohchr.org/en/AL/Ireland)