



WDI RESPONSE TO THE GENDER RECOGNITION ACT REFORM BILL PROPOSALS

About Your Org

Women's Declaration International is a non-partisan organisation established in 2019 to promote, and prevent the erosion of, women's sex-based rights. We created the [Declaration on Women's Sex-Based Rights](#), which reaffirms these and challenges the discrimination we experience from the replacement of the category of sex with that of 'gender identity'. It is based on the principles enshrined in [CEDAW](#), to which Scotland is a signatory as a country of the UK.

At the time of writing, our Declaration has been signed by people in 159 countries and by 439 women's organisations from across the world. We hold weekly international webinars with speakers from across the globe, which are attended live by 200-600 women from every continent and subsequently viewed thousands of times online. Additionally, webinars are regularly held by our members in the Antipodes, and others in German, French and Spanish languages.

1. The removal of the requirement for a medical diagnosis of gender dysphoria and supporting medical evidence.

We strongly oppose the proposal to enable people to self ID without any medical assessment or intervention. This means legal sex would become a matter of choice, divorced from any biological or medical reality. The introduction of the GRA in 2004 was introduced specifically for the very small number of individuals who suffered from the medical condition of 'gender dysphoria'. It is entirely unclear why anyone who does *not* suffer from gender dysphoria would have any need to change their legal sex.

Despite Scottish Government assertions to the contrary, removing the need for a medical diagnosis vastly increases the range of people who will be eligible for a GRC: from a small number of individuals with a medical condition to a large number of people who may now consider themselves to be within an undefined 'trans' umbrella.

The removal of the need for a diagnosis would remove all safeguarding from the process. We consider such safeguarding to be important for the individuals obtaining a GRC who may be going through a temporary period of distress. Studies have shown that many people who have identity issues are in fact gay or bisexual, have autism, or have experienced sexual or other trauma.

Removing medical gatekeeping may also increase the later risk of unnecessary medicalisation as those requesting a GRC are more likely to transition as a result.

An increasingly large number of people are now choosing to detransition, even with the existing medical input. The numbers who mistakenly decide to transition are likely to grow exponentially if even the safeguard of a diagnosis is removed. (We comment below on the failure of the Bill to make provision for detransitioners.)

The increased numbers and characteristics of males considered likely to obtain a GRC also compromises the safety of women and girls. There is nothing in the proposals which in our opinion would prevent a sex offender, domestic abuser or a sexual fetishist from obtaining a GRC for nefarious reasons. (We say more below on the proposed penalties for making a false declaration.) This Bill ignores the possible effects of the c.900% growth in GRC holders on women's rights to single sex spaces, jobs, services etc which are allowed under the Equality Act 2010. Although the Scottish Government has repeatedly stated that there will be no impact on women's EA rights, there is no clarity about the rights males obtaining a GRC will accrue in relation to these, nor how they will be prevented from accessing them. In the absence of such clarity there will be a large increase in the number of males demanding access to provision intended for women. We already have examples of the serious consequences of such a decision¹.

Additionally, as the Bill does not require any change to someone's physical presentation it will become extremely difficult for women to challenge *any* male in our space since there is no means of telling whether a male bodied person undressing in a women's changing room possesses a GRC or not. Thus, even men without a GRC could simply claim to 'be a woman' and refuse to leave. This has a serious negative impact on, and compromises the dignity and safety of women who will have no choice but to share our supposedly single sex space with males. Some groups of women will be particularly adversely affected, including survivors of male violence and members of certain religions which forbid mixing with non-family members of the opposite sex.

This Bill will force those women to self-exclude from spaces and services and we believe would be likely to lead to a legal challenge on the grounds of discrimination.

2) Provisions enabling applicants to make a statutory declaration that they have lived in the acquired gender for a minimum of three months (rather than the current period of two years) and that they intend to live permanently in their acquired gender

The Bill offers no definition of 'living in the acquired gender'. Does this mean wearing the clothes of stereotypical males or females? Wearing makeup or doing weightlifting? A person can dress and act as they see fit but this does not make them the opposite sex, or even the opposite gender.

However, if a person truly believes they are 'transgender' three months is nowhere near enough time to establish if this is how they wish to live the rest of their life. There are mounting cases of detransitioners who now state that they should have been given more information and more time to fully consider the implications. A recent study² found that 60% of detransitioners felt more comfortable identifying as their natal sex while 38% came to the view that their gender dysphoria was caused by something specific such as trauma, abuse, or a mental health condition. These issues should be fully explored before someone obtains a GRC and commits themselves to 'living in the acquired gender' for the rest of their lives.

The ramifications of such a potential mistake, (even without surgery or hormone treatment) could lead to a lifetime of trauma. Regret is a profound emotion which can occur years after the event and can have a devastating impact on a person's life.

¹<https://www.scotsman.com/regions/edinburgh-fife-and-lothians/female-spaces-need-better-protection-after-trans-woman-sex-assault-girl-say-campaigners-140883>

<https://www.theguardian.com/uk-news/2018/oct/11/transgender-prisoner-who-sexually-assaulted-inmates-jailed-for-life>

² <https://pubmed.ncbi.nlm.nih.gov/34665380/>

The replacement of a lengthy period of reflection and proper medical support and counselling, by a requirement to merely spend three months ‘living in acquired gender’ has not been well researched or evidenced and appears to be more a sop to ideology than a well thought out response to a genuine problem.

3) Whether applications should be made to the Registrar General for Scotland instead of the Gender Recognition Panel, a UK Tribunal.

Applications should remain with the existing UK body. The Registrar General has no particular relevant knowledge or experience of this matter and this therefore appears to be no more than a rubber-stamping exercise. By contrast, the existing panel is composed of people with appropriate expertise. Removing the application process from the established body will further weaken any safeguarding and protections for either applicants or others affected.

4) Proposals that applications are to be determined by the Registrar General after a further period of reflection of at least three months

It is difficult to answer this question. We have already stated that we consider the initial period of three months to be inadequate, and expressed our concern about the proposed role of the Registrar General. This suggestion of a further period of reflection does nothing to alleviate those concerns.

We believe the issuing of an interim certificate will make it more, not less, difficult for the applicant to change their mind. There is evidence that each step on a route to transitioning makes it more likely that the person will take the next step.

The proposed system will not allow for any investigation into the motivation or the background of the applicant. So there will be nothing to prevent the inappropriate issuing of a certificate to people ranging from those who would be better served by being offered appropriate services for their underlying issues, to sex offenders who believe they will gain easier access to vulnerable women and girls with a GRC.

If a diagnosis of gender dysphoria was required before a GRC was issued, this further reflection period would be more relevant.

5) Whether the minimum age for applicants for obtaining a GRC should be reduced from 18 to 16.

There are serious safeguarding issues with this proposal. Studies show that a person’s brain does not fully mature until they are in their mid to late 20s. The US National Institute of Mental Health states³ *the prefrontal cortex is one of the last brain regions to mature. This area is responsible for skills like planning, prioritizing, and controlling impulses. Because these skills are still developing, teens are more likely to engage in risky behaviors without considering the potential results of their decisions.*

The research on brain maturation has been fully considered and accepted by the Scottish Sentencing Council, whose guidance⁴ – introduced in January this year – states:

10. In assessing culpability, the court should have regard to the intellectual and emotional

³ <https://www.nimh.nih.gov/health/publications/the-teen-brain-7-things-to-know>

⁴ <https://www.scottishsentencingcouncil.org.uk/media/2171/sentencing-young-people-guideline-for-publication.pdf>

maturity of the young person at the time the offence was committed. Research shows that young people are not fully developed and may not have attained full maturity. As a result they:

- are generally less able to exercise good judgement when making decisions;
- are more vulnerable to negative influences such as peer pressure and exploitative relationships;
- may be less able to think about what could happen as a result of their actions, including the impact on any victim and others affected by those actions; and
- may take more risks.

In light of this it is inexplicable why the Scottish Government would consider lowering the age at which a young person can make an irreversible decision which will have a serious and, for some, a negative impact on the rest of their lives.

Research also shows that with no intervention, around 85% of young people who experience gender confusion settle happily into their natural sex post puberty⁵, although a considerable majority are gay. Allowing young gay men and lesbians to 'change sex' - and thus become 'heterosexual' in their 'acquired gender' - is an extreme form of conversion therapy, sometimes described as transing the gay away.

Whilst we recognise that this Bill does not impact on physical transition directly, we believe there is a danger that a young person holding a GRC may be more likely to subsequently move towards medical treatments which will make their body appear closer to that of their legal sex. Both hormones and surgical interventions have extremely serious, irreversible physical effects including infertility and life-shortening conditions.

WDI believes the over emphasis on this subject in politics, schools, advertisements, movies and social media have created a cult-type situation whereby a young person can feel excluded or ostracised if not on board with gender identity ideology. This has no scientific basis and is based around 'feelings' not facts. Gender identity ideology leads some young people to feel pressurised into transitioning, while others do so because of underlying issues which need to be dealt with appropriately instead, in particular those who are gay, lesbian, autistic or who have suffered sexual, physical or emotional violence.⁶

As the Cass Review Interim report states⁷: *It is essential that these children and young people [with gender incongruence or dysphoria] can access the same level of psychological and social support as any other child or young person in distress.*

This should be offered to all such young people as a matter of course, rather than encouraging and enabling them to change their legal sex without such safeguards being provided.

If there is to be a change to the age at which it is possible to obtain a GRC WDI believes this should reflect the most up-to-date psychological research. This would mean *increasing*, not decreasing, the age for obtaining a GRC to at least 25 years. This would ensure the applicant is more able to make

⁵ <https://www.frontiersin.org/articles/10.3389/fpsy.2021.632784/full>

⁶ See, for example, this account by a transitioner <https://genspect.org/transition-in-hindsight-aaron-kimberly-story/>

⁷ <https://cass.independent-review.uk/publications/interim-report/>

mature, considered, non-impulsive decisions, taken in full knowledge and understanding of the consequences.

6) Comments on provisions for interim GRCs

We support the current arrangement allowing a spouse or civil partner in this situation to exit a marriage/civil partnership if they choose.

7) Comments on the provisions for confirmatory GRCs for applicants who have overseas gender recognition

We are concerned that the proposed legislation will turn Scotland into a tourist destination for would-be GRC holders for people from the UK (about whom we say more below) and elsewhere. Those who have obtained an overseas gender recognition certificate should be ordinarily resident in Scotland for a minimum of 2 years before they become eligible for a Scottish GRC.

8) Comments on the offences of knowingly making a false application or including false information.

In response to concerns that the Bill will allow literally any male to obtain a GRC, the Scottish Government has pointed to two supposed safeguards. Firstly, the need to ‘live in the acquired gender’ for three months, and secondly the criminalisation of making a false declaration. These are inextricably linked however, since the declaration states that the applicant *(iii) has lived in the acquired gender throughout the period of three months ending with the day on which the application is made, and (iv) intends to continue to live in the acquired gender permanently.*⁸

Thus, proving the truth or falsity of the declaration depends on proving whether or not the person ‘has lived’ and at the time of making the declaration intended ‘to continue to live in the acquired gender’. The lack of definition and clarity within the Bill mean that it will be impossible to prove someone has made a false declaration. Without knowing what ‘living in the acquired gender’ means in law, it cannot be proved whether or not someone has done so.

The existing criterion – a diagnosis of gender dysphoria – provides a clear definition, and one moreover that has to be confirmed by two independent doctors. The Scottish Government now proposes to abolish the need for that without putting any alternative in place. The intended criterion has no objective meaning, nor will it require any confirmation or oversight from any independent person or body.

Nevertheless, if someone is to be allowed to enter into the legal fiction of being a member of the opposite sex it is essential that meaningful criteria not only exist, but are capable of being rigorously applied.

An additional level of difficulty would be proving that, at the time the declaration was made, the person did not ‘intend to continue to live in the acquired gender permanently’, since the only indication that they did so intend would come from their own self-declaration. No objective or independent confirmation is to be required. The argument therefore becomes circular.

⁸ <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/gender-recognition-reform-scotland-bill/introduced/bill-as-introduced.pdf>

Since the difficulties in proving someone has made a false declaration seem to be virtually insurmountable, we do not consider that the potential penalty of 12 or 24 months imprisonment and/or a fine would be any kind of deterrent to anyone – whether trans-identified or confused teenager or sexual deviant – who wishes to obtain a GRC for any reason.

We are concerned that the only people who will be identified as having made a false declaration are those who subsequently decide they are happy in their own sex, and wish to detransition.

The extraordinary weakness of this provision reinforces our concerns that GRCs will be successfully sought not only by the tiny number of people with gender dysphoria, or even those who consider themselves to be somewhere on the 'trans' spectrum from 'non-binary' to cross-dressers, but also by sex offenders and men with autogynephilia and other sexual paraphilias, who hope to gain access to women's hard-won rights and spaces.

9) Comments on the removal of powers to introduce a fee:-

We disagree with the proposal to remove any fee for obtaining a GRC. There is a considerable cost to obtaining other forms of identification or registration, such as a passport or driving licence and unlike a GRC these must be periodically renewed. It is inconsistent and discriminatory to offer one group of individuals free documentation.

Given the ease and speed with which it will become possible to obtain a GRC, with the removal of all existing safeguards, a fee may at least act as a slight deterrent to dishonest or impetuous applications.

The Scottish Government estimates that the cost of administering the proposals will be in the region of £300-350,000 set up costs and a further £150,000 p.a. Since the proposals do not include any medical necessity for the issue of a GRC the scheme should at the least be self-financing.

10) If the Bill's intended policy outcomes could be delivered through other means such as using existing legislation or in another way?

As presently drafted the Bill, in effect, gives any man the ability to obtain a GRC and 'become a legal woman' without any need for objective proof, independent oversight or safeguarding. Intentionally or not, an additional consequence of this will be the undermining of women's sex-based rights, safety, security and dignity. (Similarly of course, any woman would also be able to obtain a GRC, but this does not present the same dangers to men's physical, mental and emotional well-being.)

In order to improve provision for trans identifying individuals without seriously encroaching on the sex-based rights of women, there needs to be greater clarity about the purpose and *justification* for new legislation, which needs to go beyond the stated wishes of a small but vocal minority. In our view there needs to be clear distinctions made – and fully understood – between the different groups of people who are pushing for change, including but certainly not limited to people with medical conditions and needs such as gender dysphoria.

Suitable legislation should have built into it all the safeguards, checks and balances required for the safeguarding of both those applying for a GRC and others – predominantly women – who might be negatively impacted by the provisions. It must ensure that all applicants, particularly young people, are supported to in relation to underlying conditions and experiences.

The Scottish Government has recognised that this proposal is extremely divisive. Rather than dismiss the needs and concerns of women as unfounded and therefore ignorable, the Government should seek to build consensus about a way forward which would protect the human rights of all groups. In the absence of any such discussions, it is difficult to foresee what such a consensual approach might deliver.

11) If you have any suggestions for how this Bill could be amended. If so, please provide details.

We believe the Bill fails to consider four major areas of concern.

1. Protection of women's right to single sex spaces, provision and employment

The Scottish Government repeatedly states that this legislation will not affect women's rights under the Equality Act 2010. However it has not at any time offered any evidence for this assertion, beyond the statement that the Bill will not amend the EA (which would be outwith the Scottish Government's legislative competence.)

Whilst this is technically true, the consequences of allowing a very much wider group of male GRC holders who have self-identified as legal women, means there will in fact be a huge impact on women's rights.

The EQIA carried out for the Bill merely dismisses all the concerns that have been raised with the Scottish Government by women over the last two years or more. It fails entirely to understand and/or misrepresents the negative impacts on women of the likelihood that a much larger and more diverse group of male GRC holders gaining access to women's spaces. It also fails to recognise the real likelihood that non-trans identified males will (mis)use the system to gain such access.

As far as we can tell, the Scottish Government has made no effort to undertake such research, but instead has dismissed women's concern's as 'not valid'. In such an atmosphere, bordering on contempt for women, it is unsurprising that the EQIA appears to assume that the absence of evidence is the same as evidence of absence.

There is, in our view, considerable evidence. For example, in a high profile organisation where a male is running a trauma service for women, we know that women are self-excluding from that service - and similar ones - because they have told us so. In fact there is a court case pending in England, taken by a woman claiming discrimination because her local service refused to provide even one single-sex group that she felt able to attend. But examples such as these are dismissed as 'anecdotal'. The failure of the Scottish Government to take such reports seriously, or to undertake proper investigation does not make them untrue.

Additionally, the recording of individuals' preferred gender rather than sex makes research more difficult as data recorded in this way cannot be properly interrogated. Police Scotland already record prisoners' claimed gender, whether or not they have a GRC or even the protected characteristic of gender reassignment. This skews data and creates misleading impressions of the facts. For instance, the number of 'women' recorded as having committed pornographic offences now includes males, but in reality this crime is almost never committed by females.

It also appears that the EQIA may rely over-heavily on research conducted by those with a commitment to gender identity ideology, and a tendency to produce work which appears to support it. Those who oppose such views have found it increasingly difficult to obtain funding. Indeed many (mostly women) who question gender identity ideology have been severely harassed by GI ideologues. In at least four well publicised cases, three women and a man⁹ have been forced out of their academic institutions. Others have found themselves side-lined and had their work blocked or disrupted.

Any new legislation broadening the scope of men able to claim an identity as a woman **must** make clear that this does not give them automatic right of entry to women's safe spaces, hospital wards, jobs, prisons, sporting events, all-women shortlists etc.

2. Living in the acquired gender

The Bill turns on the assumption that someone can 'live in their acquired gender'. That concept is entirely undefined and we believe has no meaning either in law or in reality. If the Scottish Government does believe it to have a real meaning, this begs the question as to why there is no attempt to define it in the Bill.

The Bill must define its central concept. Without a definition it is not possible to uphold the law. Before doing so, there needs to be a widespread consultation with all groups, especially including women's rights groups, to reach a meaningful definition, acceptable to all, which everyone concerned is able to understand and recognise as accurate.

3. Provision for detransitioners

The Scottish Government has repeatedly given assurances that the needs of detransitioners would be addressed, but it has failed to include them in the Bill. Any legislation must make proper provision for those who obtain a GRC but who later wish to revert legally to their sex. Even amongst those with gender dysphoria and surgery, we are seeing increasing numbers of people detransitioning¹⁰. Under the present legislation they are unable to obtain legal recognition of this and are condemned to always live with the legal status of the wrong sex. Under these proposals, an even higher number of detransitioners are to be expected from those with a GRC but without dysphoria who only socially 'transition'. The speed and ease with which a GRC will become obtainable will lead many more people – especially suggestible youngsters – to obtain a GRC without fully appreciating the consequences, or even gaining any benefit from their new status.

There also needs to be a guarantee that people who later realise obtaining a GRC was a mistake will not be criminalised or otherwise penalised when they wish to detransition.

4. Ordinary residence

⁹ Professor Kathleen Stock from Sussex University; Professor Jo Phoenix from the OU; Raquel Rosario Sánchez from Bristol University; James Esses from the Metanoia Institute (accredited by Middlesex University)

¹⁰ <https://news.sky.com/story/hundreds-of-young-trans-people-seeking-help-to-return-to-original-sex-11827740>

<https://www.dailywire.com/news/detransitioners-flood-social-media-with-testimony-photos-the-darkest-time-in-my-life>

The proposed legislation will allow anyone 'ordinarily resident' in Scotland to apply for a GRC. The length of time that someone has to have lived here is not specified, leaving open the possibility that it will be interpreted as a very short period. This raises the prospect of large numbers of people from the rest of the UK coming to Scotland, staying for a few weeks and then applying for a GRC, although they would be ineligible for one in their normal place of residence.

We note that the government in Westminster has recently concluded that the present legislative arrangements provide the correct balance of rights and protections for trans-identified individuals. Self-ID will, rightly in our view, not be introduced in rUK.

The current proposal for a Scottish self-declaration regime is likely to create a significant cross-border anomaly with the rest of the UK, which would be potentially challengeable under the Scotland Act.

In order to avoid such a conflict and also to prevent Scotland becoming a tourist destination for those seeking a GRC, we believe that the period of 'ordinary residence' should be a minimum of 2 years.

12) Any other comments on the Bill.

We consider the Bill, if enacted, would constitute a significant erosion of our sex-based rights, by allowing large numbers of males to be counted as 'women', and – by allowing men to engage in the legal fiction that they are women – break down the proper, established boundaries between the legal categories of 'female' and 'male'. The Bill does not appear to conform to Scotland's CEDAW obligations in this regard. Article 1 states: *For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made **on the basis of sex** which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*

The concept of 'transgenderism' relies on a social construct of 'gender' based on sexual stereotyping, which we believe is especially harmful to women and girls. The proposed Bill does not conform to Scotland's international obligations to break down such stereotypes. CEDAW Article 5 states: *States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes **or on stereotyped roles for men and women;***

Similarly, Article 10 commits States Parties to *take all appropriate measures to eliminate discrimination against women, including 10 (c) **the elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education.***

In direct contrast to these obligations this Bill would legislate for the legal recognition of behaviours, personal presentations and 'feelings' based on exactly those sexual stereotypes. Even those who suffer from gender dysphoria are not *actually* members of the opposite sex. Yet the Bill would allow not only those who are gender dysphoric but also a much greater range of men to be treated in law as if they were, in fact, women (and vice versa).

The 2004 Gender Recognition Act was introduced in order to allow a small, clearly defined group of gender dysphoric people who 'believed' themselves to be the other gender, primarily to allow them to be given the right to marry and an equal pension age. Both of these issues have since been dealt with through other legislation. Marriage is now possible between any two consenting adults regardless of sex. And the pension age for both sexes is being equalised. It is therefore our view that the GRA has outlived its purpose: there is no longer any need for individuals to engage in the legal fiction of 'changing sex' in order to obtain the human rights they were previously deemed to have been denied.

The rational approach, we submit, would be to abolish the Act in its entirety. This Bill, however, takes a diametrically opposite approach and will extend the right to change their legal sex to a large, undefined number of people, based merely on their self-determined 'identity' and a self-declared intention to 'live in their acquired gender', which concept we believe has no meaning either in law or in reality.