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Policy Analysis Collective

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Shirley-Anne Somerville
Cabinet Secretary for Social Security and Older People
Scottish Government
By email

Dear Ms Somerville,

CONSULTATION ON THE GENDER RECOGNITION REFORM (SCOTLAND) BILL

We write in relation to the consultation on the draft Bill reforming the Gender Recognition Act 2004 published by the Scottish Government on 17 December. We welcome this additional consultation, but believe the proposals as published raise a number of questions, listed below, which need to be clarified urgently by government, if a meaningful consultation is to take place.

Q.1. Is it Ministers' policy intention to widen the range of people who will be entitled to have a GRC compared to the current position, and if so, in what ways?

Q.2. Does acquiring a GRC give a person new legal rights of access to single sex services and occupations under the Equality Act 2010 (before any consideration is given to making specific arrangements to exclude GRC holders from these, as discussed in Chapter 5)?

Q.3. Specifically, what is Ministers' understanding of the relevance of a person holding a GRC to the ability of the prison service to exercise its discretion over the accommodation of transgender prisoners, in the light of the outcome of R (on the application of AB) v Secretary of State for Justice (2009)?

Q4. What is the view of Ministers of the implications for third parties who are referring to a person who has a GRC of the judgement last month in the case of Forstater vs the Centre for Global Development?

Q5. What criteria do Ministers envisage the courts would use to decide whether a person has made a false declaration about having lived and/or intending to live in their acquired gender?

Q6. What courses of action do Ministers understand would be open to a notary public who suspected someone was seeking to make a false declaration and do Ministers intend it to be possible to refuse to grant a GRC based on reported concerns about a possible false application?

Q7. How do Ministers envisage that cases of de-transition would interact with the provisions criminalising a false declaration?

Q.8. How do Ministers intend that “ordinarily resident” will be defined for the purpose of the Act, including whether they intend this to require any minimum period of residence in Scotland?

Q.9. Have Ministers undertaken any detailed analysis of the law, and its application in settings such as hospitals, schools and prisons in Ireland and other jurisdictions it considers to represent ‘international best practice’, including how far the GRC equivalent in these countries confers the same legal rights as a GRC in the UK?

We would be very grateful for clarification of these points, without which we think consultees may be unreasonably hindered in responding to the consultation.

Yours sincerely

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