

ANNEX D: DRAFT EXPLANATORY NOTES TO THE GENDER RECOGNITION REFORM (SCOTLAND) BILL

Introduction

1. The Gender Recognition Reform (Scotland) Bill (“the Bill”) amends the Gender Recognition Act 2004 (“the GRA”), to reform the grounds and procedure for obtaining gender recognition.
2. These draft Explanatory Notes outline the effect of the provisions of the Bill. When the Bill is introduced into the Scottish Parliament, the Scottish Government will also, in line with the Parliament’s Standing Orders, prepare:
 - Explanatory Notes (based on this draft).
 - A Policy Memorandum.
 - A Financial Memorandum.
 - A Delegated Powers Memorandum (on powers to make regulations and orders).
 - A statement of legislative competence.
3. The Scottish Government will also publish Impact Assessments. Drafts of these Impact Assessments are attached to the consultation, for comment.
4. These draft Explanatory Notes are provided to help consultees understand the proposals contained in the draft Bill attached to the consultation. These Notes are not meant to be an authoritative interpretation of the law: that can only be provided by the courts.

Background

5. The origins of the GRA; the way in which the current system for obtaining legal gender recognition works; and the Scottish Government’s proposed changes to the system are outlined in the consultation. Key aspects of the proposals for obtaining legal gender recognition in the future are:
 - The removal of current medical requirements;
 - The removal of the need to apply to the Gender Recognition Panel (“the GRP”);
 - The gender recognition process should apply to those aged at least 16, thereby reducing the minimum age from 18;⁶²
 - Applications should be made to the Registrar General for Scotland (“the Registrar General”);

⁶² The consultation seeks views on whether the minimum age for applying for gender recognition should be reduced from 18 to 16.

- Applicants must either (a) be the subject of an entry in a birth or adoption record kept by the Registrar General⁶³ or (b) be ordinarily resident in Scotland;
- Applicants must declare that they have lived in their acquired gender throughout the period of 3 months occurring immediately before submitting an application for gender recognition (the current requirement is 2 years),⁶⁴ and that they intend to continue to live in their acquired gender permanently;
- The Registrar General may not determine an application until after the expiry of a 3 month reflection period, and may only determine the application if the applicant thereafter confirms (within 2 years) that they wish to proceed with it;
- The Registrar General should, where required, grant a full Gender Recognition Certificate (“GRC”) to a single applicant. A full GRC provides legal gender recognition;
- The Registrar General should grant a full GRC to a married applicant or applicant in a civil partnership if both parties wish the marriage or civil partnership to continue after the issue of the full GRC, and this is evidenced by statutory declarations from both. If either party does not wish the marriage or civil partnership to continue, the Registrar General would instead grant an interim GRC.

Provisions in the Bill

Section 1: Meaning of “2004 Act”

6. Section 1 provides that, in the Bill, the “2004 Act” means the Gender Recognition Act 2004. (In these Explanatory Notes, the 2004 Act is referred to as the “GRA”).

Section 2: persons who may apply

7. Section 2 inserts new section 8A into the GRA.

8. The new section enables a person to apply to the Registrar General for a GRC if the person is aged at least 16 and is either (a) the subject of an entry in a birth or adoption record kept by the Registrar General or (b) ordinarily resident in Scotland.

Section 3: notice to be given on receipt of application

9. Section 3 inserts new section 8B into the GRA.

⁶³ Or the subject of an entry in the Parental Order Register maintained by the Registrar General for Scotland. Parental orders under section 54 and 54A of the Human Fertilisation and Embryology Act 2008 follow a surrogacy arrangement, which replaced parental orders under section 30 of the Human Fertilisation and Embryology Act 1990. The Parental Order Register is currently maintained by the Registrar General under the Human Fertilisation and Embryology (Parental Orders) Regulations 2018 which replaced earlier similar regulations.

⁶⁴ Except for applications under the overseas track (when a person has obtained legal gender recognition overseas) when no minimum period is laid down.

10. The new section makes provision about notifications which the Registrar General must provide to the applicant.

11. It sets out the information which the Registrar General must provide to the applicant in relation to the handling of the application, and requires the Registrar General to provide certain information as to the effect of the issue of a GRC (subsections (1) and (2)).

12. It also provides that the Registrar General must not determine the application unless, after the end of a 3 month reflection period, the applicant confirms that they wish to proceed with it (subsection (3)). This confirmation is referred to in the Bill as the “notice of confirmation”.

13. Under new section 8U(1)(c) of the GRA (inserted by section 11 of the Bill), the Registrar General, with the consent of the Scottish Ministers, may make regulations about the form and manner in which a notice of confirmation is given. By virtue of an amendment to the GRA (by paragraph 8(b) of the schedule of the Bill), any such regulations are subject to the affirmative procedure if they add to, omit or replace any part of the text of an Act. Otherwise, they are subject to the negative procedure.

14. If the applicant has not, within 2 years of the reflection period ending, given the Registrar General written notice of their intention to proceed (or has otherwise withdrawn the application), the application is treated as having been withdrawn (subsection (4)). This provides administrative certainty in a case where the applicant fails to confirm they wish to proceed, as it gives an end date for applications.

Section 4: grounds on which application to be granted

15. Section 4 inserts new section 8C into the GRA.

16. The new section requires the Registrar General to grant an application for a GRC if the applicant has provided a statutory declaration that the applicant:

- Is aged at least 16;
- Has a record of their birth or adoption in a register (or a certified copy is) kept by the Registrar General, or is otherwise ordinarily resident in Scotland;
- Has lived in their acquired gender for at least the previous 3 months;
- Intends to live permanently in their acquired gender;
- The application and the notice of confirmation comply with new section 8D of the GRA (added by section 5 of the Bill) which concerns evidence to be given in relation to marriage or civil partnership, and with any regulations made under new section 8U(1)(d) (added to the GRA by section 11 of the Bill).

17. A “statutory declaration” is an existing feature of the process for obtaining legal gender recognition: the relevant legislation on statutory declarations is the Statutory Declarations Act 1835.⁶⁵ A statutory declaration is similar to an affidavit and is a formal statement that something is true to the best of the knowledge of the person making the declaration. The statutory declaration will be made in the presence of a notary public (most solicitors in Scotland are notaries public) or a justice of the peace.

18. It is an existing offence (by virtue of section 44(2)(a) of the Criminal Law (Consolidation) (Scotland) Act 1995) to knowingly and wilfully make a false statutory declaration. The Bill creates a new specific offence in respect of false statutory declarations relating to gender recognition. This is provided for by section 14, which inserts new section 22A into the GRA. In consequence of this new specific offence, the existing general offence in section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 is amended (by paragraph 12 of the schedule of the Bill) so that it no longer applies in relation to a statutory declaration made in accordance with the GRA or regulations made under new section 8U(1)(d) of the GRA.

Section 5: statutory declarations and other evidence in relation to marriage or civil partnership

19. Section 5 inserts new section 8D into the GRA.

20. The new section provides that an application for a GRC under new section 8A(1) of the GRA must include a statutory declaration by the applicant as to whether the applicant is married or in a civil partnership.

21. Where the applicant is married or in a civil partnership, the applicant must, (under subsection (3)), include in the application or notice of confirmation:

- A statutory declaration by the applicant that the applicant either wishes or does not wish the marriage or the civil partnership to continue after the issue of a full GRC; and
- Either, a statutory declaration by the applicant’s spouse or civil partner that they wish the marriage or civil partnership to continue after the issue of a full GRC or a statutory declaration by the applicant that no such declaration by the spouse or civil partner is included.

22. By virtue of subsection (4), a statutory declaration included in a subsequent notice of confirmation replaces any corresponding declaration previously provided with the original application.

⁶⁵ The 1835 Act is at www.legislation.gov.uk/ukpga/Will4/5-6/62/contents

23. Under subsection (5), if the application includes a statutory declaration by the applicant's spouse or civil partner that they wish the marriage or civil partnership to continue, the Registrar General must notify the spouse or civil partner that an application for a GRC has been made.

24. Subsections (6), (7) and (8) make provision for cases where the applicant's marriage or civil partnership is ended by dissolution, annulment or the other party's death in the period between the application being made and the applicant providing the "notice of confirmation" (within a period of two years after the reflection period).

Section 6: certificate to be issued

25. Section 6 inserts new section 8E into the GRA.

26. The new section sets out circumstances in which the Registrar General must issue either a full GRC or an interim GRC to an applicant, in a case where the Registrar General grants an application made under new section 8A(1) of the GRA.

27. Where the applicant was single at the time the application was made or becomes single before the applicant gives the notice of confirmation (due to dissolution, annulment or the other party's death), the Registrar General will issue a full GRC (subsections (2) and (3)).

28. Where the applicant is married or in a civil partnership with another person (and at the time of giving notice of confirmation, both are still or have become the parties to a marriage or civil partnership), and both parties wish the marriage or civil partnership to continue after the issue of a full GRC, the Registrar General will issue a full GRC and give notice of this to the applicant's spouse or civil partner (subsections (5) and (7)). In other cases, the Registrar General will issue an interim GRC (subsection (6)). These provisions apply regardless of whether the marriage or civil partnership took place in Scotland or elsewhere.

29. Subsection (4)(b) refers to persons who were still, or had become, the parties to a marriage or civil partnership. This takes account of the fact that the relationship between the parties at the point when the applicant gives notice of confirmation may not be the same as when the applicant first applied for a GRC. For example, the couple may have changed their relationship from a civil partnership to a marriage. (Similar references in new sections 8D(2)(b), 8F(2)(b), 8H(2)(b) and 8R(4)(c) of the GRA, as inserted by sections 5 to 7 and 9 of the Bill, address the same point.)

30. The new section does not require the Registrar General to notify the applicant's spouse or civil partner when an interim GRC is issued. This takes account of the fact that, in circumstances where the spouse or civil partner does not wish the relationship to continue after the issue of a full GRC, the Registrar General may not have contact details for the spouse or civil partner.

31. The Scottish Ministers may, after consulting the Registrar General, make regulations specifying the content and form of full and interim GRCs (subsections (8) and (9)). By virtue of the amendments made by paragraph 8(a) of the schedule of the Bill, any such regulations will be subject to the negative procedure.

Section 7: issue of full gender recognition certificate to person with interim certificate

32. Section 7 inserts new sections 8F, 8G, 8H, 8I, 8J, 8K and 8L into the GRA.

33. These new sections relate to when a full GRC may be issued in place of an interim GRC. Broadly similar existing provision in the GRA will, in consequence, be repealed by paragraph 2 of the schedule of the Bill.

New section 8F

34. This new section requires the Registrar General, upon application by a person within 6 months of being issued an interim GRC, to issue a full GRC to the person if certain conditions are met including that the application contains a statutory declaration by the applicant's spouse or civil partner that they wish the marriage or civil partnership to continue after the issue of a full GRC. This caters for cases where the spouse or civil partner changes their mind and decides to stay in the relationship.

New section 8G

35. Where an application is made under section 8F of the GRA and the applicant's spouse or civil partner dies before the application is determined, this new section provides that the application is to be treated instead as an application having been made under new section 8K(1) of the GRA. It also requires the Registrar General to specify the period within which the applicant must produce the required evidence to support the application under section 8K(1).

New section 8H

36. Under the existing provisions of the GRA, the GRP may grant and issue a full GRC to a married applicant, but only if the application includes a statutory declaration by the applicant's spouse consenting to the marriage continuing after the issue of a full GRC. If the applicant's spouse has not made any such a statutory declaration, the GRP must issue an interim GRC instead.

37. However, under existing section 4E of the GRA,⁶⁶ a person issued with an interim GRC in these circumstances (who is in a marriage solemnised in Scotland) may apply to the sheriff for a full GRC. On civil partnerships, the Civil Partnership (Scotland) Bill currently before the Parliament⁶⁷ includes provision to amend section 4E so that an equivalent application may be made by a civil partner.

38. Under the new general recognition system being established by the Bill, the Registrar General will be able to grant and issue a full GRC to a married person or a person in a civil partnership, but again only if the person has a statutory declaration from their spouse or civil partner that they wish the relationship to continue.

39. New section 8H provides that, where any such person is issued with an interim GRC, the person may (within 6 months) apply to the sheriff for a full GRC. The sheriff must issue a full GRC if satisfied that the condition in subsection (2) is met, including that the applicant is not in possession of a statutory declaration by the spouse or civil partner that they wish the marriage or civil partnership to continue. This new section ensures that any such applicant may still obtain a full GRC from the sheriff without the consent of the applicant's spouse or civil partner. But the sheriff must notify the spouse or civil partner of the application and, if granted, notify the spouse or civil partner of the issue of the full GRC. In consequence of the new section (making provision which is broadly equivalent to section 4E of the GRA), paragraph 2 of the schedule of the Bill repeals section 4E.

New section 8I

40. Under this new section, a court granting a divorce or dissolution on the ground of an interim GRC issued to a party in a marriage or civil partnership (including an interim GRC issued elsewhere in the United Kingdom under the GRA) must issue a full GRC and give a copy to the Registrar General, unless a full GRC has already been issued under new section 8H.

New section 8J

41. This new section requires the Registrar General to, on application, issue a full GRC to a person who already has an interim GRC if, in proceedings instituted within 6 months of the issue of the interim GRC (subsection (2)), the person's marriage or civil partnership is dissolved or annulled.

⁶⁶ <http://www.legislation.gov.uk/ukpga/2004/7/section/4E>

⁶⁷ <https://www.parliament.scot/parliamentarybusiness/Bills/112997.aspx>. Paragraph 5(7) of schedule 2 refers.

42. This does not extend to cases where the ground of divorce or dissolution is that the interim GRC was issued. This is because where the court grants a decree or dissolution on this ground, the court must separately issue a full GRC by virtue of section 8I (provided one has not already been issued to the party under section 8H).

43. Under subsection (4), the application to the Registrar General must be made within 6 months of the marriage or civil partnership being dissolved or annulled.

New section 8K

44. This new section requires the Registrar General to, on application, issue a full GRC to a person who already has an interim GRC if the person's spouse or civil partner dies within 6 months of the issue of an interim GRC (subsection (2)). The application must be made within 6 months of the death (subsection (4)).

New section 8L

45. This new section provides that where a period of months referred to in sections 8B to 8K would end on the 29th, 30th or 31st day but the month does not include such a day, the period ends on the last day of the month.

Section 8: gender recognition obtained outwith Scotland

46. Section 8 inserts new sections 8M, 8N, 8O and 8P into the GRA.

New section 8M

47. This new section provides that, where a person has obtained a full GRC under the GRA in another part of the United Kingdom, the person is to be treated as if the person had been issued with a full GRC by the Registrar General for Scotland.

New section 8N

48. This new section provides that, where a person has obtained 'overseas gender recognition' (as defined), the person is to be treated as if the person had been issued with a full GRC by the Registrar General for Scotland. But this rule doesn't apply if it would be manifestly contrary to public policy (for example, in a case where gender recognition was obtained overseas at a very young age). Whether or not a public policy exception applies will depend on the facts and circumstances, and may be determined by the courts under new section 8P.

49. In broad terms, this approach is similar to the current approach taken in Scotland to validity of marriages entered into outwith Scotland⁶⁸ and recognition of divorce obtained overseas.⁶⁹

50. At the moment, overseas gender recognition is not recognised automatically in the UK (including Scotland). Persons who have obtained gender recognition overseas who wish to be recognised in the UK have to apply for a GRC issued by the GRP under its overseas track.⁷⁰

51. The overseas track operated by the GRP can be used when a person has obtained gender recognition in an “approved country or territory” listed in a statutory instrument made by the Secretary of State after consulting with the Scottish Ministers and the Department of Finance and Personnel in Northern Ireland. Paragraph 16 of the schedule to the Bill revokes for Scotland the current statutory instrument on approved countries and territories as it is no longer needed once gender recognition obtained overseas is automatically recognised in Scotland.

New section 80

52. This new section enables a person who has obtained ‘overseas gender recognition’ to apply to the Register General for a confirmatory GRC. It sets out what the application must contain, and how the Registrar General will deal with it. There is no obligation on any person to apply for a confirmatory GRC but it may be helpful to put the matter beyond doubt. In addition, a person may wish to apply for a confirmatory GRC if they wish an amendment to be made to a register entry (for birth, marriage or civil partnership) held by the Registrar General.

53. Subsections (8) and (9) empower the Scottish Ministers, after consulting the Registrar General, to make regulations on the form and content of a confirmatory GRC. These regulations would be subject to the negative procedure, by virtue of the provision made at paragraph 8(a) of the schedule.

⁶⁸ Section 38 of the Family Law (Scotland) Act 2006 refers:

<http://www.legislation.gov.uk/asp/2006/2/section/38>

⁶⁹ Part II of the Family Law Act 1986 refers <http://www.legislation.gov.uk/ukpga/1986/55/part/II>
Part II of the 1986 Act implements the Hague Convention on the Recognition of Divorces and Legal Separations: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=80>

⁷⁰ There is a limited exception. Section 21(6) of the GRA currently provides some acknowledgement of the need to recognise gender recognition obtained elsewhere in the European Union. Paragraph 1(2)(d) of the schedule to the Bill repeals section 21 for Scotland as it is no longer required given the Bill provides automatic recognition of gender recognition obtained overseas.

New section 8P

54. This new section applies where a question arises as to whether a person has obtained overseas gender recognition or, if so, whether it would be manifestly contrary to public policy to treat the person as if the person had been issued with a full GRC by the Registrar General. It provides that a court may make an order determining the question, if the question arises in the course of civil proceedings before the court or on an application to the court by a person having an interest in it.

Section 9: Review and appeal of decisions

55. Section 9 inserts new sections 8Q, 8R and 8S into the GRA.

New section 8Q

56. This new section provides that, where the Registrar General has determined an application for a GRC or a confirmatory GRC, the applicant may request a review of the decision on the ground that the application was incorrectly rejected or that the wrong type of GRC was issued.

57. In line with usual practice for internal reviews of decisions of this nature, the Registrar General would be expected to make arrangements to ensure that staff carrying out the review had not been involved in taking the original decision.

58. The Registrar General must carry out a review if the request is made within working 40 days of the original decision and may do so if it is made after 40 days (subsection (4)). Subsection (5) sets out the steps the Registrar General must take following the review.

New section 8R

59. This new section ensures that, if the applicant remains dissatisfied after the review carried out by the Registrar General, the applicant can appeal to the sheriff.

New section 8S

60. This new section enables a person who has a genuine interest (such as the Registrar General) in a GRC to apply to a sheriff to revoke the GRC on various grounds (subsection (1)). The grounds are that the wrong type of GRC was issued, the application for it was fraudulent, the applicant was incapable of understanding the effect of it, or the applicant was incapable of validly making the application.

61. This new section also enables a person who has an interest in a confirmatory GRC to apply to a sheriff for the revocation of the certificate on the ground that the application for it was fraudulent (subsection 2).

62. Where the sheriff grants any such application, subsection (3) specifies the further steps that the sheriff must take and the sheriff's supplementary powers. Subsections (4) to (6) also require the sheriff to notify, in certain circumstances, the applicant's spouse or civil partner of the issue of a full GRC to the applicant, and to send a copy of the GRC to the Registrar General.

63. Subsection (7) provides that proceedings under new section 8S are to be held in private if the person to whom the GRC was issued so requests.

64. It is possible that provisions in the Bill may give rise to a need for rules of court. If required, the Scottish Government would, in line with usual practice, prepare a policy paper on proposed court rules for the Family Law Committee of the Scottish Civil Justice Council.⁷¹

Section 10: Correction of error in certificate

65. Section 10 inserts new section 8T into the GRA.

66. The new section empowers the Registrar General to correct a GRC (including a confirmatory one) if the Registrar General becomes aware that it contains an error (such as where a name on the GRC has been spelt incorrectly). This power does not extend to cases where the wrong type of GRC was issued, as that is for the review and appeal process outlined at new sections 8Q and 8R.

Section 11: further provision about applications

67. Section 11 inserts new section 8U into the GRA.

68. The new section empowers the Registrar General, with the consent of the Scottish Ministers, to make Regulations about:

- The form and manner in which an application for a GRC is to be made;
- Fees payable in connection with an application for a GRC;
- The form and manner in which a notice of confirmation is to be given;
- Information or evidence to be included in an application for a GRC or a notice of confirmation;
- Other matters in connection with the making of an application for a GRC.

69. By virtue of paragraph 8(b) of the schedule of the Bill, any such regulations are subject to the affirmative procedure if they add to, omit or replace any part of the text of an Act. Otherwise, they are subject to the negative procedure.

⁷¹ Information on the Family Law Committee of the Scottish Civil Justice Council is at <https://www.scottishciviljusticecouncil.gov.uk/committees/family-law-committee>

Section 12: copies of certificates to be given to other Registrars General

70. Section 12 inserts new section 10A into the GRA.

71. The new section provides that, where a full GRC is issued by the Registrar General or a copy of one is given to the Registrar General by a sheriff or court under new section 8H(4)(b)(ii), 8I(2)(b), 8R(6) or 8S(6) of the GRA, the Registrar General must, in the circumstances specified, send a copy of it to the Registrars General for England and Wales or Northern Ireland. This enables register entries held in England and Wales or Northern Ireland to be updated after the applicant obtains gender recognition in Scotland.

Section 13: continuity of marriage or civil partnership

72. Section 13 inserts new section 11E into the GRA.

73. The new section provides that under Scots law the continuity of a marriage or civil partnership is not affected by the issuing of a full GRC.

Section 14: Offences

74. Section 14 inserts new section 22A into the GRA.

75. The new section provides that it is an offence for a person to knowingly:

- make a statutory declaration in accordance with the GRA, or regulations made under it, which is false in a material particular, or
- include any other information which is false in a material particular in: an application for a GRC under new sections 8A(1), 8F(1), 8J(1) or 8K(1), an application for a confirmatory GRC under new section 8O(1), or a notice of confirmation under new section 8B(3) of the GRA.

76. A person who commits any such offence is liable on summary conviction⁷² to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (currently £10,000) (or both), and on conviction on indictment to imprisonment for a term not exceeding 2 years or an unlimited fine (or both).

Section 15: further modification of enactments

77. Section 15 introduces the schedule (the content of which is explained below).

⁷² The Scottish Sentencing Council's Jargon Buster has information on what "summary" and "indictment" mean: <https://www.scottishsentencingcouncil.org.uk/about-sentencing/jargon-buster/>

Section 16: ancillary provision

78. Section 16 empowers the Scottish Ministers to, by regulations, make ancillary provision for the purposes of, or in connection with or for giving full effect to the Bill.

79. Regulations made under this section are subject to the negative procedure, unless they add to, replace or omit any part of the text of an Act in which case they are subject to the affirmative procedure.

Section 17: commencement

80. Section 17 provides that the final provisions in sections 16, 17 and 18 of the Bill come into force on the day after Royal Assent, and that other provisions of the Bill come into force such as the Scottish Ministers may by regulations appoint.

81. There are a number of tasks which the Scottish Ministers and the Registrar General would need to undertake before the new system of gender recognition could start. These tasks include:

- Recruiting staff to handle the applications sent to the Registrar General;
- Setting up systems (including IT systems) to handle the applications;
- Preparing guidance for applicants;
- Making regulations on matters such as the form and content of applications;
- Working with the UK Government on an Order under section 104 of the Scotland Act 1998 to make consequential changes to UK legislation;
- Considering what transitional arrangements would be required (e.g. in relation to any applications from Scotland being dealt with by the GRP at the time the changes in Scotland on how gender recognition is obtained take place).

Section 18: short title

82. Section 18 specifies the short title of the Act for the Bill.

Schedule: Further modification of the 2004 Act and modification of other enactments

Part 1

83. Part 1 of this schedule amends the GRA as follows.

84. Paragraph 2 repeals, for Scotland, section 1 (applications) and schedule 1 (GRPs) of the GRA. It also repeals for Scotland the following sections of the GRA:

- Section 2 (determination of applications),
- Section 3 (evidence),
- Sections 3A, 3B, 3C, 3D, 3E and 3F (relating to alternative grounds),
- Section 4 (successful applications), other than section 4(4) which relates to annulment or dissolution of marriage after issue of an interim GRC,
- Sections 4A, 4B, 4C, 4D, 4E and 4F (relating to applications for full GRCs by married persons),
- Section 5 (issue of full certificates where applicant has been married),
- Sections 5A, 5B, 5C and 5D (relating to applications by civil partners),
- Section 6 (errors),
- Section 7 (applications: supplementary),
- Section 8 (appeals etc.),
- Sections 11A to 11D (on the continuity of marriage and civil partnership), and
- Section 21 (foreign gender change and marriage).

85. Despite these repeals, some provisions of the GRA will remain unchanged. For example, section 9(1) of the GRA will continue to provide that, where a full GRC is issued to a person, the person's gender becomes for all purposes the acquired gender. This reflects the fact that, although the Bill changes the way in which gender recognition can be obtained, it does not change rights and responsibilities after gender recognition has been obtained.

86. Paragraph 3 makes changes to section 10 (registration). It amends section 10(1) and 10(1B), and repeals section 10(1A).

87. Paragraph 4 amends section 17 (trustees and personal representatives) to cover gender recognition generally.

88. Paragraph 5 amends section 18 (orders where expectations defeated) so cases in Scotland can be heard by the Sheriff Court.

89. Paragraph 6 amends section 20(1) (gender-specific offences).

90. Paragraph 7 amends section 22 (prohibition of disclosure of information) to cover applications for a GRC generally.

91. Paragraph 8 amends section 24 (orders and regulations) to make provision about the Parliamentary procedures which apply to regulations made under powers conferred by virtue of the Bill.

92. Paragraph 9 amends section 25 (interpretation) to add definitions to the GRA to reflect the proposed new process and removes for Scotland definitions which are no longer needed.

93. Paragraph 10 amends paragraphs 14 and 19 of schedule 3 (registration) to reflect the new role given to the Registrar General in relation to issuing GRCs and confirmatory GRCs, and that applications to revoke GRCs and confirmatory GRCs may be made to the sheriff. It also adjusts paragraph 20A of schedule 3 of the GRA as regards the registration of Scottish marriages and civil partnerships following gender recognition. (Paragraph 20A defines a qualifying Scottish marriage or civil partnership to include one where a confirmatory GRC is issued or the Gender Recognition Panel has, in relation to any other part of the UK, issued a GRC.)

Part 2

94. Part 2 of the schedule amends other enactments as follows.

95. Paragraph 11 amends section 1 of the Divorce (Scotland) Act 1976. This amendment ensures that when the GRP (for England and Wales and Northern Ireland) or the Registrar General (for Scotland) issue a full GRC after issuing an interim GRC, the issue of an interim GRC is not a ground of divorce. This reflects that the GRP and the Registrar General will only do this when both parties wish the marriage to continue thereafter.

96. Obtaining gender recognition overseas will not be a ground of divorce, or dissolution of a civil partnership, under the Bill. This reflects the fact that most countries have different systems when gender recognition is obtained. For example, the birth entry register is often amended directly with no interim GRC, whereas the interim GRC would be the relevant ground for divorce in Scotland.

97. Paragraph 12 amends section 44 (false statements and declarations) of the Criminal Law (Consolidation) (Scotland) Act 1995. This amendment is made in consequence of new section 22A of the GRA (inserted by section 12 of the Bill). It ensures that section 44(2) does not apply to a statutory declaration made in accordance with the GRA or regulations made under new section 8U(1)(d) of it.

98. Paragraph 13 amends section 117 (dissolution) of the Civil Partnership Act 2004. This amendment makes provision on the dissolution of civil partnership similar to the amendment made by paragraph 11 of the schedule in relation to divorce. The Civil Partnership (Scotland) Bill currently before Parliament provides that the issue of an interim GRC will not be a ground of dissolution once a full GRC is issued.⁷³

⁷³ Please see paragraph 6 of schedule 2 to the Civil Partnership (Scotland) Bill: <https://www.parliament.scot/parliamentarybusiness/Bills/112997.aspx>

99. Paragraph 14 of the schedule amends section 30 (renewed marriage or civil partnership following issue of full gender recognition certificate) of the Marriage and Civil Partnership (Scotland) Act 2014. Section 30 of the 2014 Act gives powers to the Scottish Ministers to make regulations on renewed marriage and civil partnership ceremonies following gender recognition. Paragraph 14 amends section 30 so that it also applies to confirmatory GRCs and full GRCs issued by the Gender Recognition Panel (which will continue to operate elsewhere in the UK), as it applies to full GRCs issued by the Registrar General. It also adjusts the references to protected Scottish marriages and civil partnerships in consequence of the changes made to the definitions in section 25(1) of the GRA by paragraph 9 of the schedule of the Bill.

100. Paragraph 15 amends schedule 1 (civil jurisdiction of summary sheriff) of the Courts Reform (Scotland) Act 2014.⁷⁴

101. Paragraph 16 revokes, for Scotland, the Gender Recognition (Approved Countries and Territories) Order 2011⁷⁵ as this will no longer be needed once gender recognition obtained overseas is recognised in Scotland.

**The Scottish Government
December 2019**

⁷⁴ Information on the role of summary sheriffs is at <http://www.scotland-judiciary.org.uk/39/0/Summary-Sheriffs>

⁷⁵ <http://www.legislation.gov.uk/uksi/2011/1630/contents/made>