

Gender Recognition Reform (Scotland) Bill

2nd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 16	Schedule
Sections 17 to 19	Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

After section 13

Rachael Hamilton

21 After section 13, insert—

<Parenthood

For the avoidance of doubt, this Act does not affect the status of a person whose gender has become the acquired gender under the 2004 Act as the father or mother of a child.>

Section 14

Graham Simpson

22 In section 14, page 15, line 36, at end insert—

<() The Scottish Ministers must, by regulations, make further provision about—

- (a) what would constitute a false statutory declaration under subsection (1), and
- (b) what would constitute evidence tending to show that a person had made a false statutory declaration under subsection (1).>

Roz McCall

99 In section 14, page 16, leave out lines 1 and 2

Shona Robison

72 In section 14, page 16, line 2, leave out <or>

Shona Robison

73 In section 14, page 16, line 3, at end insert <or,

- () a request under section 8EA(1) (early determination of application made by person nearing end of life), or any information which the person provides to the Registrar General in connection with such a request,>

Jamie Greene

133 In section 14, page 16, line 12, at end insert—

<22B Aggravation of offence

- (1) An offence is aggravated if the circumstances of the offence are proven to be connected to the fact that the person has fraudulently obtained a gender recognition certificate.
- (2) Subsection (3) applies where it is—
 - (a) libelled in an indictment, or specified in a complaint, that an offence is aggravated by being connected to the fact that the person has fraudulently obtained a gender recognition certificate, and
 - (b) proved that the offence is so aggravated.
- (3) The court must—
 - (a) state on conviction that the offence is aggravated by the fact that a person has fraudulently obtained a gender recognition certificate,
 - (b) record the conviction in a way that shows that the offence is so aggravated,
 - (c) take the aggravation into account in determining the appropriate sentence, and
 - (d) state—
 - (i) where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or
 - (ii) otherwise, the reasons for there being no such difference.”.>

Sue Webber

14 Leave out section 14

After section 14

Tess White

135 After section 14, insert—

<Public understanding of gender recognition

14A Duty to encourage public understanding

The Scottish Ministers must take steps to encourage public understanding of the provisions and effect of this Act. >

Brian Whittle

1* After section 14, insert—

<Impact of this Act on sport

Impact of this Act on sport

- (1) The Scottish Ministers must, no later than one year after the date of Royal Assent, prepare and publish a report on the impact of this Act on the participation of transgender people in sport.
- (2) A report under subsection (1) must set out, in particular, any change in the number of—
 - (a) trans women participating in women’s sport,
 - (b) trans women participating in men’s sport,
 - (c) trans men participating in women’s sport,
 - (d) trans men participating in men’s sport.>

Rachael Hamilton

23 After section 14, insert—

<Effect on the Equality Act 2010

Effect on the Equality Act 2010

- (1) For the avoidance of doubt, nothing in this Act affects—
 - (a) the definition of “sex” in section 11 of the 2010 Act,
 - (b) any of the protections afforded by the 2010 Act.
- (2) In this section, “the 2010 Act” means the Equality Act 2010.>

Rachael Hamilton

24 After section 14, insert—

<Effect on the Equality Act 2010: Sport

Effect on the Equality Act 2010: Sport

For the avoidance of doubt, nothing in this Act affects the protections offered by section 195 of the Equality Act 2010.>

Daniel Johnson

25 After section 14, insert—

<Guidance

Guidance

- (1) The Scottish Ministers must issue guidance on the interaction of this Act with the provisions of the Equality Act 2010.
- (2) The Scottish Ministers must publish the guidance in such manner as they consider appropriate.
- (3) The Scottish Ministers may vary or revoke guidance prepared under subsection (1).>

Pam Gosal

74 After section 14, insert—

<Duty to provide information on single-sex spaces

Duty to provide information on single-sex spaces

The Scottish Ministers must publish and publicise information on the impact of this Act on—

- (a) single-sex spaces,
- (b) exceptions to single-sex spaces.>

Pam Gosal

75 After section 14, insert—

<Duty to provide information of single-sex services

Duty to provide information on single-sex services

The Scottish Ministers must publish and publicise information on the impact of this Act—

- (a) single-sex services,
- (b) exceptions to single-sex services.>

Pam Gosal

76* After section 14, insert—

<Impact of Act on religious groups

Impact of Act on religious groups

- (1) The Scottish Ministers must prepare and publish a report on a review of the impact of this Act on patients where knowledge of the biological sex of a health professional carrying out a medical examination or treatment is required, including on religious grounds.
- (2) In carrying out the review under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate.
- (3) A report under subsection (1) must set out any steps the Scottish Ministers are planning to take to respond to any concerns expressed as a result of the review.>

Pauline McNeill

101 After section 14, insert—

<Guidance on effect of having a gender recognition certificate

Guidance on effect of having a gender recognition certificate

- (1) The Scottish Ministers must prepare and publish guidance on the effect of having a gender recognition certificate.
- (2) Guidance under subsection (1) must, in particular, set out how obtaining a gender recognition certificate impacts on the rights in the Equality Act 2010.>

Brian Whittle

103 After section 14, insert—

<Guidance on sporting activities

Guidance on sporting activities

- (1) The Scottish Ministers must prepare and produce guidance for—
 - (a) sports governing bodies,
 - (b) teachers,
 - (c) any authority required to make a decision on inclusion in sporting activities,on the impact of this Act in relation to the inclusion of trans people.
- (2) Guidance under subsection (1) must include information on—
 - (a) any safety concerns or concerns about material advantage that may be gained as a result of change of gender resulting from this Act,
 - (b) how the Scottish Ministers propose to address these.>

Foyso! Choudhury

104 After section 14, insert—

<Effect on the Equality Act 2010

Effect on the Equality Act 2010

- (1) For the avoidance of doubt, nothing in this Act affects—
 - (a) the definition of “sex” in section 11 of the 2010 Act,
 - (b) the definition of “man” or “woman” in section 212(1) of the 2010 Act,
 - (c) any of the protections afforded by the 2010 Act.
- (2) In this section, “the 2010 Act” means the Equality Act 2010.>

Jamie Greene

136 After section 14, insert—

<Impact of this Act on prisons

Impact of this Act on prisons

- (1) The Scottish Ministers must, no later than three years after section 2 comes into force, prepare and publish a report on the impact of this Act on the placement of transgender people within prisons.
- (2) A report under subsection (1) must set out, in particular, any change in the number of—
 - (a) trans women residing in women’s prisons,
 - (b) trans women residing in men’s prisons,
 - (c) trans men residing in women’s prisons,
 - (d) trans men residing in men’s prisons.>

Jeremy Balfour

137 After section 14, insert—

<European Convention on Human Rights

European Convention on Human Rights

- (1) For the avoidance of doubt, nothing in this Act alters the effect of Article 9 of the European Convention on Human Rights and the rights and protections that it affords.
- (2) For the purposes of this Act, “European Convention on Human Rights” means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4 November 1950.>

Jeremy Balfour

138 After section 14, insert—

<European Convention on Human Rights

European Convention on Human Rights

- (1) The Scottish Ministers must, by regulations, make further provision about the interaction between this Act and Article 9 of the European Convention on Human Rights.
- (2) Regulations made under subsection (1) are subject to the affirmative procedure.
- (3) For the purposes of this Act, “European Convention on Human Rights” means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4 November 1950.>

Sarah Boyack

139* After section 14, insert—

<Review: Gender identity healthcare

Review: Gender identity healthcare

- (1) Within two years of Royal Assent, the Scottish Ministers must review the impact of this Act on the provision of gender identity healthcare.
- (2) Before carrying out a review under subsection (1), the Scottish Ministers must consult as it considers appropriate on the remit of the review.
- (3) A review under subsection (1) must consider what further steps could be taken to improve access to and provision of gender identity healthcare.
- (4) The Scottish Ministers must prepare and publish a report on the review under subsection (1).>

Rachael Hamilton

140 After section 14, insert—

<Review of healthcare for trans people>

<Review of healthcare for trans people

- (1) The Scottish Ministers must review the interaction of this Act with healthcare for trans people.

- (2) A review under subsection (1) must consider, in particular—
 - (a) whether a bespoke healthcare pathway needs to be created for those applying for a gender recognition certificate,
 - (b) any issues experienced by people applying for a gender recognition certificate in relation to healthcare,
 - (c) what further steps could be taken to improve healthcare for trans people.
- (3) The Scottish Ministers must prepare and publish a report on the review under subsection (1).
- (4) The report under subsection (3) must set out, in particular, any steps that the Scottish Ministers propose to take as a result of the review.>

Maggie Chapman

141 After section 14, insert—

<Review of time periods

Review of time periods

- (1) The Scottish Ministers must, no later than three years after section 2 comes into force, prepare and publish a report on a review of the impacts on trans people of—
 - (a) the period a trans person is required to live in the acquired gender under section 8C(1)(a)(iii) of the 2004 Act (inserted by section 4),
 - (b) the reflection period under section 8B of the 2004 Act (inserted by section 3).
- (2) The report under subsection (1) must set out any changes that the Scottish Ministers propose to make to the time periods as a result of the review.>

Before section 15

Tess White

142 Before section 15, insert—

<Scottish Ministers' duty to report

- (1) The Scottish Ministers must prepare a report on the steps they have taken to meet the requirement in section 14A.
- (2) The Scottish Ministers must lay a copy of the report before the Scottish Parliament no later than 6 months after the day after Royal Assent.>

Tess White

143 Before section 15, insert—

<Scottish Ministers' duty to report

- (1) The Scottish Ministers must, in respect of each reporting period—
 - (a) undertake a review of the operation of this Act, and
 - (b) prepare a report on that review.

- (2) A report prepared under subsection (1) must include information on the effect of the operation of the Act on—
 - (a) educational establishments,
 - (b) the health system,
 - (c) the criminal justice system.
- (3) Each of the following is a “reporting period”—
 - (a) the period beginning with the day after Royal Assent and ending on 31 December 2023,
 - (b) each successive period of two years.>

Section 15

Tess White

144 In section 15, page 16, line 24, at end insert—

<() a gender recognition certificate under section 8A(1), 8F(1), 8J(1) or 8K(1) of the Gender Recognition Act 2004 where the applicant has previously obtained a gender recognition certificate under one of those sections,>

Roz McCall

105 In section 15, page 16, leave out lines 25 and 26

Roz McCall

106 In section 15, page 16, line 27, leave out <and confirmatory gender recognition certificates>

Shona Robison

78 In section 15, page 16, line 29, after <sheriff> insert <clerk>

Roz McCall

107 In section 15, page 16, leave out line 33

Roz McCall

108 In section 15, page 16, line 38, leave out <or a confirmatory gender recognition certificate>

Roz McCall

109 In section 15, page 16, line 40, leave out <“confirmatory gender recognition certificate”>

Sue Webber

15 Leave out section 15

After section 15

Pam Duncan-Glancy

37 After section 15, insert—

<Impact of Act on Equality Act 2010

Impact of Act on Equality Act 2010

For the avoidance of doubt, nothing in this Act modifies the Equality Act 2010.>

Pauline McNeill

110 After section 15, insert—

<Reporting on sex

Reporting on sex

- (1) For the avoidance of doubt, nothing in this Act affects any requirement to collect data on sex.
- (2) For the purposes of this Act, “sex” has the meaning in section 11 of the Equality Act 2010.>

Pam Duncan-Glancy

145 After section 15, insert—

<Review of the Act

Initial review

- (1) Scottish Ministers must, no later than 3 years after section 2 of this Act has come into force, initiate a review of the operation of the Act.
- (2) The review under subsection (1) must consider, in particular—
 - (a) whether the Registrar General for Scotland has been able to carry out the functions specified in the Act effectively,
 - (b) how many people have obtained gender recognition certificates,
 - (c) the operation of section 22 of the 2004 Act in light of changes made by this Act considering, in particular, whether further exceptions are necessary under subsection (4) of that Act,
 - (d) if any further provision related to the Act is being considered by the Scottish Ministers, in particular any provision related to gender recognition for non-binary people,
 - (e) anything else that the Scottish Ministers consider to be relevant.
- (3) No later than 2 years after a review is initiated under subsection (1), the Scottish Ministers must—
 - (a) prepare a report setting out the findings of that review and conclusions drawn from those findings, and
 - (b) lay that report before the Scottish Parliament.>

Pam Duncan-Glancy

146 After section 15, insert—

<Impact assessment

Impact assessment

- (1) Scottish Ministers must, no later than 3 years after section 2 of this Act has come into force initiate an assessment of the impact of this Act.
- (2) The assessment under subsection (1) must include consideration of—
 - (a) the effect of the Act on the operation of the Equality Act 2010 in Scotland, including
 - (i) the exemptions set out in the Equality Act 2010, and
 - (ii) single-sex spaces as provided for in paragraph 27 of Schedule 2 of the Equality Act 2010,
 - (b) the number of individuals seeking gender affirming medical care,
 - (c) the number of people with gender recognition certificates and confirmatory gender recognition certificates imprisoned or on remand in prisons in Scotland,
 - (d) The number of people charged with an offence under section 22A of the 2004 Act,
 - (e) Information on the disclosure of information under section 22(4), including—
 - (i) any cases brought under section 22 of the 2004 Act,
 - (ii) any exceptions to section 22 relied upon in each case,
 - (iii) the outcome of those cases,
 - (f) Information on any legal challenges where—
 - (i) the interaction of the provisions of the 2004 Act inserted by this Act and the Equality Act 2010,
 - (ii) the provisions of the 2004 Act inserted by this Act,are matters in dispute.
- (3) As soon as practicable after the conclusion of the assessment under subsection (1), the Scottish Ministers must—
 - (a) publish a report on the findings of the assessment and,
 - (b) lay that report before the Parliament.>

Pam Duncan-Glancy

147* After section 15, insert—

<Duty to publish information

Duty to publish information

- (1) Scottish Ministers must collect and publish (in a form that ensures no individual applicant is identified or identifiable) the information in this section.
- (2) In relation to section 8A of the 2004 Act, the number of applications—
 - (a) received,
 - (b) granted,

- (c) rejected.
- (3) In relation to section 8O of the 2004 Act—
 - (a) received,
 - (b) granted,
 - (c) rejected.
- (4) The reasons for rejection of applications under section 8A or 8O of the 2004 Act.
- (5) The number of applicants who have applications under section 8O of the 2004 Act rejected who subsequently make an application under section 8A, and the result of those applications.
- (6) The number of applications withdrawn.
- (7) The number of interim gender recognition certificates granted.
- (8) The number of full gender recognition certificates granted and—
 - (a) how many of these were granted to a person with an interim gender recognition certificate,
 - (b) information on the length of time taken between interim gender recognition certificates being issued and a subsequent full gender recognition certificate being issued to the same person.
- (9) The number of requests for review under section 8Q of the 2004 Act.
- (10) The number of appeals under section 8R of the 2004 Act
- (11) In relation to section 8S of the 2004 Act, the number of applications—
 - (a) received under each ground in subsection (1),
 - (b) granted in respect of each ground in subsection (1),
 - (c) received under subsection (2),
 - (d) granted in respect of subsection (2).
- (12) The number of corrected certificates issued under section 8T of the 2004 Act,
- (13) Information on applicants’—
 - (a) marital status at the time of making the application (including whether the applicant was in a civil partnership),
 - (b) acquired gender,
 - (c) place of birth.
- (14) The number of applications received from prison and the details specified in subsections (2) to (13) in respect of these applications.>

Tess White

148* After section 15, insert—

<Scottish Ministers' duty to consult: women and girls

15A Scottish Ministers' duty to consult: women and girls

- (1) Within six months of Royal Assent, the Scottish Ministers must consult publicly on how it should report on the impact of the operation of the Act on women and girls, in particular—
 - (a) the form that such reporting should take, and
 - (b) the regularity of the reporting.
- (2) The Scottish Ministers must publish a report within six months of carrying out the consultation setting out—
 - (a) information on the consultation undertaken,
 - (b) the responses received, and
 - (c) the timescale for laying regulations in accordance with subsection (3).
- (3) The Scottish Ministers must make regulations setting out its plans for reporting on the impact of the operation of the Act on women and girls, including—
 - (a) the form of the reporting,
 - (b) the data that must be collected,
 - (c) the timescale for publication of the first report, and
 - (d) frequency of subsequent reports.
- (4) For the purposes of subsection (3), any data collected should record the sex as recorded at birth.
- (5) Regulations made under subsection (3) are subject to the affirmative procedure.>

Sarah Boyack

149* After section 15, insert—

<Scottish Ministers' duty to collect data

Scottish Ministers' duty to collect data

- (1) The Scottish Ministers must by regulations set out the data that is required to be collected (in addition to that specified in section 15) in order to monitor the operation and impact of this Act.
- (2) Regulations under this section must require—
 - (a) the collection of data on the impact of the Act on trans healthcare waiting times,
 - (b) in specified circumstances, the collection of data on an individual's acquired gender and gender at birth for the purposes of monitoring—
 - (i) access to and provision of healthcare,
 - (ii) the commission of specific offences.
- (3) The Scottish Ministers may modify the data required to be collected under subsection (2).
- (4) Regulations under subsection (1) are subject to the affirmative procedure.>

Section 16

Sue Webber

- 16 Leave out section 16

After section 16

Rachael Hamilton

- 26 After section 16, insert—

<Evidence to be included with application

Evidence: details to be included in report

In the 2004 Act—

- (a) in section 3, subsection (3) is repealed,
- (b) in section 3B, subsection (4) is repealed,
- (c) in section 3D, subsection (4) is repealed,
- (d) in section 3F, subsection (4) is repealed.>

Fulton MacGregor

- 111 After section 16, insert—

<Impact of this Act on prisons

Impact of this Act on prisons

For the avoidance of doubt, nothing in this Act affects the ability of the Scottish Prison Service to take a risk based approach to where trans people are housed within the prison estate.>

Claire Baker

- 151 After section 16, insert—

<Guidance on occupational exemptions

Guidance on occupational exemptions

- (1) The Scottish Ministers must issue guidance on the interaction between—
 - (a) this Act,
 - (b) section 22 of the 2004 Act,
 - (c) schedule 9 of the Equality Act 2010.
- (2) The Scottish Ministers must make guidance issued under subsection (1) publicly available.
- (3) The Scottish Ministers may at any time vary or revoke any guidance issued under subsection (1).>

Carol Mochan

- 152 After section 16, insert—

<Interaction with the Equality Act 2010

Interaction with the Equality Act 2010

The functions to be exercised by virtue of this Act must be exercised in accordance with the Equality Act 2010.>

Claire Baker

156 After section 16, insert—

<Review of section 22 of the 2004 Act

Review of section 22 of the 2004 Act

- (1) The Scottish Ministers must, no later than 3 years after section 2 comes into force, review the operation of section 22 of the 2004 Act in light of changes made by this Act considering, in particular—
 - (a) whether the criminal offences remain appropriate,
 - (b) whether any further exceptions are necessary under subsection (4) of section 22 of that Act.
- (2) The Scottish Ministers must publish a report on the review under subsection (1).
- (3) The report under subsection (1) must set out whether the Scottish Ministers intend, by order under subsection (5) of section 22 of the 2004 Act, to make provision specifying further exceptions, particularly in relation to sharing information to ensure the effective operation of Part 1 of schedule 9 of the Equality Act 2010, within the legislative competence of the Scottish Parliament.
- (4) If the Scottish Ministers do not intend to make provision by order as a result of a review under subsection (1), the report under subsection (2) must specify why not.>

Schedule

Roz McCall

112 In the schedule, page 18, leave out line 11

Shona Robison

79 In the schedule, page 18, line 22, at end insert—

<() subsection (1C) is repealed.>

Pam Gosal

80 In the schedule, page 18, line 33, after <22> insert—

<()>

Pam Gosal

81 In the schedule, page 19, line 5, at end insert—

<() after subsection (8) insert—

- “() The Scottish Ministers must review the operation of this section in light of changes made by the Gender Recognition Reform (Scotland) Act 2022 considering, in particular—
- (a) whether the criminal offences remain appropriate,
 - (b) whether any further exceptions are necessary under subsection (4).”>

Graham Simpson

- 27 In the schedule, page 19, line 7, at end insert—
- <<(5ZZA)Regulations made by the Scottish Ministers under section 8C(4) are subject to the affirmative procedure.>

Pam Duncan-Glancy

- 153 In the schedule, page 19, line 16, leave out from <if> to end of line 18.

Graham Simpson

- 28 In the schedule, page 19, line 19, at end insert—
- <() after subsection (5B) insert—
- “(5C) Regulations made by the Scottish Ministers under section 22A are subject to the affirmative procedure.”>

Roz McCall

- 35 In the schedule, page 19, line 22, leave out <and 8N(3)(b)>

Roz McCall

- 36 In the schedule, page 19, line 38, leave out <8N(3)(a)> and insert <8O(10)(a)>

Roz McCall

- 113 In the schedule, page 19, line 38, leave out <8N(3)(a)> and insert <8A(3)(za)>

Pam Duncan-Glancy

- 154 In the schedule, page 19, line 39, at end insert—
- <<“statutory declaration” means a declaration made by virtue of the Statutory Declarations Act 1835,”>

Shona Robison

- 82 In the schedule, page 20, line 37, after <sheriff> insert <clerk>

Sue Webber

- 17 Leave out the schedule

Section 18

Graham Simpson

29 In section 18, page 17, line 19 after <sections> insert <4,>

Rachael Hamilton

31 In section 18, page 17, line 21, at end insert—

<() The Scottish Ministers may not bring into force any provisions by regulations under subsection (2) until—

- (a) the Independent Review of Gender Identity Services for Children and Young People (“the Cass Review”) has published its final report, and
- (b) the Scottish Ministers have considered the report, and set out—
 - (i) their response to the report’s findings,
 - (ii) the implications of the report for the provisions of this Act and
 - (iii) the steps that they intend to take.>

Graham Simpson

30 In section 18, page 17, line 21, at end insert—

<() The Scottish Ministers may not bring into force any provisions by regulations under subsection (2) until regulations under section 8C(4) (inserted by section 4) have been made.>

Tess White

155 In section 18, page 17, line 21, at end insert—

<() Regulations under subsection (2) may not bring section 2 into force until regulations have been made under section 15A(3).>

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