



Shona Robison MSP  
Cabinet Secretary for Social Justice, Housing and Local Government

By email

Friday October 7<sup>th</sup> 2022

Dear Cabinet Secretary,

We are writing to you regarding a letter you received from Baroness Falkner, Chair of the Equality and Human Rights Commission (EHRC) about reform of the Gender Recognition Act (GRA) in Scotland dated 20<sup>th</sup> September 2022.

The letter rightly acknowledges the democratic mandate of the Scottish Parliament to legislate on this issue, the support for the proposals as well as EHRC's requirement to defer to the Scottish Human Rights Commission on devolved issues.

We understand the EHRC has raised concerns about the possible implications of operating different systems for obtaining a Gender Recognition Certificate (GRC) within the UK. We do not foresee that a divergence in registration systems for obtaining a GRC within the UK would present a challenge. The devolved nations diverge on a number of legal issues without prohibitive jurisdictional complexity. Examples include the age at which young people can marry without parental consent, and the process for registering legal name changes. These are both areas in which we have rightly seen no intervention from the EHRC or UK Government into devolved areas of competence.

As you will be aware, the UK Government dropped plans to reform the GRA and de-medicalise the process in England and Wales. We are pleased however that the Scottish Government has shown leadership by proceeding with its draft bill to introduce a system of self- declaration for trans people which will better comply with in the right to dignity under Article 8 of the European Convention on Human Rights.

In May this year our two organisations gave evidence to the Scottish Parliament's Equalities, Human Rights and Civil Justice Committee in support of the Scottish Government's draft Bill. During that session we outlined that Scotland must align with international standards and best practice in upholding rights related to gender recognition, and that while the Gender Recognition Act 2004 was a positive step, nearly 20 years later, best practice has moved on and the GRA has been shown not to be working for trans people. The Scottish Government's draft Bill as it stands will bring Scotland closer in line with international best practice on legal gender recognition processes, importantly, by supporting the removal of the requirement for medical diagnosis of gender dysphoria as well as the need to include intrusive and detailed medical reports about choices that people have made with their bodies.

There has been clear and committed support for the Scottish Government's reforms from different sectors of civil society that represent the rights of women and girls, children's rights and human rights more broadly. No concerns have been raised by the sector about the implementation of different systems within the UK context. Those who have had their gender recognised outside of the UK can often apply for a GRC in the UK on a self-ID basis. The UK Government [lists over 40 countries](#) from which those with a GRC can apply in the UK through a streamlined route without the need to provide medical reports. Among others, this list includes countries such as Belgium, Iceland and Denmark where domestic legislation sets out that the requirement for a medical or psychiatric intervention to obtain a GRC is illegal, and that applicants are only required to make a declaration through a simple administrative process.

Specifically on the content of the draft Bill Baroness Falkner also implies an incompatibility between the Scottish Government's proposals and the UNCRC on the basis that the CRC only recognises those 18 and above as adults. We would take this opportunity to highlight the evidence given to committee by Scotland's Commissioner for Children and Young People who explained that the CRC endorses the principle of evolving capacities for those under the age of 18.

The progress of GRA reform has been slow and trans people in Scotland and beyond have suffered materially because of the toxicity of the debate which has unfolded here in recent years. In summary, we are writing now to restate our support for the Scottish Government's Gender Recognition Reform (Scotland) Bill. We are consistent and clear in our analysis that there is no conflict between the rights of trans people and women or any other group in Scotland, and that the need to reform the GRA in line with the principles of self-identification is pressing. We note the publication of the Equalities, Human Rights and Civil Justice Committee's Stage One report on the draft Bill this week and the committee's majority support for the Bill. We know that GRA reform has the support of the Scottish Parliament and we hope to see the draft Bill progress through the parliamentary process and become legislation as soon as possible.

Yours Sincerely,

Emma Hutton, CEO, JustRight Scotland

Naomi McAuliffe, Director, Amnesty International Scotland

CC: Equalities, Human Rights and Civil Justice Committee

Alex Cole Hamilton MSP, Leader, Scottish Liberal Democrats

Anas Sarwar MSP, Leader, Scottish Labour Party

Douglas Ross MSP, Leader, Scottish Conservative and Unionist Party

Patrick Harvie MSP and Lorna Slater MSP, Co-Leaders, Scottish Green Party