



OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities, Human Rights and Civil Justice Committee

Tuesday 17 May 2022

Session 6



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EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE
14th Meeting 2022, Session 6

CONVENER

*Joe FitzPatrick (Dundee City West) (SNP)

DEPUTY CONVENER

*Maggie Chapman (North East Scotland) (Green)

COMMITTEE MEMBERS

*Karen Adam (Banffshire and Buchan Coast) (SNP)

*Pam Duncan-Glancy (Glasgow) (Lab)

*Pam Gosal (West Scotland) (Con)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Alexander Stewart (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Dr Mhairi Crawford (LGBT Youth Scotland)

Melanie Field (Equality and Human Rights Commission)

Alasdair MacDonald (Equality and Human Rights Commission)

Colin Macfarlane (Stonewall Scotland)

Vic Valentine (Scottish Trans Alliance)

Tess White (North East Scotland) (Con)

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Equalities, Human Rights and Civil Justice Committee

Tuesday 17 May 2022

[The Convener opened the meeting at 10:00]

Gender Recognition Reform (Scotland) Bill: Stage 1

The Convener (Joe FitzPatrick): Good morning and welcome to the 14th meeting in 2022 of the Equalities, Human Rights and Civil Justice Committee. We have received no apologies.

I welcome Tess White MSP to this morning's evidence-taking sessions. It is worth noting that other MSPs will be watching on Parliament TV and on catch-up. I also welcome a number of members to the public gallery. I ask everyone—members and members of the public—to ensure that their electronic devices are set to silent.

Agenda item 1 is evidence taking on the Gender Recognition Reform (Scotland) Bill. The committee is aware of the strongly held and often opposing views on the bill, so we look forward to engaging with a wide range of stakeholders in our evidence taking. We are committed to listening to everyone's views in a respectful manner throughout our stage 1 scrutiny. I remind everyone that Parliament must lead by example in setting the tone for the debate, so we should be courteous and respectful at all times.

I am very pleased to welcome to the meeting Vic Valentine, who is Scottish trans manager at the Scottish Trans Alliance; Dr Mhairi Crawford, who is chief executive officer of LGBT Youth Scotland; and Colin Macfarlane, who is the director of Stonewall Scotland. You are our first witnesses in our consideration of the bill. We will announce new witnesses week by week through to the summer recess; they will cover issues relating to the bill and views on the bill's merits. I refer members to papers 1, 2 and 3.

I invite our witnesses to make short opening statements, starting with Vic Valentine.

Vic Valentine (Scottish Trans Alliance): Good morning, everyone.

When the Gender Recognition Act 2004 was passed, it was considered to be a world-leading piece of legislation because it did not require trans people to be sterilised before we could be recognised as who we are.

Fortunately, a lot has changed in the nearly 20 years since that law was passed, and the law that we have in Scotland now lies far behind international best practice. The key reasons for that include the fact that trans people are still required to submit a psychiatric diagnosis before they can obtain legal gender recognition. In 2019, the World Health Organization removed gender identity disorder from the mental health chapter of the "International Classification of Diseases 11th Revision", or ICD-11; the fact that we still have such a requirement here is intensely pathologising and stigmatising. Trans people are not, in and of ourselves, people with mental illnesses; our identities are not mental illnesses so it is not fair that we need to provide a psychiatric diagnosis to be recognised as who we are.

Our process is also far behind international best practice, in that we are, before we can be legally recognised, required to provide intrusive and detailed medical reports about choices that we have made about our bodies. Despite the fact that there are no particular medical treatments that we need to have undergone, we still have to send details about the choices that we have made about our lives to a panel of doctors and judges for scrutiny.

Across the world, we are seeing a move, underpinned by international human rights standards, towards recognising trans people on the basis of self-determination. In many ways, the bill's provisions are to be welcomed, in that they would see Scotland moving towards that much better international best practice in the area. However, the provisions are not perfect; Scotland would not be world leading if the bill as drafted were to come into effect.

There are a number of key reasons for my saying that. For a start, the bill's provisions contain no proposals to recognise non-binary people—trans people who do not see themselves as men or women—and they also do not recognise trans people under the age of 16, which would mean that children and young people would still not be able to have identity documents that reflect who they are and how they live their lives.

We began to consult on reform of the 2004 act way back in 2017, so it has been a long journey to get to where we are today. I am really pleased to be here with the committee. I look forward to answering your questions and hope that we can work together to ensure that Scotland has a law that is fit for purpose for 2022.

The Convener: I ask Dr Crawford to make some opening remarks.

Dr Mhairi Crawford (LGBT Youth Scotland): Thank you. First, I say for the record that I am very happy for my name to be pronounced "Mari", but

normally it is pronounced “Vari”. I will answer to both.

Thank you for inviting me to the meeting to support the process of scrutinising the bill to reform the 2004 act. That the bill is before the Scottish Parliament is a huge step forward, but I will add that trans young people have made it clear that it neither goes far enough nor, as Vic Valentine has outlined, makes Scotland a policy leader in the area.

Members will already be aware of the bill’s history, the length of time since the first bill was passed in 2004 and the length of time since it was proposed that that legislation be updated. However, my focus lies not on that but on the impact of the delay on young people, and the actions that Parliament can take to help to improve their lives, as we move forward.

From our research report “Life in Scotland for LGBTI Young People”, which was published last month, we know that the average age for coming out as trans is 15. That means that a 15-year-old who came out in 2017 when work started on the bill would be about 20 now. It is likely that during that time they have been unable to apply for a gender recognition certificate because of their age, and subsequently, because of the requirement for a psychiatric diagnosis, just as Vic Valentine outlined. That is because of the time and cost of obtaining the diagnosis and the burden of collecting evidence that they are living in their acquired gender. They also know that they risk rejection from an unknown panel, without recourse to appeal.

During those five years, that young person might have had to apply for a driving licence or a passport, to set up their first adult bank account or to apply for college, university or a job—all with identification documents that do not align with their gender identity. The GRC is the only document that they cannot obtain from the age of 16. Please—just take a second to think about how it might feel knowing that you might be outed because your paperwork does not match, or because the gender that you are presenting as does not match your documentation.

We know that discrimination is not allowed in the workplace, but we regularly hear from young people who have lost opportunities or had them delayed when an employer has found out that they are trans. I have recently heard from young people whom I am working with about investigations for fraud by, for example, the Student Loans Company, because their birth certificate does not match the rest of their identification, even though they disclosed their identity when first making an application. There have also been delays in, for example, completing right-to-work checks; that is

accepted as normal. I challenge whether that is acceptable.

During the consultation, we have engaged with lots of young people; 97 per cent of them welcomed the minimum age being lowered from 18 to 16 to bring it into line with other rights that are accessible at age 16 in Scots law. That was also supported by two thirds of respondents in the 2018 consultation, and 56 per cent in the 2020 consultation.

For young people specifically, that would validate them. One commented:

“I think it would lower depression rates—it would give that certainty, that validation”,

and another said that

“At 16, I was certain, articulate, and capable in my knowledge of my gender and my rights.”

We are also concerned that individuals who might not support the measure conflate the legal process for obtaining a GRC with medical transition, so I encourage the committee to review feedback and evidence with a critical eye. Colin Macfarlane will talk more about that shortly. I am nearly done—I promise.

Young people also feel really strongly that there is no justification that warrants applicants being required to live in their acquired gender for three months before applying for a GRC, and for the three-month reflection period. Indeed, both—especially the reflection period—are detrimental to people who are at the end of their lives, and could result in individuals not having their true gender reflected on their death certificate. Many of our young people feel that the requirement misunderstands the experience of being trans, and they note that gender identity is an individual journey. In their own voices, they say that trans people have already undergone a period of deep reflection before even telling other people that they are trans. In general, telling people that they are trans is an early step, and applying for a GRC is often the last step, if they even apply at all. It is also inconsistent with other statutory declarations.

The provisions in the bill are an important step forward, but they do not go far enough. More than 80 per cent of our consultation respondents felt that there should be an option for young people under the age of 16, and one person noted that dysphoria does not wait until the person is 16. In addition, 96 per cent of respondents were in favour of non-binary recognition, and non-binary respondents reported feeling let down by the Scottish Government on this.

I ask the committee to consider those matters carefully, because they present us with opportunities to make the bill world leading. Progressing the bill cannot come soon enough for

trans young people, because it will help them to live the best life that they can live.

I am aware that the committee heard, a couple of weeks ago, directly from young trans people about their lived experience. I am sure that you will agree that their stories are very powerful and must be central to the decision making. The young people whom we are working with on gender recognition reform just want you to listen to trans people, and for it to be acknowledged how difficult and draining the process is for trans individuals. You have the power to improve the lives of young trans people for the better, and to give them a better start in life. Being a young trans person in Scotland could be really joyful, but it can be really difficult, so I am looking forward to your questions and to supporting you in progressing the bill.

Colin Macfarlane (Stonewall Scotland):

Thank you, convener. I thank the committee for the opportunity to give evidence today. I would like to align Stonewall Scotland with the comments that my colleagues Vic Valentine and Mhairi Crawford have made.

I am really pleased to be here today and to see, at last, the bill to reform the Gender Recognition Act 2004 beginning its important process of detailed parliamentary scrutiny. It has been a long time coming. As colleagues have said, it is now six years since the Scottish Government stated its intention to reform the GRA and to bring Scotland into line with international best practice. In that time, we have seen an ever-growing number of countries move to a system of self-declaration, with Switzerland being the latest country to have done so.

Over the past six years, we have also seen two major public consultations with more than 34,000 responses. The committee launched its own call for views, which closed yesterday. It is not a fib to say that the bill is probably the most consulted-on piece of public policy in the history of the Scottish Parliament.

There has also been much public discourse about the bill. Sadly, a significant amount of that discourse—much of it in large sections of our media, but also online and on social media—has been full of misinformation about the proposed changes. In particular, it has said that reform of the GRA will lead to detriment in the rights of others. That is not true.

Concerns have continually been raised about misunderstandings and misinformation about what reform will mean, so it is important to clarify that GRA reform does not affect access to single-sex services and facilities; that GRA reform does not affect the Equality Act 2010 gender reassignment protections and exemptions; that GRA reform will not affect sports competitions; that GRA reform

will not affect any national health service clinical decision making; and crucially, that GRA reform will not permit anyone to flip-flop legal genders across different situations or days. The self-declaration process will be a statutory declaration of a person's intention to live permanently in their gender identity, and the bill will introduce significant criminal sanctions for making a false declaration.

It is important to note that, along with misinformation about the bill, much of the public discourse about trans people has happened without trans people being in the room or at the table. Trans people tell us that a significant amount of the reporting and discussions present trans people as a problem that needs to be solved. There has, unfortunately, been a whipping up of moral panic, and othering of trans people in the public discourse.

Trans people are not an ideology; they are our friends, our family and our colleagues. They are human beings who want to go about their daily lives. It is really important that the committee remembers that point, as it begins its vital scrutiny of the bill.

It is also important to point out that the majority of the public support trans equality and the proposed changes. The latest poll, which was published by BBC Scotland in February this year, showed that 57 per cent of people overall supported simplifying the process of obtaining a gender recognition certificate, with women being 63 per cent in favour.

There are concerns. We recognise those concerns, but we hope that, as it takes evidence from people who support the bill and people who do not support it, the committee will base its considerations on fact, evidence and truth. With that in mind, we hope that as the bill progresses, fact, evidence and truth will allay the concerns that some people have about the bill.

We look forward to working with the committee to progress the bill, and I look forward to taking your questions today.

The Convener: Thank you all. We now move to questions.

Pam Duncan-Glancy (Glasgow) (Lab): Thank you for the evidence that you submitted in advance of the meeting, and for what you have said so far. I also thank you for the work that you have done in the past year, and previously, for the people whom you represent. I acknowledge the significant effort that has gone into your work for LGBT people over the years.

My first question was going to be about the case for change, but you have addressed much of that in setting out your stall, as it were. However, one

question remains in that area. Could you tell us a bit more about the hidden costs of applying for a gender recognition certificate?

Vic Valentine: The United Kingdom Government reduced the application fee from £140 to £5 a couple of years ago, which was very much welcomed. However, people are often not aware that there is not just the fee to apply; costs tend to accumulate when people make an application for a gender recognition certificate.

At the moment in Scotland, the largest gender identity clinic, the Sandyford sexual health service, has a waiting list of just over four years for a first appointment. Because the person needs to provide a psychiatric diagnosis in order to apply for a gender recognition certificate, many people choose private healthcare instead. That could mean their spending several hundred pounds—roughly £1,000—for two or three appointments with a private clinician. As a rule, the general practitioner writes the second medical evidence report; they can charge up to £130 for such a report.

10:15

The panel normally requires that the evidence that you have been living in your acquired gender also includes updates to other identity documents, which can be changed before getting legal gender recognition. Changing a passport costs almost £100, and changing a driver's licence costs about £20. It is not impossible for people to accrue costs of up to £1,000 in getting the evidence that they need to make a submission.

Although it is great that the application fee has been reduced from £140 to £5, in the grand scheme of things, bringing together all the evidence that is needed to make an application can still be prohibitively expensive. That means that poorer trans people are unable to apply, while rich trans people are able to access the process.

Pam Duncan-Glancy: That is really helpful.

I will move on to a question about procedures. The submissions from Stonewall and the Equality Network note concerns that section 8U(1)(c) allows for the registrar general, by regulations, to make provision for or about

“information or evidence to be included in an application”.

Could you tell us more about your concern? Should that provision be in primary legislation? I find it odd that it is to be in regulations. What should we do about that concern?

Vic Valentine: If the powers around what additional evidence might be required are not limited in primary legislation, then hypothetically the registrar general might require evidence above

and beyond what is laid out in the provisions of the bill—evidence that is equal to the current evidence requirements of the existing process. That would fundamentally undermine the purpose of the bill.

Although that provision requires the consent of Scottish ministers, it would be more appropriate for it to require a higher level of parliamentary scrutiny. It is perfectly reasonable for the registrar general to request additional evidence from applicants, in some instances. However, historically, the way in which trans people have been treated shows us that if you allow people to think that they can make a decision about how much scrutiny we can be put under, that tends to turn into questions being asked about things such as medical evidence and diagnoses. If the policy principles of the bill are to guarantee that Scotland has a process that is based on self-determination, we need to ensure that that decision by Parliament cannot potentially be undermined in the future by the registrar general having powers to reintroduce such evidence requirements in the system.

Colin Macfarlane: I would echo those comments. In our submission, we say that we have concern about that provision—in particular, the line in the policy memorandum that says that the bill

“removes the routine requirement to submit evidence”.

Our emphasis was on the word “routine”, because it implies that there could be a requirement for trans people to provide documentation, which—as Vic Valentine said—flies in the face of the policy intention of the bill. We agree that that provision needs higher-level parliamentary scrutiny in order to avoid the situation that Vic Valentine outlined. Our views align with what Vic Valentine said about that provision.

Pam Duncan-Glancy: I have one more question on this area. I will keep the international question for later.

In your evidence, you have set out why you support change, and you note that just now, trans people can, without a gender recognition certificate, socially transition. Can you set out what difference it makes for a trans person to have a gender recognition certificate, what rights it would secure that the trans person otherwise would not have, and why those are important?

Vic Valentine: There are two aspects to that. There are practical considerations, including about situations in which the person might have to show their birth certificate as an identity document. The one that is most likely to happen to me is that if I were to go for a new job, I would need to show a birth certificate as proof of my right to work in the UK. Starting a new job is fairly stressful anyway; if you have to show a document that fundamentally does not align with how you see yourself and how

you live your life, and perhaps has a different name on it to all your other identity documents and the name that you applied for the job with, that is distressing and embarrassing and does not give you ownership of the point at which you might choose to share with colleagues that you are a trans person. It takes your ability to make that decision away from you.

There is also something about being recognised as who you are. For lots of trans people, it is upsetting to know that a document that is supposed to be about us, that we might have to show and that determines how the state sees us, is so fundamentally opposite to how we see ourselves.

Although a gender recognition certificate is not so consequential in many circumstances, when it comes to how trans people are able to live our lives and the rights that it gives us, it is important to trans people to be recognised and to have the reality of who we are and how we move through the world properly shown and represented on our identity documents, and properly seen and believed by the state.

Dr Crawford: That is even more important for young people, because when they are starting out, leaving school, applying for first jobs, applying for college or university, applying for a student loan or other things, they are less likely to have the full suite of matched documentation, and their gender recognition certificate and birth certificate will be different. That mismatched documentation is an additional hurdle in relation to supporting every young person to have the opportunity to have the best start in life.

As Vic Valentine said, it is about the risk of being outed. By the time you get to your mid-30s and have been out for a long time, you might be a bit hardened to it, but it is still difficult. If you have only been out for a few years and are just starting out, you might be very comfortable in your gender and know who you are, but we see young people who will not apply for the gender recognition certificate because of the additional hurdles. I do not want to say that it would level the playing field, but it would give young people the opportunity to be who they know they are. That would make a huge difference because it would remove barriers and offer them a better opportunity when they are starting out.

Colin Macfarlane: I would reiterate that. Trans people tell us that, in particular in relation to work. Dr Crawford talked about young people going into work for the first time; we also know that people who have lived in their acquired gender for many years but have not gone through the process of applying for a GRC have a real fear of what it might mean for how they can move through the world as themselves without it. That is particularly

the case in the world of work, where trans people still face significant discrimination for being who they are. It is a barrier to moving into the world of work, because of the fear that people might have of being outed, as Dr Crawford said.

I reiterate that simplifying the process, removing the medicalisation piece of it and removing the burden of evidence will, we hope, encourage people who wish to apply for a GRC to do so and, therefore, to be able to live as themselves and navigate the world in a way that is kinder and fairer. The practical bit is being able to participate at work or in school, higher education or further education. Trans people tell us that that is why they want reform.

Maggie Chapman (North East Scotland) (Green): I echo Pam Duncan-Glancy's comments and her thanks to you not only for the work that you have done in presenting written evidence to us prior to today, but for what you have said already and the support that you provide to the people you and your organisations represent.

I would like to explore in a bit more detail three specific areas of the bill: the requirement to live in one's acquired or inherent gender for three months; the spousal consent and interim GRC issue; and the person with an interest issue.

Dr Crawford, you spoke a bit about the requirement to live in one's acquired or inherent gender for three months in your opening remarks. We know that there are competing opinions and views about that. Some people think that three months is about right, some think that it is too long and some think that it is too short. It is a reduction from the current two years, obviously. What is your view on the provision on living in an inherent gender for three months prior to getting a GRC? Should we retain it? Colin Macfarlane said a little about the burden of evidence. Is there any risk that a requirement for proof could creep into the three months? I will start with Mhairi Crawford, and then go to Colin Macfarlane and Vic Valentine.

Dr Crawford: That is a good question. We regularly hear from young people that, currently, the GRC is one of the last things that they apply for, because of the burden of proof. Vic has talked about the waiting list to see a psychiatrist to get a medical diagnosis, for example.

Young people tell us that, before they come out, they have already done an awful lot of reflection to understand their true gender. Then they come out, usually to a safe group, and they build up from that. By the time they look to apply for a gender recognition certificate, they have been living in their acquired gender for quite some time—I want to ensure that Vic has an opportunity to talk about that from lived experience. As young people go through that, they can update all their other

documentation without the need to provide proof. It is a statutory declaration.

About 90 per cent of the young people we consulted felt that reducing the lived experience requirement from two years to three months was either good or okay but could be better. The provision does not go far enough. Do not get me wrong—it is a step in the right direction. However, young people really want to shorten or eliminate the lived experience requirement.

Interestingly, when speaking with young people, we find that they are focused on not just themselves but trans people who are towards the end of their lives. With the lived experience requirement in place, someone who has six months left to live might have enough time to get the GRC but they might not. Let us think about an individual whose death certificate does not match all their other documentation and who is not able to be buried or cremated with their true gender. I hate to use the word “fair”, but it does not seem right. We would say, strongly, that the requirement for lived experience is not necessary.

Colin Macfarlane: I back what Mhairi Crawford has said. In our evidence to the committee, we said that we oppose the requirement for an application to include a statutory declaration that the person has lived in their acquired gender for three months. We do not think that the Scottish Government has made its case or provided any justification for the three-month period, although it claims that it would be

“a reasonable length of time to demonstrate a serious commitment behind the application”.

As Mhairi Crawford and Vic Valentine have stated, trans people live as themselves for long periods of time and, if we move to a self-declaration system, applicants will have to make a solemn, statutory declaration to a notary public or justice of the peace, with significant criminal penalties if they make a fraudulent application. That, coupled with the fact that trans people are who they say they are, demonstrates a suitably serious commitment.

As far as we are aware, none of the other modern systems of gender recognition has a provision for applicants to have lived in an acquired gender for a defined period. Saying that a trans person has to have done so does not sit within the Scottish Government’s policy intent around reform of the Gender Recognition Act 2004. Our view is that it is unnecessary.

Vic Valentine: I do not have loads to add. I want to stress that it seems to be a unique requirement, although it is possible that that is not true, given the fact that I have to read translated versions of most of the other legislation. However, as far as we are aware, none of the other

jurisdictions around the world that recognise trans people by self-declaration, of which there are now more than 30, has a model with a requirement for people to have lived in their acquired gender for a set period of time before they can apply for legal gender recognition. Lots of trans people feel that it is just quite arbitrary.

10:30

I completely, whole-heartedly agree that only trans people who are permanently living in their gender and who feel confident that they are making an application on the basis of that being permanent should be able to apply. However, the fact that it is a statutory declaration—the fact that you have to make that declaration, that it will be permanent and that it is a witnessed legal oath—in itself is the safeguard that ensures that people choose to apply only when they are ready.

For many trans people, it is not the case that, when we come out and when we transition, we are all of a sudden aware of all the rights that we are able to access. Many of us are quite cautious about taking steps when it comes to making the social transition. We want to wait until we are ready and until we are sure and confident that we are making the right decision about things. Therefore, I imagine that the vast majority of people will probably apply much later than three months after they began living in their acquired gender. However, I do not think that we should have a hard-and-fast rule. Even if we are talking about a small number of people, if someone feels ready and able to make that statutory declaration sincerely sooner than three months after they permanently transitioned, I do not think that there is necessarily any reason to prevent them from doing so.

Maggie Chapman: I move on to the question of spousal consent and interim GRCs. The bill replicates the current provisions, but what do you think about them? Are you content with them or do they need to change? I will start with Vic Valentine.

Vic Valentine: Yes, we are broadly content with them. In the past, we were disappointed because, given that there is such a small number of grounds on which you can get a divorce or dissolution, overall, it is quite stigmatising that one of them is that your spouse has obtained a gender recognition certificate. However, we are also very strongly of the view that all spouses and civil partners should be able to end their marriage or civil partnership for whatever reason they want. Therefore, with regard to replicating the current system, it is a fair balance between ensuring that people are able to leave their marriages or civil partnerships if they are unhappy with their partner and ensuring that a spouse or civil partner cannot

block a trans person from accessing their legal rights.

However, if in the future no-fault divorce became possible in Scotland, there would probably no longer be a need to have this slightly convoluted process for the various permutations of people being granted interim gender recognition certificates if they are married.

Maggie Chapman: Thanks, Vic. Colin, do you have anything to add?

Colin Macfarlane: No. Vic answered that comprehensively.

Maggie Chapman: Mhairi, are you happy with that, too?

Dr Crawford: Yes.

Maggie Chapman: I move on to the question of the provision whereby a person with an interest could apply to have a GRC revoked.

Colin Macfarlane: We have strong reservations about the inclusion of section 8S, which would enable a person who has an interest in a gender recognition certificate to apply to the sheriff to have a certificate revoked. It is worth noting that the public consultation on the draft bill provided the example of the registrar general for Scotland as

“A person who has an interest in a gender recognition certificate”,

but the explanatory notes expand on that quite a bit, giving a spouse, civil partner or child of a person who has obtained a gender recognition certificate as further examples of people who have a genuine interest.

We are extremely concerned that the provision could enable family members who are not supporters of a person’s decision to transition to make vexatious and malicious applications to the sheriff to have the gender recognition certificate revoked. We have real concerns. We seek further clarification, and it would be good for the committee to seek further clarification, of the grounds for determining whether a person making an application for revocation has an interest in a gender recognition certificate.

We are also aware that there are groups that are strongly opposed to reform of the Gender Recognition Act 2004 and who—let us be fair—do not believe that trans people are valid. We are concerned about whether they might be classed as people with an interest or whether individuals in those groups might be classed as a person with an interest and able to make vexatious applications to have GRCs revoked.

Therefore, we have concerns. Further clarification of that is needed, and we urge the

committee to pursue that further, particularly when the cabinet secretary and officials give evidence.

Maggie Chapman: Thanks, Colin. Do you want to respond, Vic?

Vic Valentine: Yes. Like Colin Macfarlane, we have some significant concerns about the provision. Under section 8 of the 2004 act, the people who are able to apply to have a gender recognition certificate revoked are limited to a “spouse or civil partner” and “the Secretary of State”. It would make sense for the registrar general to be the person in question, given that, with this administrative procedure, they would be heading up the unit that deals with gender recognition, rather than the secretary of state with regard to the tribunal.

We think that all the grounds for revoking a GRC are totally reasonable. It is totally reasonable for a certificate to be challenged if someone thinks that it has been applied for on a fraudulent basis. However, we need to be honest about the situation with regard to the acceptance of trans people in society. Our submission sets out that, when the Scottish social attitudes survey was last carried out, 32 per cent of people said that they would be unhappy if a family member married a trans person, while, according to more recent polling, 12 per cent of Britons would be strongly opposed to a family member coming out as trans or non-binary.

There is real concern about the burden of proof on someone applying to have a GRC revoked and how they demonstrate that the case that they are making is worthy of consideration. You could end up with a trans person having to go before a sheriff court to demonstrate that they have not fraudulently applied for a gender recognition certificate, which might involve their having to provide all the evidence that is currently required by the gender recognition panel but in a kind of in-court conflict scenario in which they have to argue with a family member or another person who has demonstrated an interest in the matter. That would be a significantly more difficult and traumatising process than the current one.

It would be much more appropriate to continue to limit those who can apply for a certificate to be revoked to spouses and civil partners or the registrar general. I would also imagine that people who had concerns could go to the registrar general and explain why they felt that a GRC had been obtained fraudulently, and then the registrar general could make the choice as to whether the matter was worth taking forward and making an application to the sheriff court on.

We also have real concerns, given that, under the provisions in the 2004 act, the Court of Session would hear such cases. There is

something about widening the scope and lowering the level of court in which the cases would be heard that indicates to us the potential for relatively large numbers of vexatious claims to be made against people with regard to fraudulent applications.

Maggie Chapman: Thanks for that, Vic. Do you have anything to add, Mhairi?

Dr Crawford: We are seeing positive steps, particularly for young people. I have just been looking up some research, and the number of transgender participants receiving a supportive or very supportive reaction to coming out has gone up from 70 to 77 per cent, but just less than a quarter of them come out to family first. We are concerned that, if young people do not have a supportive family, those who have acquired a GRC might face vexatious challenges through the courts from their parents, carers or supporters. That is borne out a little by the fact that 28 per cent of trans young people still leave home not in positive circumstances. There is therefore a risk to young people obtaining a GRC of perhaps not having the support of their family and the family choosing to challenge it in court. That is our particular concern in that area, for exactly the reasons that Vic Valentine and Colin Macfarlane have already set out.

Maggie Chapman: Thank you very much.

The Convener: I call Pam Gosal.

Pam Gosal (West Scotland) (Con): Good morning, panel, and thank you for your opening statements.

I want to ask about lowering the minimum age at which a person can apply for legal gender recognition. I think that I am correct in saying that the Scottish Trans Alliance has welcomed that, but it has also stated:

“there should also be provisions for individuals struggling with their application to request support, and these should be especially sensitive to those under 18 who may be applying without the support of their parent or guardian.”

The alliance then goes on to say:

“explainers ... on ... what a GRC means, and how it could be used would ... be helpful”.

Do you think that, if individuals of a certain age are unable to understand

“what a GRC means, and how it could be used”

and require additional support to understand and submit an application, it might be unwise to lower the minimum age? That question is for Vic Valentine, first of all.

Vic Valentine: That very well might be a direct quote of something that we have said, although I do not remember off the top of my head what it is. It would be really valuable for applicants of all

ages to have accessible information about the effects of obtaining a gender recognition certificate. People should make the application with full knowledge of what its effects are. I do not think that 16 or 17-year-olds necessarily, as a rule, require more support than some people who are over 18. It will depend on the individual circumstances of each person who is applying. It is really important to reiterate what a GRC is: it is a certificate that people apply for to update the sex on their birth certificate.

Many 16 and 17-year-olds have completely socially transitioned. They are out to their families and friends, in education settings and at work, and if they are interested in medically transitioning they may already have started the wait to access medical treatment. Not allowing 16 and 17-year-olds to apply for a gender recognition certificate would not prevent any of those other things from happening. All that you would end up with is a group of trans people who may be permanently living in their gender but are unable to update the sex on their birth certificate and are therefore open to a lack of privacy around their trans status.

It is really important that information is available to applicants about what applying for a GRC means, but I do not necessarily think that that information should only be for 16 and 17-year-olds; I think that it should be for everyone.

Dr Crawford: I would echo that—it is not about being 16 or 17. There are many reasons why an individual might need additional documentation or support, including having additional support needs. There are certainly people out there who, for example, might have dyslexia or need support to translate written information into forms that they might want to submit, and that is not age specific. Excuse me for stumbling through that.

The other thing around that for any applicant is making sure that they understand what the GRC does—it is actually only about changing their sex on the birth certificate—and that it is not conflated with other things. Just as there is confusion within the general public, there is also education to be done within the trans community about that limit and how far the GRC goes. There is a whole range of things that it does not cover, as Colin Macfarlane outlined in his opening statement.

Colin Macfarlane: I have nothing to add. The point that Mhairi Crawford just made about the wider public piece and the information and education piece is really important. I just echo what Vic and Mhairi have said on that specific point.

Pam Gosal: Going back to what Dr Crawford said about support and something that Vic Valentine said about having explainers, that suggests that you are looking at having a much

wider support mechanism. If you are looking at people who have disabilities and need extra help, that cannot just be an explainer on a piece of paper. Support services will have to be provided to say what a GRC is and what it means. Am I right that you are saying that what is needed is more than just explainers and descriptions?

Dr Crawford: I am saying that the potential need for additional support would be the same for that individual across a whole range of things; it is not limited to the GRC. If, for example, you have an individual with additional support needs, whatever those might be, they might need additional explainers, information and support to fill out paperwork for a whole range of things. It should not just be limited to the GRC.

Pam Gosal: Thank you.

Karen Adam (Banffshire and Buchan Coast) (SNP): Good morning and welcome to the committee. In your written submissions, you have shown support for the removal of the requirement for the applicant to have medical evidence of gender dysphoria. You have also shown support for the replacement of the GRP with the registrar general. Can you explain your reasons and include any issues that you can see with providing medical evidence?

Vic Valentine: The removal of the requirement for a psychiatric diagnosis and for medical evidence is the thing that we most strongly support about the bill. Fundamentally, being trans, who we are and our identities are not mental health conditions, and it unfairly stigmatises us to require us to provide a psychiatric diagnosis to be legally recognised as who we are.

10:45

As I said in my opening statement, one thing that is particularly intrusive about the current process is the requirement to provide detailed medical reports about choices that you have made about your body, when they do not determine your eligibility for a gender recognition certificate. We know that quite a lot of people have encountered problems with the gender recognition panel because of the specific way in which their medical reports were worded.

We then end up with this strange situation in which someone will apply for a gender recognition certificate and their application will not necessarily be rejected but the panel will come back to them and require changes to their application because of the way in which they have described a particular surgical intervention that they have undergone. Even though you do not need to have undergone any particular surgical intervention, the panel will say, "You've not described this particular medical treatment in the precise language that

we'd like you to describe it," so you need to resend your application, go back to that doctor and get a new medical report that uses what the panel considers to be the accurate wording, and then reapply. That is the case even though you do not need to have had that surgical intervention. There is this odd situation in which that can be a significant barrier to people getting a gender recognition certificate, but it is all about the specifics of the wording; it is not about choices that they have made.

On the panel generally, trans people are opposed to the fact that we have to send off a pack to a tribunal of doctors and judges who never meet us and who essentially hold quarterly meetings to look at our applications and decide whether who we are and how we live our lives should be legally recognised. That is one of the aspects of the current process that people find the most offensive, I guess. It is very difficult to feel that a panel of strangers who you will never meet have that power in their hands, particularly when, because of the way in which the current system is set up, the people who are applying already know who they are—it is simply who they are. The fact that you have to send off an application is distressing for people.

It is therefore a welcome aspect of the bill that the panel will be removed. If the provisions in the bill that demedicalise the process and remove lots of the evidence requirements remain as they are, there will not be much for a panel to scrutinise, so it makes sense for the process to be done in a more administrative way. That would also bring Scotland significantly more into line with the places around the world that have already made such reforms. In those places, updating your birth certificate and getting legal gender recognition is a simple, quick and transparent administrative process that is based on your own declaration of who you are, and it does not require that kind of outside expertise or verification of your identity.

We are very supportive of those aspects of the bill.

Karen Adam: I have a supplementary question. You mentioned the GRP. Are you saying that the panel would not necessarily meet the person who is applying at all?

Vic Valentine: That is correct—you never meet the panel.

Karen Adam: What type of people make up the panel?

Vic Valentine: It is made up of doctors and judges.

Karen Adam: So they are not necessarily experts with regards to gender.

Vic Valentine: Normally, one of the doctors is a retired gender specialist, but not everybody is.

Karen Adam: I ask Mhairi Crawford to come in on my initial question.

Dr Crawford: I will offer a quote from one of our young people, and then I will talk a little more. This relates to the question and to what Vic Valentine talked about.

The young person told us that they were originally looking to apply in their late teens and early 20s so that all their legal documentation was matching, as they had begun to have issues with applying for things such as insurance, jobs, the protecting vulnerable groups scheme and health travel cards. They then decided not to apply, after reading through the process and discovering that their application could be rejected without recourse, particularly given the financial barriers to applying in the first place.

They found that to be a very difficult decision and one that they struggle with even now, when they could maybe afford the risk, but they felt like the medical process in particular was overly invasive and that the document would not reflect who they are. That also comes at the cost of their being vulnerable in situations when they are applying for jobs, travelling abroad and so on.

They have also now realised that that is delaying things such as looking into getting married or having children, and they are worried about how they will be recorded when they die. They want that to reflect the way they lived their life. The burden of medical evidence therefore has quite a significant impact.

Let us think about a young person, for example. We know that work is under way to reduce the waiting times at gender identity clinics, but the waiting time for a first appointment is expected to be over four years in some cases, as Vic Valentine said. There are more than 1,000 young people—that is, people who are 17 or under—on the waiting list on Scotland. That is a huge number, and that leaves young trans men and women in limbo. They can, and often do, progress with social transition, but they cannot progress with medical transition. Under the current scheme, if they wait so long to obtain the first appointment, there is no way they can even consider getting a gender recognition certificate. That is one of the reasons why we are so keen on that changing. The other aspect is moving the process into line with international best practice. This is one area in which Scotland should look to mirror best practice across the globe.

Karen Adam: You touched on the number of people on the waiting list. A question that has come up is that, with making it easier for people to apply for a GRC, there will be an increase in the

number of people coming forward. Will you explain why that would be?

Dr Crawford: A young person is less likely to have lots of surplus income. We should consider what Vic Valentine talked about earlier in response to Pam Gosal's question about the costs. A young person is not necessarily going to be able to afford private healthcare to accelerate the process, so they will be on the waiting list for years. Currently, that delays their being able to get a psychiatric diagnosis to be able to progress. We think that there are 1,000 young people on the waiting list, and that means that there are probably many more who are not even on the waiting list. Removing that barrier will support young people to be able to access a GRC, and that will support them to start and move into adult life with documentation that matches and remove the potential for them to out themselves as a result of having mismatched documentation or their lived gender not reflecting all their documentation. That is quite important to us.

Colin Macfarlane: I do not have much to add. Vic Valentine and Mhairi Crawford have touched on the point that, when we look at the growing number of countries around the world that are moving to this system and removing the medicalised approach, we see that we are lagging behind. Last week, ILGA World, which ranks European countries on their progressive policies around LGBT equality, found that the UK had dropped from, I think, first a good few years ago to 14th—I think that we were 10th the year before. We are plummeting down the list of progressive countries on LGBT equality. One of the reasons that was given for that was the fact that we still maintain the medicalised process and we do not have a self-declaration process. Mhairi Crawford and Vic Valentine have pointed out that removing that and having a self-determination and self-declaration process will see us moving in line with the growing number of countries around the world that have such a system in place.

On the removal of the panel, I cannot begin to imagine compiling piles and piles of evidence and putting that to a panel of people who do not know me, will never meet me and have no idea who I really am, and who will make up their minds based on the evidence provided, and make a decision about whether I can say who I am and be able to live my life and navigate myself through the world. I cannot begin to imagine how that must feel.

The removal of the panel system and replacing it with the registrar general will make it a far more humane and less intrusive system, and will allow trans people to flourish and thrive. That should be a position that all of us want to see.

Alexander Stewart (Mid Scotland and Fife) (Con): Good morning, and thank you for your

comments and evidence to date. I will start with a question on the legal recognition of non-binary people. You have already touched on that, but it would be good to get more of a flavour of your views.

In some of your presentations, you have talked about non-binary people being let down by the bill. The bill does not include legal recognition of non-binary people, but the Scottish Government has set up a non-binary working group to identify some of the issues. It would be good to get your views on the legal recognition of non-binary people and how you see that progressing.

Vic Valentine: I am a non-binary person and, if the bill is passed as it is, it will continue to be the case that I am unable to change the sex on my birth certificate or have legal recognition of who I am.

The lack of legal recognition of non-binary people is definitely an aspect of the bill—or, I would potentially say, the aspect of the bill—that the whole of the trans community, including trans men and trans women, is most disappointed about. For the bill to have legally recognised non-binary people would have been the change in the law that meant that it represented ambitious law reform and truly tried to ensure that all trans people in Scotland were legally recognised as who we are.

I have been involved in the work of the non-binary working group, and I welcome it. I think that its recommendations will be out in the near future. However, it is important to say that that group was set up on the understanding that the Scottish ministers had taken a decision that non-binary legal recognition would not happen and, even if the group was to recommend that recognition, it is likely that that would continue to be the Scottish ministers' position.

I do not disagree with the Scottish Government's analysis in the policy memorandum that legally recognising non-binary people would have a range of consequences. We currently have a legal system and indeed a society that treats all people as men or women. However, non-binary people ourselves are already navigating the messy complexities of that, because we are neither men nor women and we have to try to make do as best we can within frameworks that do not see that or recognise it.

I would like to see something in the bill that ensures that we can make meaningful progress within a set period of time and take us forward from what I see as a bit of an impasse. The Scottish Government acknowledges and agrees that there would be consequences of non-binary legal recognition. We need to work through exactly what those are and make decisions about when

we would or would not need to change things as a result. My concern is that we are tending to see the fact that there will be consequences and that it might be complicated being raised over and over, but significant work is not being done on how we will solve those complexities and move forward from where we are.

In my view, some of the issues that are raised are things that could be solved easily. It will probably not surprise people to know that, historically, we used to write laws that said that only men were people. We passed the Interpretation Act 1978 a few decades ago to say that, in certain aspects of law, where it refers only to men, we should presume that it is also talking about women. There will be aspects of law where simple things such as that could also apply to non-binary people.

There will be other aspects of law where the intention is to treat people differently on the basis of sex or gender, and those might need to be looked at more carefully, but I think that we can figure all of this out. There are states, particularly in Europe, that have invested quite a lot of time and energy in looking at these issues in detail. I think that Belgium, for example, commissioned very in-depth, expert research and a report on this area.

I am disappointed—and the trans community is disappointed—that non-binary people are not proposed to be legally recognised in the bill. I would welcome any way in which we could put provisions into the bill to at least ensure that meaningful progress is made in the area.

Dr Crawford: I will add a couple of quick points, if that is okay. It is worth reflecting that over half the under-24 trans respondents to the UK Government's 2018 national LGBT survey identified as non-binary. There is a population out there who are being let down by the bill, and they are telling us that that is how they feel.

The number of jurisdictions around the world providing legal recognition of non-binary people is growing. I say that not to negate the challenges but to show that there are ways forward.

11:00

We would like the legislation to include a requirement for ministers to review the recommendations of the non-binary working group and investigate how we can ensure that non-binary people can receive legal recognition in the timescale that was set out. In our submission we said that the maximum timescale should be five years from the enactment of the bill. However, if there is a way to bring that in quicker, we would very much welcome that.

We have held multiple consultations with young people—that goes back to Colin Macfarlane’s earlier point that this is a very consulted-on bill—and 96 per cent of the young people we consulted were in favour of non-binary recognition. Young people are making a strong statement that it is an important issue to them.

Colin Macfarlane: I echo my colleagues’ comments. We are disappointed that non-binary identities and non-binary people are not included in the bill. It is a missed opportunity. That means that, if the bill is passed in its current form, it will not be in line with international best practice—we will be some way towards that but will not have fully joined other jurisdictions that recognise non-binary people.

I echo what Mhairi Crawford and Vic Valentine were saying. We would like some consideration of how the act might be able to include non-binary identities in future. We encourage the committee to consider the merits of lodging amendments to the bill that would place a duty on the Scottish ministers to review the impact—or lack thereof—on non-binary people, or to fully scope non-binary legal recognition and then set out the next steps to Parliament.

If we look overseas, section 7 of the Irish Gender Recognition Act 2015 stipulated that the relevant minister should, within two years,

“commence a review of the operation of this Act”

and report on the review within 12 months of its commencement. The report on the initial review found that the act was operating successfully and recommended that, following extensive legal analysis and consultation with relevant stakeholders, legal recognition should be available to non-binary people.

We would like to see something in the Scottish bill, perhaps through amendments, that would put a duty on the Scottish ministers to carry out such scoping or ensure that non-binary people are included at a later date. We are not talking five, seven or 10 years down the line; it should be sooner than that.

Alexander Stewart: My second question touches on the impact on women and girls, which is probably the area of the bill that has caused the most controversy. You have touched on the debate in social media and the media, and in his initial statement, Colin Macfarlane talked about fact, evidence and truth.

This aspect of the bill has provoked the most opposition, because of the threat that women and girls feel when it comes to women-only spaces, such as the changing room, the refuge, the hospital ward or the toilet. Those are the areas that people have given as examples. At present,

the Equality Act 2010 allows for trans people to be excluded from single-sex spaces. With reference to those current provisions, and the exclusions that are already in place, what is the expectation that anything will change under the bill that we are discussing? How will the application of the bill’s provisions have an effect and impact on women and girls? Is anything going to change as a result of some of that impact? Perhaps Colin Macfarlane can unravel some of that.

Colin Macfarlane: We absolutely recognise that some women have concerns about the bill. However, it is also important to state that many, many other women do not have concerns and are very supportive of the bill.

It is crucial to point out, as I did in my opening statement, that the Gender Recognition Act 2004 has no impact on the Equality Act 2010. The changes to the GRA do not change anything in the 2010 act, which is not up for review. The things that you mentioned—single-sex spaces and the exemptions—exist and will continue to exist. GRA reform will not impact on them, and it is unfortunate—deeply unfortunate—that there has been misinformation, some of it deliberate, around what the bill will mean for women and girls.

Look at the jurisdictions around the world that are introducing a system of self-declaration. As far as we are aware, there have been no negative impacts from introducing it, and there has been no diminution of rights for women and girls. That is my point about facts and evidence: the evidence suggests that the introduction of the bill will not have negative impacts on, as you have said, access to single-sex services or change the Equality Act 2010. It is really important that the committee holds that in mind, because the proposals in the bill are about demedicalising an intrusive process and allowing trans people to have a simpler system of self-declaration. Nothing changes around single-sex spaces, single-sex exemptions or the Equality Act 2010. That will remain the same—the 2010 act is not up for review.

Alexander Stewart: So your submission, including the answer that you just gave, is that the bill does not pose a threat to women and girls.

Colin Macfarlane: Again, look at the provisions in the bill. What you are perhaps suggesting—and, if I am honest, this is the part of the discourse that has been horrible—is the idea that trans people, and particularly trans women, are a threat. That presentation of trans people, and trans women in particular, is an othering of them as, somehow, something to be scared of, and the bill’s provisions are presented as making that even worse. We have to be very careful around that in the public discourse. Trans people are human beings. They are valid. They are not a threat to the wider public.

Some of the framing of the discussion around the bill has been really unfortunate and has seen the othering of trans people, particularly trans women, as something to be afraid of.

I am 45 years old; I grew up in the 1980s and came out in the late 1990s. A lot of the discourse around this matter is reminiscent of the discourse then around lesbian, gay and bi identities, particularly that gay men were somehow predatory, a threat to children and a safeguarding risk and that there was something inherently dangerous about us. The same rhetoric is being used about trans people, and particularly trans women, around the reform in the bill.

Look across the world at countries that are operating such systems—indeed, look across at Ireland, our nearest neighbour, which has had a self-declaration system since 2015. There have been no incidents of people using it in a way that would enable them to be a threat and a danger to women and girls. I do not think that any of us would conceivably sit here and defend a piece of legislation that we genuinely thought was going to harm women and girls and take away their rights.

Dr Crawford: I do not know how to follow that. All that I can say, as a woman, is that the bill is about a piece of paper—a birth certificate. It is not about the Equality Act 2010. Actually, the single-sex provisions in that act are not up for discussion, because it does not impact on the gender recognition certificate.

I can only echo Colin Macfarlane: look at the evidence and be very clear about what the bill does and does not do. The bill does not open up the Equality Act 2010 for discussion. The single-sex provisions remain. If you are looking at the gender recognition certificate, please remember what we have talked about: trans people have come out and lived in their true gender, often for years, so a bit of paper makes absolutely no difference to them accessing single-sex spaces and does not affect any of those rights.

Alexander Stewart: Vic, do you want to add anything to that?

Vic Valentine: Not loads, but I will reiterate a little bit of what Colin Macfarlane said. The group of trans people that is talked about in the law on single-sex services and how trans people are treated is those with the protected characteristic of gender reassignment. That includes not only every person with a gender recognition certificate but a much broader group of trans people, because it covers people who are proposing to undergo, are undergoing or have undergone any part of a process for reassigning their sex. In short, changing the way that someone can get a gender recognition certificate does not in any way change the make-up of the group of people defined by that

protected characteristic under the Equality Act 2010, so in terms of how the law works and how decisions are made within the confines of the Equality Act 2010, nothing will change by changing how a person can apply for gender recognition.

I guess that I want to reiterate that violence against women and girls is endemic, and I take really seriously the fact that we need to do more to reduce the experiences of violence that women often—most often of all, in fact—have at the hands of men. I also want to say that trans people of all genders—and indeed lesbian, gay and bi people of all genders—also experience higher rates of gender-based violence than the general population. I very much see the women's movement and the trans and wider LGBT movement as allies in fighting the causes of gender-based violence. I hope that that is something that we can progress and work on together.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good morning, panel. First, I must apologise, as I have moved into a new room in my office and the light seems to come and go. It is completely outwith my control. If, when I ask questions, I go into shadow, that is what is happening.

I thank the panellists for all their answers so far in what has been a very informative first session on the bill. There are two areas that I want to ask about. I know that you have touched on this a wee bit already, but are you able to expand on your views on the three-month reflection period proposed in the bill for an applicant to confirm whether they wish to proceed with the gender recognition certificate? I have already heard indications of some of your views, but the previous discussion was more about the period before the application. The views on that were given in quite strong terms, but can you talk about the proposed three-month reflection period?

Convener, as I am remote and you are there in person, I am happy for you to decide on the order in which folk respond.

The Convener: Vic, I will take you first, as your microphone is on.

Vic Valentine: We do not think that the three-month reflection period is needed. Around the world, the only self-declaration systems with a reflection period are those in Belgium and Denmark, and I am led to believe that Denmark is planning to remove the reflection period from its process, as it has found it to be not actually necessary and slowing up applications.

Most trans people, at the point when they apply for legal gender recognition, have done an inordinate amount of reflecting on who we are. It is

not the easiest thing in the world to figure out that you are trans, in a world that does not give you loads of positive messages and visibility about the fact that that is possible, so it normally takes you a fair while to figure out that that is what is going on and then, on top of that, a fair while to work up the courage to talk to other people about the fact that that is how you see yourself.

At the point at which you have done all of that—you have come out to your family and friends, you have figured out who you are and what rights you are able to access, you have learned what a gender recognition certificate is and you are in a position where you feel confident to swear that you will live permanently that way for the rest of your life—you probably do not need another three months to reflect on it. You have probably done a lot of reflecting already. We do not think that the reflection period is necessary, and I know that the vast majority of trans people feel the same way.

One small thing that I would add is that, if the reflection period remains and if it continues to be the case when the bill, hopefully, becomes law, it is really important that there are specific circumstances in which the reflection period can be waived—for example, Mhairi Crawford talked earlier about somebody approaching the end of their life. That should be possible in exactly the same way that it is possible in terms of notice periods for marriage. I think that that is really important.

I also think that there could be other circumstances in which it should be possible for the reflection period to be waived. You might have a trans person who was born in Scotland but who lives abroad in, perhaps, a country with lower levels of protection for trans people than we have in Scotland. Obviously, in Scotland, you are protected under the Equality Act 2010, even if you do not have a GRC, but it might be that, in some countries around the world, you would be protected only if you had legal gender recognition. Therefore, if a trans person who was born in Scotland but lived abroad potentially faced persecution or discrimination due to being trans, and their obtaining legal gender recognition would aid them in ensuring that they did not face that discrimination or persecution, it would be important for there to be a way to expedite the process.

Overall, I definitely do not think that the reflection period is needed. However, if the provision is maintained, it is really important that there are ways for people to be able to waive it in suitable circumstances.

11:15

The Convener: Do Colin McFarlane or Mhairi Crawford have anything to add?

Dr Crawford: Eighty-two per cent of the trans young people whom we consulted, from youth groups or in online surveys, feel that the three-month reflection period post application is too long or unnecessary. They have pointed out that applying for a GRC is currently one of the last things that trans men and women do in their transition. As a result, many feel that they have ample time to reflect on it and that the reflection period is therefore utterly unnecessary. Interestingly, many young people feel that a reflection period after statutory declaration does not respect their decision and effectively contravenes article 12 of the United Nations Convention on the Rights of the Child, which is about respecting the views of the child.

I go back to my earlier point about the average age of coming out as trans being 15 years old. Vic Valentine has mentioned that people take a long time in introspection, figuring out who they are before they even come out. If we think of that period of time before people come out—and if the average age for coming out is 15—people have already been living in, and reflecting on, their acquired gender for years before they turn 16, so the addition of an additional three-month waiting period is unnecessary.

Finally, young people have told us about the seriousness of the decision to apply for a GRC. The fact that it is an offence to provide a “false declaration or application” is more than enough for young people to take that decision very seriously. The young people with whom we have spoken are very aware of the severity of the punishment for false declaration, which is up to two years’ imprisonment and/or a fine. Signing the statutory declaration, given its consequences, is more than enough to mean that the reflection period is not necessary.

Colin Macfarlane: Again, I agree with my colleagues. The policy memorandum states:

“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.”

You have heard those very eloquent responses from Vic Valentine and Mhairi Crawford about the fact that trans people—trans men and women—will have thought about the process very seriously. As Mhairi has said, there is a solemn statutory declaration in front of a notary public or a justice of the peace, and there are significant criminal penalties for making any sort of fraudulent application. This provision in itself undermines the seriousness of the proposals and the system of

self-declaration, so we would want to see it removed from the bill. However, as Vic has said, if it remains in the bill, there should be specific circumstances in which it can be waived.

Fulton MacGregor: I thank the panel for those thorough and detailed answers.

On the requirement in the bill for the person who applies for a GRC to be “ordinarily resident in Scotland”, some concerns have been raised that that might lead to trans people from other parts of the UK travelling to Scotland to apply. Is there any merit in those arguments? Do you think that the committee needs to consider that point when scrutinising the bill?

I am happy with any order of response, convener.

The Convener: Who wants to go first?

Vic Valentine: It is my understanding that you certainly would not be able to come to Scotland for the weekend to be classed as “ordinarily resident” here and thus able to make an application. However, I think that it is right that people who were born in other parts of the UK but are genuinely “ordinarily resident” in Scotland should be able to apply.

My main concern around the “ordinarily resident” requirement is about refugees and people who are waiting for their asylum claims to be heard. I do not think that this is completely legally certain, but it seems to be the case that anyone who is waiting for an asylum claim to be processed would not be counted as being “ordinarily resident” in Scotland, despite the fact that they might have been living here for a number of years. Given that some people might be coming from a country of origin where legal gender recognition is completely unavailable, and that they might be here as a refugee as a result of transphobic persecution, it is really important that there are provisions in the bill that would allow people who are waiting for the asylum process to also apply for legal gender recognition. There are ways of doing that that would allow the “ordinarily resident” requirement to remain; for example, specific provisions could be put in that deal with refugees who are making asylum claims.

Certainly, it does not seem to me that the requirement would allow people to come for a long weekend and apply for a gender recognition certificate.

The Convener: Colin, do you have any comments?

Colin Macfarlane: I have nothing to add.

The Convener: Fulton, do you have any further questions?

Fulton MacGregor: No, thanks.

The Convener: Pam would like to come in briefly on the last point.

Pam Gosal: If there was no GRC, how would one protect women prisoners from men who say that they are women in order to transfer prisons? What are your thoughts on that?

Vic Valentine: It is not currently Scottish Prison Service policy to guarantee to a trans person that they can be housed on an estate that corresponds with the sex on their birth certificate, if it has been updated via a gender recognition certificate. By that, I mean that if a trans woman has applied for a gender recognition certificate and her birth certificate now says female, that does not give her a guarantee that she will be held on the female estate.

At the moment, the policy is to make individualised decisions on the basis of risk assessments that have at their very foundation the safety of both the trans person who is in custody and, of course, all other people who are in custody. Changing the way in which somebody can obtain a gender recognition certificate will not change the way in which the Prison Service is able to make decisions about who is housed where to ensure that everybody’s safety is properly upheld.

Pam Gosal: Thank you. Dr Crawford, do you have anything to add?

Dr Crawford: I have nothing to add.

Pam Gosal: Colin, do you have anything to add?

Colin Macfarlane: I have nothing to add.

The Convener: I go back to Pam Duncan-Glancy.

Pam Duncan-Glancy: I thank the witnesses for their really helpful answers so far.

I will touch a bit more on the international evidence. In your written evidence, all of you note what is happening in other countries that have moved to a self-identification model. From those international examples, what can you tell us about the impact of such a move? Specifically, how has it affected trans people in those countries, and how has it affected single-sex spaces? Have you seen any data or evidence that suggests that there has been abuse of the self-ID system in the countries where it has been implemented?

Vic Valentine: Quite recently, the European Commission published a bit of research on the approach to legal gender recognition being taken in all European Union member states, which, at the time, included the UK. When it looked at the various systems, it noted that people who live in member states that provide legal gender recognition via self-declaration felt a significant decrease in the stigmatisation around accessing

legal gender recognition. They felt that such a system improves and simplifies trans people's lives, because it allows them to have documents that reflect who they are and ensures that it is not a difficult or onerous thing to do. It removed a lot of stress for people. Some people with less supportive families remarked that they found that people were more supportive both because they had obtained legal gender recognition and because, with the policy shift in the country, the leadership was showing that being trans was okay and that this was the way in which we should be treating trans people.

As far as I am aware, no changes to legal gender recognition have had an impact on how individual territories or countries make decisions on how to treat trans people within single-sex service provision. I do not know the details of how the equivalents of the Equality Act 2010 and the Gender Recognition Act 2004 interact in other parts of the world. As far as I am aware, in most places, it is similar to how it is in Scotland: the two things are separate, and how you make decisions about service provision, and who is or is not included at a given time, does not directly correlate with how you allow trans people to update the sex that is recorded on their birth certificate and have gender recognition of how they are living.

A number of years ago—in 2017, I think—Transgender Europe, which is a Europe-wide transgender advocacy organisation, published a paper that looked at all the gender recognition certificates that had been obtained in Argentina, Denmark, Malta and one other country with self-declaration. I want to say Norway—it is somewhere in my notes. Basically, of the more than 17,000 people who had been legally recognised, there were two cases of repeat applications, both of which involved people who had come out as trans, had transitioned, had obtained legal gender recognition and then had faced a significant amount of hostility and discrimination due to their transitioning and felt unable to continue to live in a way that reflected how they felt about themselves. Those people went on to reapply later, when their circumstances changed. All the evidence from around the world seems to be that changing a gender recognition law means that trans people are treated better and have access to identity documents that reflect who we are, and that, by and large, except for a very small number of trans people, there are no other impacts beyond very good ones.

Pam Duncan-Glancy: Thank you. Colin Macfarlane, do you have anything to add?

Colin Macfarlane: Only that I hope that the committee might take evidence from some of the countries that have operated this system and hear

from them at first hand about their experience of it. That would be a good thing for the committee to do.

The Convener: That concludes this evidence session. Thank you all for attending. I suspend the meeting for a changeover of witnesses.

11:26

Meeting suspended.

11:36

On resuming—

The Convener: I welcome our second panel of witnesses: Alasdair MacDonald, director of policy and human rights monitoring, and Melanie Field, chief strategy and policy officer, both from the Equality and Human Rights Commission. They are both very welcome. I invite Melanie Field to make a short opening statement.

Melanie Field (Equality and Human Rights Commission): I thank the committee for the opportunity to give evidence, on the international day against homophobia, biphobia and transphobia, on a subject that is of great importance to trans people.

I will start by affirming the Equality and Human Rights Commission's commitment to protecting trans people from discrimination and harassment. The Equality Act 2010, for which the commission is the statutory regulator, protects trans people from gender reassignment discrimination at all points on their transition journey. We recognise that trans people still face prejudice, hate crime and unacceptable barriers in many areas of their lives, and we are actively working to address those barriers, including by ensuring fair treatment at work and improved access to healthcare for trans people. In that context, we strongly welcome the Scottish Government's commitment to increasing funding and reducing waiting times for gender identity services.

As we will, no doubt, go on to discuss, the commission has modified its position on proposals for amending the process by which a person changes their legal sex since the Scottish Government consulted on reform of the Gender Recognition Act 2004, first in 2017 and again in early 2020. In the past year or so, our board, advised by our statutory Scotland and Wales committees, has considered a range of work related to gender reassignment. That has included guidance for schools and on single-sex services, proposals to ban conversion therapy, issues related to data collection, and UK and Scottish Government proposals to reform the Gender Recognition Act 2004.

The board wanted to assess the most up-to-date evidence and legal analysis, not least because key concepts have been tested in court with judgments that can seem contradictory, and to consider the different initiatives that are being pursued by the Governments of Great Britain and the evolving national debate on matters of sex and gender.

During the same period, we have developed proposals for our new strategic plan and have conducted a public consultation on that. We received almost 900 responses, with 10 per cent of individual respondents and 13 per cent of participating organisations coming from Scotland. There was strong support among consultees on the importance of the commission's role in advising on law and policy relating to how sex and gender-based rights should be balanced.

That is the context in which our board wanted to review the issues against our statutory remit to regulate a legal framework that protects nine overlapping protected characteristics. Our remit requires us to consider how the rights of one person or group might be affected by those of others in the light of the law that we regulate. Balancing overlapping rights can be complex and challenging.

In the case of reform of the Gender Recognition Act 2004, we reached the position that more detailed consideration is needed before legislative change is made. That 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.

Questions continue to be raised in different quarters about potential consequences in relation to, for example, the collection and use of data; participation and drug testing in competitive sport; measures to address barriers that women face; and practices in the criminal justice system. We fully recognise that the issues are complex and sensitive and that they divide opinion, but the current polarised debate is causing much harm and distress to people on all sides. It is our view that the questions should be engaged with, discussed and addressed carefully, openly and with respect before legislative change is made. Ensuring that the practical impact of proposals is understood and that concerns are addressed is vital if legislative changes are to be effective in improving the lives of trans people and if further damage and division are to be avoided.

In the meantime, we consider that, taken together, the established legal concept of sex, the existing protections from gender reassignment discrimination and the ability for trans people to

obtain legal recognition of their gender collectively provide the correct balanced legal framework for the protection of everyone.

We continue to work to drive practical improvements for trans people and support the progress that Governments are making, including a reduction in the fee for applying for a gender recognition certificate, a commitment to digitise the process, and urgently needed improvements in access to gender identity services.

In addition, under our new strategy, the commission will focus on fostering good relations around the most complex issues and debates in our society today, including on matters of sex and gender.

The Convener: Thank you very much. We move to questions, starting with Maggie Chapman.

Maggie Chapman: Good morning, and thank you for joining us. Thank you, Melanie, for your opening statement. I have a few questions to put to you.

Some of us were newly elected in last May's Holyrood elections. Prior to that, the EHRC's advice to political party candidates was that gender recognition reform was needed urgently. You have outlined that your position on that has changed. Why do you think that legal gender recognition is no longer in need of reform? What analysis did you do to come to that changed view? Is that view shared by the EHRC as a whole, including the Scotland office?

I have a couple of further questions, but please start there.

Melanie Field: I will start, and perhaps Alasdair MacDonald can come in afterwards.

I will answer your final question first. The position held is that of the commission. Our policy positions are taken by the board, with advice from the Scotland and Wales committees, so those are corporate positions that the whole commission is signed up to.

As I tried to set out in my opening statement, the things that have changed are to do with the context. We looked at proposals from the Scottish Government and the UK Government, which, at the time, were both putting forward proposals for reform. It is fair to say that those proposals and the discussion of them led to quite a heated and growing debate, with questions and concerns being raised from various quarters.

11:45

In the meantime, the UK Government decided not to proceed with reform, and the board looked at various other issues that had come up in the context of gender reassignment. Looking at those

issues in the round, the conclusion was that there was not sufficient certainty about the impact of making the legislative changes for us to be able to support them at this time.

Alasdair, do you want to add anything?

Alasdair MacDonald (Equality and Human Rights Commission): I would just emphasise the point that we have considered these issues on an on-going basis from a range of new and different perspectives. We have been considering the views of stakeholders from all parts of the debate on what are very complex issues, and we have been considering the evolving jurisprudence around those issues. Key concepts continue to be tested in the courts. Some of that results in differing or even contradictory judgments, and we are conscious that a range of concepts remain to be tested in the courts. A further definition would be welcome, so that we can properly understand the implications of proposed changes on policy making, data collection, sport, sex-based rights issues and so on.

Maggie Chapman: Can I clarify something? You just mentioned clarity around definition—definition of what?

Alasdair MacDonald: I do not believe that I said “definition”. I was saying that we want to understand the implications of some of the proposed changes on some of the issues that I described. I did not use that word, in fact.

Maggie Chapman: Okay. Sorry if I misheard.

I appreciate that this may not be possible, but, if you are able and willing, it would be interesting if you could share with us the advice that was sent to the board. That would be really helpful.

Following on from that, I am also interested in what engagement you had with trans people and organisations that support trans people in coming to your changed view on reform.

Melanie Field: On the point that Alasdair MacDonald was making, I think that he talked about concepts rather than definitions. We have been thinking particularly about the legal cases relating to the Scottish census and the England and Wales census and the definition of sex in those contexts. We have also been thinking about the meaning of “sex” in Scottish legislation relating to women on public boards. Those are the areas in which there has been litigation.

We have on-going dialogue with a range of stakeholders, including trans representative organisations. Over this period, which has been a number of years, we have continued to have regular dialogue with those organisations. I have had meetings with Mermaids and Stonewall—various trans rights organisations—and my colleagues in the Scotland office will have been

engaging with trans representative organisations in Scotland.

We do not generally consult on our policy positions. We are a national expert organisation and regulator. Although we obviously want to understand the range of views in a debate, we will come to our own view on the basis of the evidence that we have looked at and our analysis of the law.

Maggie Chapman: This is my last question, unless I am allowed a cheeky extra one. The Scottish Human Rights Commission has written to the EHRC to clarify mandates. As you will know, the SHRC suggests that the EHRC is required to seek the consent of the SHRC when it proposes to take action on devolved human rights matters, and we would see gender recognition reform as one such matter. Can you outline that process? Have the two organisations met? What discussions have you had with the SHRC, and has there been an explicit discussion about seeking consent when taking action on devolved human rights matters?

Melanie Field: Yes, we have met the Scottish Human Rights Commission and have discussed its issues with regard to our respective mandates. There is clarity between the two commissions about that. Its position is that the SHRC has a mandate to promote and protect human rights in Scotland in respect of matters that fall within the competence of the Scottish Parliament while the EHRC is responsible for human rights matters that are reserved.

I do not think that the question of consent has been explicitly addressed in relation to that matter, with regard to which there are equality implications—and, of course, the EHRC’s mandate extends to equality in Scotland. There are complexities with regard to how rights are balanced within equality law. However, if we had any concerns about our respective mandates, we would have further discussions with the SHRC.

Maggie Chapman: Thanks. That is helpful. I will leave it there.

The Convener: Pam Duncan-Glancy is next.

Pam Duncan-Glancy: Good morning. Thank you for the information that you provided in advance and for answering our questions today. I want to ask about the change in your view before I move on to the interactions between the GRA and the Equality Act 2010.

Have you explained your change in position to trans people? Can you set out the legal considerations that you used in doing that?

Alasdair MacDonald: On reaching the decision in January, we reached out to a range of organisations that represent trans people to explain the decision in a similar way to the way in which we have explained it today, by setting out

the rationale for the commission's reaching that position. As you would expect, there were differences of perspective on that, but there were direct and robust conversations, which we welcome. We want to continue to maintain those dialogues on these complex issues, including or especially with organisations that might disagree with us. We could list those organisations—Melanie Field has mentioned some of them. We engaged with them when we reached our position in January.

Pam Duncan-Glancy: Can you say something about some of the legal considerations that you used in changing your view?

Alasdair MacDonald: Melanie Field has set out some of the issues that are being tested in the courts at the moment. There is a range of considerations, including testing key concepts in the courts and looking at the evidence, which we agree needs to be strengthened—we will play our part in doing that—around the rights of trans people. As we set out in our opening statement, there is also the wider changing context and the improved understanding, which we welcome, of the implications of changing one's legal sex and the impact of that on the delivery of policy, the delivery of public services and our understanding of these issues.

Therefore, the legal framework—we are the regulator of the Equality Act 2010—was an essential part of our consideration. However, it was one part of it; we considered a range of other factors in reaching our position.

Pam Duncan-Glancy: I appreciate that helpful answer. At the moment, anyone who has a gender recognition certificate is protected by the gender recognition aspect of the 2010 act, but that also protects a wider group of people who do not have a gender recognition certificate. People in that broader group have rights that are afforded to people whether or not they have a GRC. What is the legal effect of a GRC? How do you view the relationship between GRCs and the 2010 act? Are you aware of any legal cases about the use of single-sex spaces where the possession of a gender recognition certificate was a factor in determining access or exclusion?

Melanie Field: To start, I note that the position is very complex. Broadly, the relationship between the 2004 act and the 2010 act is that the gender recognition certificate has the effect of changing how someone's sex is recognised in law, including under the sex discrimination provisions of the 2010 act. A trans woman with a GRC would be treated as a woman for the purpose of the sex discrimination provisions of the 2010 act. A trans woman without a GRC would be legally male under those provisions. That is how the two pieces of legislation interact.

You are right to say that the gender reassignment protections are not predicated on possession or not of a gender recognition certificate. They cover a broad range of people from the point of proposing to undergo a process of reassigning sex to having undergone that process, and the process can be a medical or a social transition.

It is fair to say that there is a loose link between the criteria that are in the 2004 act, which relate to medical evidence and evidence of social transition, and how gender reassignment is defined in the 2010 act. The relationship is quite tenuous.

I am not aware of any legal cases about the provision of single-sex services that have turned on the possession or not of a gender recognition certificate. Have I answered all your questions?

Pam Duncan-Glancy: Yes—thank you. Would it be okay to ask about international evidence on this issue, convener?

The Convener: We will come back to international evidence at the end, as we did before.

Pam Gosal: I thank Melanie Field for her opening statement. The Scottish Government asserts that the bill will not change rights under the 2010 act, but it has not produced a reasoned explanation for its position. The EHRC's letter of July 2021 to the Trans Legal Project says:

“we think that it is unlikely that a trans person without a GRC can claim direct discrimination on the grounds of gender reassignment if they are denied access to a single or separate sex service that corresponds with their lived gender.”

The EHRC has since revisited its guidance on single-sex spaces and services. Will you provide an update on that?

Melanie Field: We published fresh, or new, guidance on single-sex services quite recently—I would need to be reminded of the date when we did that. Would you like me to address your point about how the direct and indirect discrimination provisions work?

Pam Gosal: Yes.

Melanie Field: As I explained before, a person with a gender recognition certificate is legally recognised in their acquired gender as their sex. That is the whole purpose of the 2004 act. A trans woman with a gender recognition certificate would be a woman and would be able to access a women-only service. A trans woman without a gender recognition certificate would be legally male, so they would have no automatic right of entry to a women-only service.

12:00

However, if a trans woman with a GRC was excluded from the service, that would be direct gender reassignment discrimination, unless it could be objectively justified, and if a trans woman without a GRC was excluded from the service, that could be indirect gender reassignment discrimination, unless it could be objectively justified. 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.

Alasdair MacDonald: The application of the law here is highly specific and dependent on context. We can set out the general principles, as Melanie Field has done, but the specifics of the case will determine whether direct or indirect discrimination has occurred.

Pam Gosal: I have a follow-up question. I asked the first panel a question about prisoner services. You mentioned a situation in which discrimination could occur, regardless of whether the person had a GRC. I will try to word this right: where does the onus lie when it comes to the Prison Service deciding where somebody should go?

Melanie Field: The duty not to discriminate would fall on the Prison Service, in that it delivers a public function and should not unlawfully discriminate in doing so. My understanding is that prisons follow guidance that is based on the individual assessment of need and risk in each case. That appears to be an appropriate way of making sure that there is no inadvertent direct or indirect discrimination.

Alexander Stewart: Melanie Field, in your opening statement you talked about the harm and distress on both sides of the debate and how the changes could have an impact. I go back to the women and girls issue, because that is where we perceive most of the harm and distress to be focused.

There is a code of practice that ensures that trans people are supported according to their gender. The EHRC's letter of 22 January to the cabinet secretary mentioned data collection issues, difficulties related to

"participation and drug testing in competitive sport"

and

"measures to address barriers facing women".

Those issues have been invoked in the debate, and that is where some of the hostility has appeared. Can you clarify why those specific issues were mentioned in the letter to the cabinet secretary? What implications are there for the collection of information about the individuals who will be affected?

Melanie Field: The matters referred to in the letter to the Scottish Government are examples of the kinds of questions and concerns that we have become aware of during this on-going and growing debate.

On the data side, I referred earlier to the litigation about the census in Scotland and the census in England and Wales, where the courts respectively came to different views on the meaning of "sex" in the census. The Equality and Human Rights Commission is very keen that public bodies in particular should develop public policy on the basis of good data. Therefore, we think that there needs to be clarity about the basis on which data is collected, whether it is collected consistently and what errors there might be in data sets that are used as the basis of taking decisions about public policy.

That is one area in which questions have been raised and different views have been reached. We are saying that we really want to be clear about that. We regulate the public sector equality duty on public bodies and, as part of that, we encourage public bodies to collect and use data about equality impacts. We therefore want to ensure that that data is good data that can be relied on to make sound decisions.

Do you want to add anything, Alasdair?

Alasdair MacDonald: I will speak to the aspect of the question on the polarised debate, which is a linked but separate point. We have specific concerns around public policy making on the basis of good data, as Melanie Field says, but we also have concerns about the broader discourse on the issues, which are complex and divisive and evoke strong feelings.

As a public body with a duty to help foster good relations, we are concerned that the debate has become quite toxic, that certain voices are excluded from it, including those of trans people, and that the space for more constructive and respectful debate on the issues has been slightly squeezed. Therefore, we want to play our role in helping to foster more constructive dialogue on what are complex and evolving issues that for many people are deeply personal.

Alexander Stewart: Concerns have been raised about the possible impact on the aim of increasing women's participation and representation in public life, because of the dubiety or discord that exists. Is it possible that that outcome could be affected?

Alasdair MacDonald: We know that women of all backgrounds are discouraged from participating in public life, and we have done a lot of work on that. For example, the data on the numbers of women who voluntarily stepped down at the most recent UK election are striking. The evidence on

the level of social media abuse received by women representatives in all Parliaments is disturbing.

Our concern is that people, no matter their views or background, are being discouraged from participating in what is an important debate that needs to be held constructively and respectfully in order to work through these complex issues.

Pam Duncan-Glancy: I have a short supplementary question. We have heard evidence that trans people feel that the bill has been one of the most consulted-on pieces of legislation ever and that the length of time for which the process has gone on has not helped the discourse that has been described, for anyone. How do we square that situation with the need to get the additional assurances and legal advice that you have said are required?

Melanie Field: That is difficult. I understand the frustration on the part of trans people who have had promises held out that have not yet been delivered, both north and south of the border. Obviously, in England and Wales, that prospect is not forthcoming at all.

As a regulator of the law, our guiding principle is that the impact of legislative change should be understood. It is about understanding and being able to mitigate potential impacts and address concerns constructively before pushing ahead with changing the law.

Before we came into the room, I was reflecting on my involvement in the legislation that allows same-sex couples to marry, which was brought in first in England and Wales and then in Scotland. I know that it is not the same, but I would draw some parallels with regard to the fact that it, too, involved people's deeply held views and concerns about what felt like quite a big change to the fabric of our nation and to a concept that had history behind it and to which people attached certain values.

What I felt was really important in the equal marriage legislation was that the concerns could be expressed and addressed, and the legislation was constructed in such a way that appropriate safeguards were built into it. The result was that equal marriage is now accepted and uncontroversial, and that is what I would like to happen here.

Alasdair MacDonald: We understand people's concerns about the potential for on-going consultation. Again, we recommend that such consultation be respectful, constructive and focused on the absolutely key issues to give people assurance and to ensure that all parties in the debate are provided with the appropriate information and safeguards.

Other things can help in the meantime. For example, the existing process can be improved. We absolutely welcomed the decision at UK level to significantly reduce the price of the process through digitisation, and we would support any further measures to make the process as straightforward, accessible and inclusive as possible within the existing framework.

We know that there are other issues that trans people care about. For example, we have talked about access to health services. For many people, the primary issue is the significant waiting times. Waiting lists of up to five years do not allow people to begin the journey that they choose to go on. Trans people also want to be able to work and be educated free from discrimination, and we are looking at what on-going action we can take to improve trans people's lives in those areas, too.

The Convener: I call Maggie Chapman.

Maggie Chapman: I just want to come back to a couple of things and explore them in a bit more detail.

Alexander Stewart mentioned the letter that the EHRC wrote to the cabinet secretary, setting out the change in your position. That letter refers to a

"wider group who identify as the opposite gender at a given point",

and expresses concern that, under the bill's proposals, that "wider group" might be able to obtain a GRC. Can you explain the term "wider group"?

Melanie Field: Yes, but before I do, I just want to note that tone and language are really important in this debate. I do not want to say anything that anyone might take offence at, and now that you have read those words back to me, I can see how the phrasing might be difficult for some people.

I think that what we were getting at is that there are two criteria for obtaining a gender recognition certificate, the first of which is a diagnosis of gender dysphoria. Thankfully, that is no longer classified as a mental health condition, which is really important in seeking to address the stigma and prejudice that trans people face. The second criterion is evidence of having lived in the acquired gender for a period of two years, and in the bill that is before the Scottish Parliament, that period is three months.

12:15

We would like to better understand the impact that the change from two years to three months has on understanding the extent to which an individual is confident that they want to make that significant legal, social and psychological commitment. That is what we were alluding to in that letter.

Maggie Chapman: That is really helpful.

I have another question. Melanie Field, you touched on this in that response. Earlier, you talked about medicalisation and about the distinction between medical and social transition. Alasdair MacDonald, in one of your answers to Pam Duncan-Glancy you talked about working to make the process as inclusive and accessible as possible. Given that trans identity is no longer considered by the World Health Organization to be a mental illness, why retain the discussion about the need for proof of gender dysphoria?

Alasdair MacDonald: Our focus is on the wider implications of the proposed changes, rather than on the individual measures. I understand where the question is coming from. We absolutely welcome that shift away from the idea of gender dysphoria being a disorder, but we also acknowledge that it is a condition or perspective that still causes people profound discomfort.

Rather than challenging the individual measures that are proposed, we are more focused at the moment on the wider implications for public policy making and data that we have talked about, and other issues. Within that framework, we want to see more inclusion and we think that further consideration is needed before those specific changes are made.

Maggie Chapman: Do you mean specific changes around the concerns that Melanie Field was talking about, such as the reduction from two years to three months, or do you mean the specific change in the requirement for a gender dysphoria diagnosis and that medicalised approach?

Alasdair MacDonald: I am talking generally about the legislation and its wider implications rather than individual measures in the legislation at this point. It is more about the implications of a broader group of people changing their legal sex and how we understand the knock-on effects on policy making, data and so on. That is where our focus is at the moment.

Maggie Chapman: You are focusing on the impact on policy making and data.

Alasdair MacDonald: Yes: on changing the broader criteria for changing legal sex and on the more general implications, rather than on individual measures.

Maggie Chapman: To be clear, are you talking about the impacts on policy making and data collection rather than the impact on trans people themselves?

Alasdair MacDonald: We are, of course, focused on the implications for trans people. Gender reassignment is a protected characteristic and we are working on a range of fronts to protect trans people from discrimination and harassment.

As we said in our opening statement, that is one of the complex areas in which we are considering the implications and the overlapping rights across the nine protected characteristics. We are absolutely committed to the rights of trans people.

The Convener: I thank both witnesses for their evidence. That concludes the public part of the meeting.

I am sorry, Karen Adam, do you want to come in?

Karen Adam: I have a question, if that is all right. It is fine if we have run out of time.

The Convener: My apologies, Karen; I missed you. I got ahead of myself.

Karen Adam: Under the bill, making a false statutory declaration or false application would be a criminal offence, punishable by up to two years in prison and/or a fine. What are your thoughts on that?

Alasdair MacDonald: An individual who makes a declaration is taking a significant personal and legal decision and the process should absolutely be protected from any misuse. It is a really important process for those people who wish to change their legal sex. There are comparisons with other areas of law where statutory declarations are used. I think that we would support anything that emphasises the importance of the decision and protects it from any misuse, so that the process is as good as it can be for trans people who wish to change their legal sex.

Melanie Field: I reflect that that is the current situation under the Gender Recognition Act 2004. I do not think particular concerns about that have been raised in the discussions that I have had with trans people and their organisations.

Obviously, it is important for trans people to be able to change their legal sex, and I am not aware of any particular concerns having been raised with us about that provision in the bill.

Karen Adam: What are your views on that being a safeguarding measure? We have had discussions about three-month reflection periods and three-month application process periods. Is the potential for prosecution a good safeguarding measure?

Alasdair MacDonald: The evidence suggests that making a declaration is not a decision that people take lightly—as we have said, it is a significant personal and legal decision. Our engagement with trans people and their representative organisations suggests that people think very carefully about making such a significant decision.

Melanie Field: I think that that is right. As Alasdair MacDonald said previously, that aligns

with other statutory declarations that people make when they are doing some big legal thing, which this is.

The Convener: Thank you, Karen, and apologies for that—I need to improve my screeving.

Do you want to come in again as well, Pam?

Pam Duncan-Glancy: If that is okay, convener.

I am keen to know what the Equality and Human Rights Commission has learned from similar organisations in other countries where self-declaration has already happened. In some cases, that has been the case for a number of years. What can you tell us about the use of self-ID internationally—or anything else—that you have learned from your work with partners? Do you have evidence that you can share with us now that can speak to the impact of self-declaration on trans people, and the impact of self-declaration on women?

Alasdair MacDonald: When our board considered those issues in the round, as we discussed in our opening statement, part of the approach was to look at international comparators. The current UK legislation sits somewhere in the middle between, as you said, countries that focus more on self-identification or declaration—some of those countries, including Ireland, some Nordic countries and other European countries are quite close to us—and countries internationally that require some kind of medical process for people to undergo the transition. The UK's legislation sits somewhere in the middle in terms of the gender dysphoria diagnosis and other conditions.

Our board considered those issues. The evidence on the impact is still emerging. We are a member of an international group of national human rights institutions. We continue to monitor the evidence as we engage with those institutions. That is a significant part of how we understand emerging issues and compatible ones in different countries.

Pam Duncan-Glancy: In all that work, have you got any evidence of abuse of the self-ID system?

Alasdair MacDonald: We were focused not as much on abuse of the system as on wanting to understand the wider implications. I do not want to parrot that position again, but it is an important part of what we think. Our emphasis has been less on any abuse of the system than it has been on the implications of broadening access to the process and what that means for services and data collection and so on.

Pam Duncan-Glancy: In looking at those broader implications, would you say that you have not found any evidence of a negative impact?

Alasdair MacDonald: The evidence is still emerging. We want to understand all that. Some of the changes are quite recent and we want to monitor with our partners the impact of those.

Melanie Field: I am not aware of any formal discussions that we have had with our international counterparts, but I have been involved in some informal ones. The overriding thing that I took away from those discussions is that there is a real recognition that the domestic context matters. There is a recognition that the debate in the UK is particularly heated and that that is not replicated across other states. Therefore, our international counterparts are—as always—conscious of the domestic context in which we carry out our work.

The Convener: Thank you very much. That concludes the public part of our meeting and we will move into private to consider the final items on our agenda.

12:26

Meeting continued in private until 12:39.

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