

# Equalities, Human Rights and Civil Justice Committee

5th Meeting, 2024 (Session 6), Tuesday  
20 February 2024

## Gender Representation on Public Boards (Amendment) (Scotland) Bill

### Note by the Clerk

#### Introduction

1. The Gender Representation on Public Boards (Amendment) (Scotland) Bill was introduced in the Scottish Parliament by the Cabinet Secretary for Social Justice, Shirley-Anne Somerville MSP on 7 November 2023.
2. The Parliament designated the Equalities, Human Rights and Civil Justice Committee as the lead committee for stage 1 consideration of the Bill.
3. The [Bill and its accompanying documents](#) are available online on the Parliament's website. A detailed [SPICe briefing](#) on the Bill is also available online.
4. On 17 January, the Parliament agreed a stage 1 deadline of 29 March 2024.

#### Background

5. When the original [Gender Representation of Public Boards \(Scotland\) Bill](#) was introduced to the Scottish Parliament in 2017, it did not include a definition of "woman". An amendment ([amendment 10](#)) to include a definition was made at Stage 2 of the Bill's scrutiny following the Session 5, Equalities and Human Rights Committee's stage 1 report.
6. According to the Scottish Government's Policy Memorandum, an amendment was made "to make the Bill more inclusive by including trans women who were living as trans women even if they did not have a full gender recognition certificate under the Gender Recognition Act 2004".

7. Following a judicial review and reclaiming motion brought by For Women Scotland, the Court of Session decided that the definition as added by the stage 2 amendment was out with the legislative competence of the Scottish Parliament and was not lawful.

## Policy objectives of the Bill

8. According to the Policy Memorandum, the purpose of the Bill is to amend the Gender Representation on Public Boards (Scotland) Act 2018 to remove the definition of “woman” in section 2, following decisions of the Court of Session on 18 February and 22 March 2022 in the judicial review and reclaiming motion brought by For Women Scotland.
9. The definition in section 2 which is to be removed is: “ “woman” includes a person who has the protected characteristic of gender reassignment (within the meaning of section 7 of the Equality Act 2010) if and only if, the person is living as a woman and is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of becoming female”.
10. The Policy Memorandum states that the Scottish Government considers there are no alternatives to removing the definition from the statute book following the court’s decision and is “taking the necessary steps in light of a court decision to ensure that the definition, which no longer has legal effect, is removed from the face of the statute book”. It states that leaving a redundant definition on the face of the statute book could potentially be misleading and cause confusion.

## Call for views and written evidence

11. The Committee issued a [Call for Views](#) which opened on 8 January and closed on 29 January 2024. It received [56 written responses](#) which are published online.

## Oral evidence

12. As this is a short, single-issue Bill, with its sole purpose to update the statute book, the Committee agreed it should only hear oral evidence from the Cabinet Secretary and supporting officials.
13. Therefore, at this meeting, the Committee will take oral evidence from the Scottish Government:
  - Shirley-Anne Somerville, Cabinet Secretary for Social Justice
  - Eileen Flanagan, Head of the Women’s Equality Unit
  - Lucy Galloway, Solicitor, Legal Directorate, and
  - Annie Milović, Senior Policy Advisor, Gender Equality Policy Team.

## Next steps

14. The Committee is due to report on the general principles of the Bill in March.

Committee Clerks  
February 2024