

Convener  
Equalities, Human Rights and  
Civil Justice Committee  
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Chief Executive  
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[ehrcj.committee@parliament.scot](mailto:ehrcj.committee@parliament.scot)

31 May 2022

Dear Convener,

I am writing in response to the Equalities, Human Rights and Civil Justice Committee's request for Disclosure Scotland to provide evidence to inform the Committee's consideration of the Gender Recognition Reform (Scotland) Bill ("the GRR Bill").

Disclosure Scotland is an Executive Agency of the Scottish Government. We provide disclosure certificates on behalf of Scottish Ministers under Part V of the Police Act 1997 ("the 1997 Act") and administer the Protecting Vulnerable Groups (PVG) Scheme and the barred lists under the Protection of Vulnerable Groups (Scotland) Act 2007 ("the 2007 Act").

The Disclosure Scotland process protects an individual's right to a private life. It does not afford the opportunity for any party to conceal any past criminal behaviour or any names the person may have previously used. Any criminal history information, including convictions and other relevant information, that the law says must be disclosed will be, even if that information predates the current name or gender of the applicant. This is the case whether or not a person has changed their gender or name.

No impact is anticipated on Disclosure Scotland resulting from the changes proposed in the GRR Bill. Gender is not a category we use to carry out vetting checks. Our systems are already designed to find people who have changed their names for any number of possible reasons. Given this, we have chosen to provide explanatory information in writing to make this point clear.

### **Gender recognition and Disclosure Scotland**

The Scottish Ministers are required under sections 112, 113A and 113B of the 1997 Act to include on a criminal record certificate (referred to as a "disclosure certificate") the prescribed details of every conviction (and relevant matter, in relation to higher level disclosures) which is recorded in the central records. There are similar requirements on the Scottish Ministers in relation to PVG scheme records in section 47 (as read with section 48 and 49) of the 2007 Act. These details are not removed from a criminal record if an individual is granted a gender recognition certificate. The chief officer of a relevant police force can also provide other relevant information under section 113B(4) of the 1997

Act and section 49(1)(c) of the 2007 Act. Disclosure Scotland must include this information on disclosure certificates and PVG scheme records.

Section 22(4)(j) of the Gender Recognition Act 2004 provides that it is not an offence to disclose protected information in accordance with any provision of, or made by virtue of, an enactment. Therefore, if an individual's criminal record information includes a gender-specific offence, Disclosure Scotland must include it subject to the same rules as other criminal record information.

A disclosure certificate does not include information on previous names, whether the applicant is transgender or not.

### **Identification and vetting**

Applications for higher level disclosures (including PVG scheme records) may only be made by persons and organisations registered with Disclosure Scotland under section 120 of the 1997 Act. The registered person/countersignatory will check identification confirming name, current address and date of birth. We advise that one form of identification should be photographic, where possible.

Disclosure Scotland use the information supplied and verified during the application process to match an application to a record. The person and record match processes rely on a mixture of algorithms and vetting staff trained on accessing police systems. Gender is not used to confirm a match. The nominal details used are name, date of birth, place of birth and address. The system is alert to the possibility of any person concealing previous names or trying to hide their identity. This is not specific to transgender applicants. Disclosure Scotland has a vetting exceptions process where there is a partial records match on nominal details or where additional alias names or date of birth are recorded.

In rare cases where there is doubt about a person's identity after further enquiries, under section 118 of the 1997 Act and section 63 of the 2007 Act, Disclosure Scotland can ask for fingerprints to check an applicant's identity. Disclosure Scotland can refuse to issue a disclosure certificate or PVG scheme record unless the application is supported by the required evidence of identity.

### **Transgender applicant process**

The same details must be provided to Disclosure Scotland, regardless of whether the applicant is transgender or not, or holds a gender recognition certificate. It is a legal requirement to provide the information asked for in the application, including previous names.

Disclosure Scotland has had a process allowing transgender applicants to provide previous names separately from their application form since 2002. The process was introduced to ensure compliance with Article 8 of the European Convention on Human Rights (right to respect for their private and family life), preventing unnecessary disclosure of an individual's transgender status to prospective employers. The Disclosure and Barring Service (for England and Wales) and Access NI (for Northern Ireland) have similar arrangements.

Disclosure Scotland must have regard to the public sector equality duty in how it carries out its functions. Publically available guidance is available to transgender disclosure applicants on filling out an application form. The guidance allows transgender applicants who would not otherwise have to share their transgender status with their potential employer (because they have updated primary identification documents such as their passport or driving licence) to maintain privacy without committing an offence.

Yours sincerely,

**Gerard Hart**  
Chief Executive – Disclosure Scotland



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