

ANNEX G: DRAFT CHILD RIGHTS AND WELLBEING IMPACT ASSESSMENT

CRWIA front sheet	
<p>Policy/measure</p> <p>A general description of the policy/measure</p>	<p>The draft Gender Recognition Reform (Scotland) Bill, would, if enacted, introduce reformed arrangements for trans people aged 16 and over who were born or adopted in Scotland or who are ordinarily resident here to apply for legal gender recognition. The reformed arrangements would replace some of the current arrangements under the Gender Recognition Act 2004 (“the GRA”) for Scotland.</p> <p>“Gender recognition law” is the area of the law which allows a person to be legally recognised in a sex which is different to the one in which they were recorded at birth.</p>
<p>Initiating department</p> <p>The responsible team or division. If this is a cross-cutting policy, name the team that has overall responsibility</p>	<p>Family Law team, Civil Law and Legal System Division, Justice Directorate</p>
<p>Policy aims</p> <p>What the policy or measure is trying to achieve; what are the expected outcomes</p>	<p>The objective of the draft Bill is to remove the need for applicants to provide medical evidence or evidence that they are living in the acquired gender, and the need to apply to a tribunal, the Gender Recognition Panel. The draft Bill provides that the minimum age of applicants would be 16. This is in line with the age at which children and young people acquire a number of rights.</p> <p>The Scottish Government carried out a consultation from 9 November 2017 to 1 March 2018¹¹⁰ on proposals for reforming the GRA (“the 2018 consultation”).</p> <p>Chapter 7 of the independent analysis of 2018 consultation responses recorded comments made by</p>

¹¹⁰ The 2018 consultation is available at: <https://www.gov.scot/publications/review-gender-recognition-act-2004/>.

	<p>respondents on the draft Impact Assessments included with the 2018 consultation.¹¹¹</p> <p>The Scottish Government has taken account of these comments of respondents, and those raised by stakeholders and correspondences after the 2018 consultation, when reaching its decision not to extend legal gender recognition to those under 16 in the draft Bill and in the light of the mixed evidence highlighted in the draft Child Rights and Wellbeing Impact Assessment published as part of the 2018 consultation.¹¹²</p>
<p>Timetable</p> <p>What is the time frame for a policy announcement/consultation/implementation?</p>	<p>Subject to the current consultation, the Scottish Government has committed to bringing forward legislation to reform the GRA in this Parliamentary Session.</p>
<p>Date</p>	<p>THIS WILL BE COMPLETED AFTER THIS CONSULTATION AND VIEWS HAVE BEEN OBTAINED FROM CONSULTEES</p>

¹¹¹ The analysis of responses is at <https://www.gov.scot/publications/review-gender-recognition-act-2004-analysis-responses-public-consultation-exercise-report/pages/8/>.

¹¹² At: <https://www.gov.scot/publications/review-gender-recognition-act-2004/pages/25/>.

**CRWIA Stage 1
Screening – key questions**

1. What aspects of the policy/measure will affect children and young people up to the age of 18?

The Articles of the UNCRC and the wellbeing indicators under the Children and Young People (Scotland) 2014 apply to all children and young people up to the age of 18, including non-citizen and undocumented children and young people.

- If the draft Bill is enacted and reduces the age at which a person can apply for gender recognition in Scotland to 16, this will affect people aged between 16 and 18. The draft Bill does not make provision for those younger than 16.

2. What likely impact – direct or indirect – will the policy/measure have on children and young people?

‘Direct’ impact refers to policies/measures where children and young people are directly affected by the proposed changes e.g. in early years, education, child protection or looked after children (children in care). ‘Indirect’ impact refers to policies/measures that are not directly aimed at children but will have an impact on them. Examples include: welfare reforms, parental leave, housing supply or local transport schemes.

- The provisions of the draft Bill would have a direct impact on people aged 16 and 17.

3. Are there particular groups of children and young people who are more likely to be affected than others?

Under the UNCRC ‘children’ can refer to: individual children, groups of children, or children in general. Some groups of children will relate to the groups with protected characteristics under the Equality Act 2010: disability, race, religion or belief, sex, sexual orientation. It may be possible to align the CRWIA with the Equality Impact Assessment in these cases. ‘Groups’ can also refer to children by age band or setting, or those who are eligible for special protection or assistance e.g. pre-school children, children in hospital, children in rural areas, looked after children, young people who offend, victims of abuse or exploitation, child asylum-seekers, or children living in poverty.

- The children primarily affected by the provisions of the draft Bill are those aged 16 and 17 who experience issues around their gender identity.
- “Gender reassignment” is a protected characteristic under the

Equality Act 2010. A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex. The definition includes a person of any age.

4. Who else have you involved in your deliberations?

Have you included all policy leads who may have an interest in these developments?

- In respect of the 2018 consultation draft Equality Impact Assessment (“EQIA”) and the draft EQIA at Annex J we have held two framing exercises involving colleagues from across government, including Equality Unit, Communities Analytical Services, Education Directorate, and a member of the LGBT staff network. Those attending identified consequences for people under 18.
- We have considered the results of the independent analysis of the 2018 consultation responses and the evidence and views set out.

5. Will this require a CRWIA?

- Yes.

CRWIA Declaration

Tick relevant section, and complete the form.

CRWIA required	CRWIA not required
✓	

Authorisation

[] Deputy Director, Civil Law and Legal System

Date
THIS WILL BE COMPLETED AFTER THIS CONSULTATION AND VIEWS HAVE BEEN OBTAINED FROM CONSULTEES

CRWIA Stage 2 Scoping - key questions

1. What children’s rights are likely to be affected by the policy/measure?

List all relevant Articles of the UNCRC and Optional Protocols. All UNCRC rights are underpinned by the four general principles: non-discrimination; the best interests of the child; the right to life; survival and development; and the right to have children’s views given due weight.

Article 2

Being transgender may be an “other status”. This article may also be relevant for a child who has a transgender parent or parents.

Article 3

Article 3(1) is relevant to the provision of the draft Bill permitting those aged 16 and 17 to change their legal sex.

Article 5

This article of the Convention is relevant in relation to the draft Bill provision to extend gender recognition arrangements to those aged 16 and over. It is about balancing the responsibilities and rights of parents against the right of the child to make decisions.

Article 6

Extending gender recognition to those aged 16 and 17 could affect their development as it may permit them to be legally recognised in the identity in they are living in.

Article 7

Article 7(1) may be relevant. It provides that “the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.” The legal sex of a person who has obtained gender recognition is recorded in the gender recognition register (and will be disclosed on a new birth certificate issued to a successful applicant). This article also links to article 8.

The implementation handbook for the Convention,¹¹³ published by UNICEF, says:

¹¹³ At https://www.unicef.org/publications/index_43110.html

“Although the Convention does not specify what must be registered, other rights (to name and nationality, to know parentage, family and identity) imply that registration ought, as a minimum, to include:

the child’s name at birth,
the child’s sex,
the child’s date of birth,
where the child was born,
the parents’ names and addresses,
the parents’ nationality status.”

Article 8

This article concerns a child’s right to an identity. The implementation handbook for the Convention says that gender identity is an aspect of identity.

Article 12

Article 12 of the Convention concerns a child’s right for their views to be listened to and taken seriously. This is key in relation to the draft Bill provision permitting a person aged 16 and over to apply for gender recognition.

Article 13

This article may be relevant in relation to transgender children. For example, the right could relate to receiving information about gender identity and the provisions of the law.

Article 14

Article 14 may be relevant in relation to our proposals. The article is about the right to freedom of thought, conscience and religion. There may be cases where a parent or guardian’s beliefs conflict with the beliefs of a person aged 16 and 17.

Article 16

Article 16 may be relevant. For example, transgender children should be entitled to receive confidential advice. Records or correspondence about a person’s transgender status or gender history should similarly be confidential and should be processed accordingly. The draft Bill does not contain provisions changing the existing arrangements to protect the privacy of applicants for gender recognition or the gender history of those applicants who are granted legal recognition.

Article 17

Article 17 may be relevant. There may be separate actions the Scottish Government could take in relation to the supply of information to meet the needs of individual transgender children and young people.

There is also a wider point about educational material being available which recognises and educates children and young people about diversity.

Article 18

Article 18(2) concerns assistance to parents and legal guardians in the performance of their child-rearing responsibilities. It may be relevant in relation to advice and support provided to parents.

Article 23

This article, which relates to children with disabilities, may be relevant. We refer to evidence about transgender children and young people in paragraphs 4.1. to 4.5. below.

Article 24

Article 24(1) provides for the right of the child to “the enjoyment of the highest attainable standard of health”. The rights relate to both physical and mental health. (Neither the GRA nor the draft Bill make provision relating to the arrangements in NHS Scotland for treatment and support.)

2. How will the policy/measure affect children’s wellbeing as defined by the wellbeing indicators?

List all wellbeing indicators relevant to the policy/measure. The indicators are: Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible and Included.

All of the wellbeing indicators are relevant to our proposals.

3. How many children and young people are likely to be affected by the policy or measure?

List potential sources of official and other data, or note the need to locate this information. Are there different levels of impact for different groups of children?

3.1. A 2014 research paper sets out the finding of a range of studies estimating the numbers of children and adults who might be trans or experience gender dysphoria.¹¹⁴ For example, it notes that in one study from the Netherlands, parents reported 1.4% of boys and 2% of girls want to be the opposite sex and that in another, for people aged 15 to 70 years old, 0.6% of men and 0.2% of women reported an ambivalent or incongruent gender identity.

3.2 If we assume that an average of the figures in paragraph 3.1 for boys and girls and men and women aged 15-70 , i.e. that 1.05% might be trans, is representative in Scotland, then extending gender recognition to those aged 16 and 17 could affect around 1,100 people aged 16 and 17 in Scotland.¹¹⁵ The UK Government's LGBT Survey was open to respondents aged 16 and over. Of the 6,910 respondents who identified as trans men and women, 15.5% were aged 16 and 17.¹¹⁶ (However, compared to general UK population, young people were over-represented in this survey.)

3.3 A number of countries permit those younger than 18 to obtain legal gender recognition. The table in Appendix A contains information about other countries and territories which have processes for people aged under 18. There is also some data available about the numbers of under 18 year olds doing so. Numbers are generally low as a percentage of those otherwise obtaining recognition. The Republic of Ireland and Norway have similar populations to Scotland though they have differing recognition systems. Between September 2015 and August 2019, 13 young people aged 16 and 17 have obtained legal recognition in the Republic of Ireland.¹¹⁷ This is 2.5% of the total number of people who had changed their legal gender there (517) by the end of August 2019. In Norway, which does not have a court process for children between 6 and 16, between 1 July 2016 and September 2016, nine children changed their legal gender. This is 3.6% of the total applicants in the same period (250).

4. What research evidence is available?

Preliminary identification of the research base for this policy/measure.

4.1. The Scottish Government has decided not to seek to extend gender recognition to those younger than 16. The draft CRWIA published with the 2018 consultation set out research evidence the Scottish Government had

¹¹⁴ Kuyper, L & Wijzen, C (2014) Gender Identities and Gender Dysphoria in the Netherlands, *Archives of Sexual Behaviour* (Volume 43 Issue 2)

¹¹⁵ As at mid 2018 there was an estimated population of 109,296 16 & 17 year olds (55,721 males and 53,575 females). Source: National Records of Scotland, 2019. Mid-2018 population estimates Scotland. Available at: <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates/mid-2018>.

¹¹⁶ At: <https://www.gov.uk/government/publications/national-lgbt-survey-summary-report> in Annex 3 Characteristics.

¹¹⁷ Source is the Government of Ireland, Department of Employment Affairs and Social Protection Client Identity Service.

identified and which has been considered as part of decisions made in relation to the draft Bill provisions.¹¹⁸

4.2 The Gender Identity Development Service (“GIDs”), a specialised clinic for young people presenting with difficulties with their gender identity commissioned by NHS England has published details of the ages of those children and young people who are referred to the GIDs in 2018-2019.¹¹⁹ Of 2590 referrals in that year, 85% of referrals were for those aged 11 to 17. The average age of referrals to the Young Person’s Gender Service at Sandyford, Glasgow was 13.8 years old in 2017.¹²⁰

4.3. Evidence indicates that there may be a difference of experience between boys and girls. The GIDs has published statistics on the numbers of girls and boys who are referred to them each year. In 2017/2018, the most recent year for which there is complete data, 1,657 of the young people referred were registered as female at birth, and 624 were registered as male.¹²¹

4.4. There is evidence that trans young people are more than twice as likely as non-trans people to be diagnosed with depression (50.6% compared to 20.6%) and with anxiety (26.7% compared to 10%).¹²² There is evidence that this is not an inherent feature of their being transgender.¹²³ There is also some evidence that transitioning to living in their preferred gender and being supported with gender confirming medical interventions may help improve mental health, in many cases reaching levels experienced in the general population.¹²⁴

4.5. The independent analysis report for the responses to the 2018 consultation¹²⁵ notes that a small number of respondents highlighted that a higher proportion of young people referred to gender identity clinics were autistic.¹²⁶ The draft EQIA at Annex J considers this more generally.

¹¹⁸ The draft CRWIA published as part of the 2018 consultation is available at: <https://www.gov.scot/publications/review-gender-recognition-act-2004/pages/25/>.

¹¹⁹ At: <https://gids.nhs.uk/number-referrals>.

¹²⁰ The Scottish Public Health Network, at: https://www.scotphn.net/wp-content/uploads/2017/04/2018_05_16-HCNA-of-Gender-Identity-Services.pdf, page 46

¹²¹ At: <https://gids.nhs.uk/number-referrals>.

¹²² Mental Health of Transgender Youth in Care at and Adolescent Urban Community Health Centre: A Matched Retrospective Cohort Study, Sari L. Reisner and Ors, Journal of Adolescent Health March 2015 Vol 56 Issue 3 pages 274-279 at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4339405/>

¹²³ Rebeca Robles et al “Removing transgender identity from the classification of mental disorders: a Mexican field study for ICD-11” [http://dx.doi.org/10.1016/S2215-0366\(16\)30165-1](http://dx.doi.org/10.1016/S2215-0366(16)30165-1)

¹²⁴ Dhejne C et al “Mental Health and gender dysphoria: A review of the literature (2016)

¹²⁵ At: <https://www.gov.scot/publications/review-gender-recognition-act-2004-analysis-responses-public-consultation-exercise-report/>, page 51

¹²⁶ The GIDs website <https://gids.nhs.uk/evidence-base> indicates that there seems to be a higher prevalence of autistic spectrum conditions in young people diagnosed with gender dysphoria than in the general population, but also notes that the reasons why this is the case are still unknown.

4.6. The draft Bill includes protections for those who are legally recognised but who are later demonstrated not to have had the capacity to understand the effect of obtaining a gender recognition certificate or to have been able to validly make an application. In such a situation, the certificate can be revoked by a court. The guidance and support available to all applicants for gender recognition, including applicants who may be more vulnerable, will be carefully considered when a Bill is introduced.

The views of trans, and non-trans, children and young people

4.7. Scottish Government officials met members of LGBT Youth Scotland groups aged 13 and over in 2017. The Cabinet Secretary for Social Security and Older People has met with members of the LGBT Youth Commission on Gender Recognition and the Minister for Older People and Equalities also met a group of young people from LGBT Youth Scotland. The groups expressed their strong view that a person should be able to transition and live with documentation consistent in disclosing their acquired gender before they have to take their qualifications or go to university. They felt that this would better support their rights not to be discriminated against, for example, at school. A high proportion expressed the desire for their parents (or other people with responsibility for them) to be involved and supporting them through the recognition process. However, they were also of the view that legal gender recognition should be made available to people younger than 16 and for those who identify in a non-binary way and not as men and women, boys and girls.

4.8. LGBT Youth Scotland gave evidence to the Women and Equality Select Committee inquiry into Transgender Equality which set out the views of trans people aged under 18¹²⁷ about the benefits of legal gender recognition in terms of reducing discrimination and improving their mental health. LGBT Youth Scotland also responded to the 2018 consultation and set out the views of individuals in their response.¹²⁸

4.9. Section 5 below sets out a range of consultation meetings before, and after the 2018 consultation and summarises points made by respondents to the 2018 consultation as highlighted in the published analysis report.¹²⁹ This includes a meeting with members of the Scottish Youth Parliament.

¹²⁷ At: <https://gids.nhs.uk/number-referrals>
<http://data.parliament.uk/WrittenEvidence/CommitteeEvidence.svc/EvidenceDocument/Women%20and%20Equalities/Transgender%20Equality/written/19582.html>

¹²⁸ At: <https://webarchive.nrscotland.gov.uk/20190711105605/https://www2.gov.scot/Resource/0053/00539375.pdf>.

¹²⁹ At: <https://www.gov.scot/publications/review-gender-recognition-act-2004-analysis-responses-public-consultation-exercise-report/>

5. Has there been any public or stakeholder consultations on the policy/measure?

5.1. Prior to publication of the 2018 consultation, the Scottish Government met:

- Members of LGBT Youth Scotland¹³⁰ groups aged 13 and over; and
- Gender identity specialists from the Sandyford Clinic,¹³¹
- Gender identity specialists from the Chalmers Centre in Edinburgh;¹³² and
- a representative from the support group TransparenTsees,¹³³ which supports parents and family members as well as children and young people.

The 2018 consultation: views on proposals

5.2. The 2018 consultation sought views of respondents on reducing the age at which gender recognition can be obtained from 18 to 16, on whether gender recognition should be extended to those under 16 and if so, what the best option was for doing so.

5.3. A majority of respondents to the 2018 consultation, (61% of those answering the question), agreed that people aged 16 and 17 should be able to apply for and obtain legal recognition of their acquired gender.

5.3. Around 4 in 10 respondents who were in favour of this proposal considered that it is in line with other age-related rights and legal provisions in Scotland. Around 1 in 5 of such respondents commented that, by age 16, young people know their own minds and have the capacity and understanding to make their own choices and decisions. Further comments included that young people should be enabled to make decisions for themselves and that the UNCRC requires that minors are not discriminated against and that they are heard according to their maturity and evolving capacity in all matters that concern them.

5.4. Respondents in favour of the proposal to reduce the minimum age for legal gender recognition to 16 also highlighted ways in which being able to obtain a GRC could help young people in moving into adulthood. Around 1 in 6 respondents in favour of the proposal pointed to the positive impact it could have on 16- and 17-year olds' health and wellbeing. Respondents commented on the very significant and detrimental effect that not being able

¹³⁰ At: <https://www.lgbtyouth.org.uk/>.

¹³¹ At: <https://www.sandyford.org/sexual-health-services/what-are-our-services/gender-identity-service/>

¹³² At: <http://lothiansexualhealth.scot.nhs.uk/services/gjc/Pages/default.aspx>

¹³³ TransparenTsees was founded in 2013 by a parent. In 2016, three other autonomous groups were established in Edinburgh, Perth and Elgin. TransparenTsees offers email and telephone support as well as the opportunity for parents and other family members to meet each other.

to obtain legal recognition of their gender can have on the mental health of the young people affected.

5.5. Of around 2,540 respondents who disagreed with the above proposal, 7 in 10 commented that 16 years old is too young to be able to apply for and obtain legal recognition. Many issues were raised including the comment that 16 is too young to make a life-changing decision. Some respondents suggested that 16 and 17-year olds are often still going through puberty and may not yet be clear about their gender identity or sexuality. Around 1 in 5 commented on the potential confusion, particularly around their gender identity and sexuality that young people may experience. Further points included that gay or lesbian young people may see themselves as trans rather than recognising and accepting their sexuality.

5.6. Respondents who disagreed with this proposal noted that there are services that do not treat 16- and 17-year olds as adults. Examples given included that 16- and 17-year olds are still considered children from a clinical perspective and that young people held in custody are considered to need enhanced levels of protection compared with adults. Neither the GRA nor the draft Bill make provision relating to medical treatment or support.

The 2018 consultation: views on the draft CRWIA for that consultation

5.7. Specifically on the draft CRWIA published with the 2018 consultation, the independent analysis of the consultation responses noted the following points made by consultation respondents:

(a) there is no consideration of the impact on children who are not trans of being in single sex spaces with a child who is trans.

(b) That Article 3(3), which covers the care or protection of children, particularly in the areas of safety and health, may be relevant in relation to health advice and treatment provided to trans children and to children concerned about their gender identity.

(c) On Article 5, some respondents considered that the right to gender reassignment is not recognised in the UNCRC.

(d) Article 13, on children's right to freedom of expression, could be an issue if children are considered transphobic if they for example questioned a trans child or professionals may feel they are transphobic if they were to offer an alternative view.

(e) Article 17, which covers the important function performed by the mass media and ensuring that children have access to information and material from a diversity of national and international sources,

may be relevant in relation to trans children and there may be actions the Scottish Government could take in relation to the supply of information to meet the needs of individual trans children and to meet the wider needs of children.

5.8. On single sex spaces, the consultation on the draft Bill sets out relevant provisions of the Equality Act 2010, which make exceptions to the general provisions of that Act on non-discrimination. The 2010 Act is mainly reserved to the Westminster Parliament. Some of these exceptions are relevant when considering the position of non-trans boys and girls in relation to gender recognition. Further information is available in the draft EQIA at Annex J on the outcomes of this review.

5.9. The Implementation Handbook, published by UNICEF, says that gender identity is an aspect of identity.¹³⁴

5.10. The draft Bill does not affect the professional responsibilities of those offering treatment and support to those distressed or concerned about their gender identity, nor does it otherwise affect the right to access such services in Scotland.

Meetings with groups/organisations after the publication of the 2018 consultation

5.11. Since the 2018 consultation, the Cabinet Secretary for Social Security and Older People has met with a range of groups to gather further information and evidence:¹³⁵

- Women's Spaces in Scotland;¹³⁶
- CARE for Scotland;¹³⁷
- The Free Church of Scotland;¹³⁸
- Equality Network;¹³⁹

¹³⁴ At : https://www.unicef.org/publications/index_43110.html

¹³⁵ In addition, a meeting was scheduled on a number of occasions with the group Women and Girls in Scotland who were unable to attend: <https://wgscotland.org.uk/about/>. Their views were instead set out in correspondence.

¹³⁶ Two of the local groups of Women's Spaces in Scotland responded to the consultation and their responses can be accessed at:

<https://webarchive.nrsotland.gov.uk/20190116052027/https://www2.gov.scot/Topics/Justice/aw/17867/gender-recognition-review/review-of-gender-recognition-act-2004-list-of-orga/published-responses-from-organisations>. Women's Spaces in Scotland also met separately with Scottish Government officials

¹³⁷ Their 2018 consultation response is at:

<https://webarchive.nrsotland.gov.uk/20190711105341/https://www2.gov.scot/Resource/0053/00539279.pdf>. CARE also met separately with officials from Scottish Government.

¹³⁸ Their 2018 consultation response is at:

<https://webarchive.nrsotland.gov.uk/20190711105501/https://www2.gov.scot/Resource/0053/00539309.pdf>. The Free Church of Scotland also met separately with Scottish Government officials.

¹³⁹ Their 2018 consultation response is at:

<https://webarchive.nrsotland.gov.uk/20190711105447/https://www2.gov.scot/Resource/0053>

- Stonewall Scotland;¹⁴⁰
- LGBT Health and Wellbeing;¹⁴¹
- LGBT Youth Scotland;¹⁴²
- Scottish Women's Aid;¹⁴³
- Rape Crisis Scotland;
- Engender;¹⁴⁴
- Close the Gap;
- Zero Tolerance;
- The Chair of the First Minister's National Advisory Group on Women and Girls; and
- Members of the Scottish Youth Parliament.

5.12. In addition, Scottish Government officials met with:

- A member of Forwomen.scot;
- The Scottish Catholic Education Service; and
- The Catholic Parliamentary Office of the Bishops' Conference of Scotland.¹⁴⁵

Correspondence

5.13. The points made in correspondence with Scottish Government concerning access to gender recognition for children and young people have also been considered. Such correspondence reflected the range of views expressed by respondents to the 2018 consultation, as highlighted at paragraph 5.2-.5.5 above.

[/00539302.pdf](#). Scottish Government officials also met separately with the Equality Network and Scottish Trans Alliance, Stonewall Scotland and LGBT Youth Scotland.

¹⁴⁰ Their 2018 consultation response is at:

<https://webarchive.nrscotland.gov.uk/20190711105724/https://www2.gov.scot/Resource/0053/00539455.pdf>

¹⁴¹ Their 2018 consultation response is at:

<https://webarchive.nrscotland.gov.uk/20190711105603/https://www2.gov.scot/Resource/0053/00539374.pdf>

¹⁴² Their 2018 consultation response is at:

<https://webarchive.nrscotland.gov.uk/20190711105605/https://www2.gov.scot/Resource/0053/00539375.pdf>

¹⁴³ Their 2018 consultation response, setting out the results of a survey of their local groups, is at:

<https://webarchive.nrscotland.gov.uk/20190711105713/https://www2.gov.scot/Resource/0053/00539450.pdf>

¹⁴⁴ Their 2018 consultation response submitted for the coalition of women's groups is at:

<https://webarchive.nrscotland.gov.uk/20190711105437/https://www2.gov.scot/Resource/0053/00539300.pdf>. Engender also met separately with Scottish Government officials.

¹⁴⁵ The 2018 consultation response is at:

<https://webarchive.nrscotland.gov.uk/20190711105343/https://www2.gov.scot/Resource/0053/00539280.pdf>.

6. Has there been any estimate of the resource implications of the policy/measure?

Capital costs, expenditure, recruitment and training costs for the workforce etc.

Initial set-up expenditure for a new statutory declaration-based system of gender recognition for Scotland (including a new IT system, staff resourcing and training) have been estimated at £300,000 to £350,000, with running costs in the first year of around £150,000. There is a separate draft Business and Regulatory Impact Assessment covering the anticipated costs of implementing the draft Bill.

CRWIA Stage 3

Data Collection, Evidence Gathering, Involvement of/Consultation with Stakeholder Groups - key questions

1. What does the evidence tell you?

The evidence base may include demographic information, academic research, service monitoring/inspection reports, service evaluation reports, user surveys etc. Identify any gaps in the evidence base. In particular, look at what the evidence tells you about children and young people's views and experiences of the relevant service(s); and/or what it tells you about children and young people's views of the policy proposal.

The evidence suggests that:

- An increasing number of children and young people are seeking advice and support from gender identity clinics.
- A number of children and young people identify as being trans and undertake a social transition.
- There is little consistency internationally in relation to the minimum age at which people can apply for legal gender recognition.

In Scotland, young people receive a number of rights which can be seen as analogous to a right to determine whether to seek legal gender recognition, such as the right to marry or register a civil partnership. Further, gender recognition has no effect on the rights to access treatment or surgery where an appropriate diagnosis must be in place under the existing protocols in NHS Scotland and in accordance with international best practice on gender identity health services.

2. What further data or evidence is required?

Is the evidence up to date, robust and reliable, sufficiently relevant to what is being proposed, or do you need to commission new research?

The consultation seeks respondents' views on reducing the minimum age of applicants to 16 from 18.

3. Has there been any consultation on the development of the proposal(s)?

Public or targeted consultation with children and young people, their parents/carers, the children's workforce - is there enough information on the views of the children and young people who will be affected by the policy/measure?

3.1. As referenced in Stage 2 of this draft CRWIA, there was a full public consultation in 2018 including on the proposal to reduce the minimum age of applicants to 16 from 18. A draft CRWIA formed part of that 2018

consultation. This CRWIA forms part of a further public consultation on the provisions of a draft Bill.

3.2. As highlighted in Stage 3, since the 2018 consultation, the Cabinet Secretary for Social Security and Older People has met with a range of groups to gather further information and evidence:¹⁴⁶

- Women's Spaces in Scotland;
- CARE for Scotland;
- The Free Church of Scotland;
- Equality Network;
- Stonewall Scotland;
- LGBT Health and Wellbeing;
- LGBT Youth Scotland;
- Scottish Women's Aid;
- Rape Crisis Scotland;
- Engender;
- Close the Gap;
- Zero Tolerance;
- The Chair of the First Minister's National Advisory Group on Women and Girls; and
- Members of the Scottish Youth Parliament.

3.3. In addition, Scottish Government officials met with:

- A member of Forwomen.scot;¹⁴⁷
- The Scottish Catholic Education Service; and
- The Catholic Parliamentary Office of the Bishops' Conference of Scotland.

4. Should children and young people be further involved in the development of this policy? Are there particular groups of children and young people whose views should be sought?

Specify how - outline the purpose, format, timetable and the questions you want to ask

Yes. The Scottish Government welcomes responses to the consultation from children and young people and from those organisations who work with them to advocate for them or represent their views.

5. Should other stakeholders and experts be further involved in the development of this policy?

¹⁴⁶ In addition, a meeting was scheduled on a number of occasions with the group Women and Girls in Scotland who subsequently were unable to attend:

<https://wgscotland.org.uk/about/>. Their views were instead set out in correspondence.

¹⁴⁷ Their website is: <https://forwomen.scot/>.

Specify how - outline the purpose, format, timetable and the questions you want to ask

The Scottish Government would particularly welcome any further evidence which professionals working with young people may have for the purposes of finalising this draft CRWIA should the draft Bill proceed.

**APPENDIX A- CRWIA STAGE 2- SCREENING- EVIDENCE BASE
SCOTTISH GOVERNMENT’S UNDERSTANDING OF LEGAL GENDER
RECOGNITION PROCESSES FOR CHILDREN IN OTHER COUNTRIES**

Country	Minimum age	Court process	Admin. process	Who can apply and evidence required
Argentina	None	Only where disagreement	National Registry of Persons’ office	By person’s legal representatives but must be express consent of person under 18. If they cannot agree, application is made through a court.
Australian Capital Territory ¹⁴⁸	None	-	Registrar-General	For under 18s, those with parental responsibility must apply. They must declare that application is in child’s best interests. In addition, a doctor or psychologist must confirm the child has had appropriate clinical treatment for alteration of their sex. ¹⁴⁹
Belgium	16	-	Civil Registrar	Persons aged 16 and 17 may request the

¹⁴⁸ Births, Deaths and Marriages Registration Act 1997, section 24(2).

¹⁴⁹ At the URL below

https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/1691/kw/CHANGE%20OF%20SEX

Country	Minimum age	Court process	Admin. process	Who can apply and evidence required
				civil registrar to change their recorded sex, provided there is parental authorisation and after consultation with a psychiatrist.
British Columbia ¹⁵⁰	None	-	Vital Statistics Agency	People aged 18 and under apply themselves. Their legal guardians must consent and they must also enclose a statutory declaration from a physician or psychologist confirming their gender identity.
Chile	14	Yes		An individual aged 14 to 17 can apply to the family court. The court will consider evidence, including psychological or psychosocial reports.
France	16	Yes	-	Emancipated minors (those

¹⁵⁰ Information on the process is at https://www2.gov.bc.ca/assets/gov/health/forms/vital-statistics/vsa509c_fill.pdf. The legislation is the Vital Statistics Act, at section 27 here-
http://www.bclaws.ca/civix/document/id/complete/statreg/96479_01.

Country	Minimum age	Court process	Admin. process	Who can apply and evidence required
				aged 16 and above who have been emancipated by an order of the guardianship judge) may apply using the same court based procedure as a person of 18.
Republic of Ireland ¹⁵¹	16	Yes- for 16 and 17 year olds an order of court must be submitted with application.	Client Identity Services of Department of Social Protection.	Court must be satisfied that applicant's parents or legal representative's consent. Two medical reports must confirm the applicant's capacity and that they have transitioned or are transitioning to live in their preferred gender.
Malta ¹⁵²	None	Yes		Parents apply to the Civil Court of Registry who must 1. ensure that the best interests of the child are the paramount

¹⁵¹ At <http://www.irishstatutebook.ie/eli/2015/act/25/enacted/en/html>

¹⁵² At <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12312&l=1>

Country	Minimum age	Court process	Admin. process	Who can apply and evidence required
				consideration and 2. give due weight to the child's views based on their age and maturity
New Zealand ¹⁵³	18, (those aged 16 and over can apply if they are married or in civil union or de facto relationship) ¹⁵⁴	Yes		The person must demonstrate they: 1. have assumed the gender identity of person of the nominated sex; 2. have undergone appropriate medical treatment; and 3. will maintain a gender identity of a person of the nominated sex.
Norway	6 ¹⁵⁵		Tax office-National Population Register	Application by both child seeking recognition <u>and</u> those with parental responsibilities . If parents don't agree,

¹⁵³ At https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Services-Births-Deaths-and-Marriages-Information-for-Transgender-Applicants?OpenDocument.

¹⁵⁴ At

http://www.legislation.govt.nz/act/public/1995/0016/latest/versions.aspx?search=ts_act%40bill%40regulation%40deemedreg_births+deaths+marriages+and+relationships+act+1995_resel_25_a&p=1 and <http://youthlaw.co.nz/rights/legal-ages/#16-years> .

¹⁵⁵ Unless the child has an intersex condition/variation in sex characteristics, in which case an application can be made notwithstanding they are under 6 years of age.

Country	Minimum age	Court process	Admin. process	Who can apply and evidence required
				application is to the County Governor of Oslo and Akershus.

**The Scottish Government
December 2019**