

Convener,
Equality, Human Rights and Civil
Justice Committee

From: Melanie Field, Chief Strategy
and Policy Officer

By email only

Our ref: 1019EHRCJ

Wednesday 15 June 2022

Dear Convener,

Thank you for giving Alasdair MacDonald and I the opportunity to provide evidence on behalf of the Equality and Human Rights Commission (EHRC) to the Equalities, Human Rights and Civil Justice Committee on 17 May on proposed reforms to the Gender Recognition Act (GRA) in Scotland.

In our evidence, we set out the EHRC's view that more detailed consideration is needed before legislative change is made. This is because of the continued lack of certainty about the practical consequences for individuals and society of extending the ability to change legal sex from a defined group with a recognised medical condition, who have demonstrated their commitment and ability to live in their acquired gender, to a wider group.

As statutory regulator of the Equality Act 2010, the Commission is committed to protecting trans people from discrimination and harassment at all points on their transition journey. We recognise that trans people still face prejudice, hate crime and unacceptable barriers in many areas of life, including in access to the specialist healthcare services that are currently part of their gateway to legal gender recognition. We therefore strongly welcome the Scottish Government's commitments to increase funding and reduce waiting times for gender identity services.

In our evidence to the Committee, we did not explicitly touch on the proposal in the Bill to reduce the minimum age for applying for a Gender Recognition Certificate (GRC) in Scotland from 18 to 16. We are monitoring the progress of the Cass Review of gender identity services for children and young people in England, which published its [interim report](#) in February 2022. Issues it has identified include low capacity, lack of clinical consensus on effective responses, and limited data and evidence. Although, by removing the requirement for a gender dysphoria diagnosis, the GRA reform proposals currently before the Scottish Parliament may ultimately reduce the explicit relationship between such services and the process for obtaining legal gender recognition in Scotland, the Cass Review seems to us to provide a useful examination of the support needs and experiences of young people and their parents during transition. We therefore consider that it would be prudent to await the Review's final conclusions and recommendations before moving to make legal gender recognition available to 16 and 17 year-olds.

Given our remit across Great Britain, we also highlight the need for clarity about how, under the proposed reforms, GRCs issued in Scotland will be recognised in other parts of Britain that have different processes for changing legal sex. This will in part depend on UK Government decisions on whether or how to recognise GRCs granted in Scotland, as it does with those from other jurisdictions. However, we would be concerned about the potential implications for individuals whose legal sex might be recognised differently in different parts of Britain. We are considering the implications of potential divergence within Britain for the operation of the Equality Act 2010 on, for example, cross-border

employment, education and service provision, and on the single-sex service exceptions. We are also exploring the potential impacts of having a younger cohort of people eligible to change legal sex in Scotland than in England and Wales.

We are ready to continue to advise your important scrutiny process for these significant matters.

Yours sincerely,



Melanie Field

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Equality and Human Rights Commission