

Murray Blackburn Mackenzie

By email: [REDACTED]

23 December 2022

FAO: Murray Blackburn Mackenzie

Gender Recognition Reform (Scotland) Bill: Women's ability to set personal boundaries based on sex

Thank you for your email and attached letter, dated 8th December 2022. The letter asks for the Commission's answer, "as a matter of human rights", to the following four questions:

1. Should a woman *ever* be allowed certainty that a person in such circumstances will be the same sex?
2. If so, should such certainty be relatively *ordinary* or relatively *rare*?
3. How *difficult* should it be to achieve such certainty; for example, should it require personal negotiation?
4. Should it require a woman to share personal information, possibly revealing intimate personal history?

The Commission has comprehensively set out its analysis on the position of regional and international human rights standards in the area of legal recognition of gender identity. For completeness, you can find our written evidence [here](#). The Commission's position is based on these standards and remains our position.

The Commission's role, as a National Human Rights Institution, at the national level is advising on compliance with international and regional human rights standards and best practice. It is not our role, nor do we seek, to set out an ideological position on these matters. To the extent

that your questions ask matters on the human rights position, such answers are articulated in our evidence.

The Commission's statutory mandate is set out in the Scottish Commission for Human Rights Act 2006. Section 6 explicitly prevents us from providing advice or guidance in connection with any claim or legal proceedings to which a person is or may become a party. As you will be aware, the policies of public bodies in this area can become the subject of legal challenge and, as such, we cannot offer comment on the policy of NHS Greater Glasgow and Clyde and NHS Ayrshire and Arran specifically.

You raise a number of questions about the interaction of the Gender Recognition Act 2004 in concert with the Equality Act 2010, which you consider to be a matter of "legal confusion". You will of course be aware of the clarification provided on these matters by the Court of Session on 13 December 2022, in the Petition of For Women Scotland Limited for Judicial Review of the revised statutory guidance produced by the Scottish Ministers under section 7 of the Gender Representation on Public Boards (Scotland) Act 2018. The Court clarifies that "*in this context, which is the meaning of sex for the purposes of the 2010 Act, "sex" is not limited to biological or birth sex, but includes those in possession of a GRC obtained in accordance with the 2004 Act stating their acquired gender, and thus their sex.*" This confirms our understanding of the operation of the Gender Recognition Act 2004 in concert with the Equality Act 2010, which underpinned the analysis we gave in written and oral evidence. Accordingly, our position on the operation of those Acts remains as stated in our evidence.

Finally, the Commission also notes the correspondence received on the 15th December. The Commission is unable to comment on the future outcome of intragovernmental discussions between the UK and Scottish Governments.

Yours sincerely

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