

Sex

vs

gender

transsexual

— gender identity —

Are they definitions up to consider

discriminating between people with gender dysphoria & those who don't.

→ questions are conflated as a result of the mix of use of sex and gender.

Additional

→ may be an opportunity here.

queries re' assignment of sex.
to its the right language.

Matching ~~is~~ b.c. to other documents -

~~Answer D~~

-D references to men/women
↳ non-binary

Women recognised as sex discriminati
how to avoid problems.

Tracking age in statistics?

↳ transition age.
may be important
to collect.

Tracking trans women. →

Is there something that can be done re prisons.

Would skew statistics of who is 'female' estates when self identifying

Swedish study trans women have same rates of violence.

Trans women man lower figures. About going to track this, & keep an eye on it.

SPS → policy / risk assessed.

AP → SPS protocol.

gender identity

Upton

Cont case in US

CDIA - should have wider
information re priority blockers -
for children

Stop calling it a G Recognition
Act → as that's confusing.

Annex I

gender specific criminal
offences

SPS → transsexual women community
~~trans~~ rape E.U.P.S.

Prosecutions → low number succ.

prosecuted - could
make of self declared women.
- hard enough to prove
cases of male victims

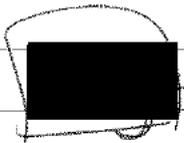


E.S.

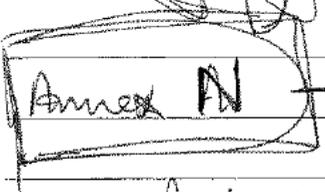
Domestic Abuse



Bill



Draft declaration process
Tax history. for example.



Annex A



Children with autism
Disability section of p EIA.

Mexican field study referred
to.

Framing exercise → Religion &
held body -
two concepts - one
for one against
Don't esp the understand
view of LI etc.

→ mentions that covered
we discuss that blasphemy
in content be made
should be false sex warning.

Should legislation say something
re freedom of speech.
Could we amend the constitution
now.

Speakers at tonight meeting -
protesters outside. Rowing
out about 'faracts' -
women allowed to take part

in democratic consultation.

Businesses affected.

Glasgow - venue changed
community name action.

People being photographed existing
from the venue.

Distressing - putting jobs at
risk.

Helpful to have reassurance from
S4.



Profs Bill

Interen Space & ^A mediated re f of S.
- A Constance.

Timescale.

Roundtable? → up for facilitated
conversation in a safe
space.

Education → homophobic bullying

& online conversation.

too trans focussed..

From: Duncan SE (Sarah) (Justice)
Sent: 23 February 2018 12:06
To: [REDACTED]
Cc: Stockwell SW (Simon); [REDACTED]
Subject: RE: Scottish Government- Consultation process about the Gender Recognition Act 2004

Following yesterday’s meeting, I’d like to thank you and your colleagues for your time in attending and discussing your views and concerns about the consultation and its proposals.

- I attach a pdf of the Scottish Prison Service’s policy on Gender Reassignment etc;



[REDACTED]

- The evidence identified in the partial Child Rights and Wellbeing Impact Assessment about the sense of gender identity and when feelings of incongruence were reported is at paragraph 4.1 footnote, being Kennedy, N. & Hellen, M. (2010) Transgender children: more than a theoretical challenge. *Graduate Journal of Social Science*, 7 (2), 25–43. There is no link in the Child Rights and Wellbeing Impact Assessment to this but I have now identified that you can find it in this publication- [http://www.academia.edu/1455407/Transgender children more than a theoretical challenge](http://www.academia.edu/1455407/Transgender_children_more_than_a_theoretical_challenge).
- The court case which has indicated that a “treatment model” that requires as sterilisation or surgery (but does not affect assessment model type systems requiring a medical diagnosis, such as the 2004 Act) is a breach of article 8 (right to respect for private life) of the European Convention on Human Rights is AP, Garcon and Nicot v France [2017] ECHR 338 (6 April 2017). I have attached a summary in English issued by the registrar of the court. The full judgement is in French and is at [https://hudoc.echr.coe.int/eng#{"itemid":\["001-172556"\]}](https://hudoc.echr.coe.int/eng#{)



[REDACTED]

At the meeting you had questions about the use/conflation of ‘gender’ and ‘sex’ within the 2004 Act which is reflected in the consultation document. We had indicated that there was intentional use of both gender and sex within for example section 9(1) of the 2004 Act. That states:

“Where a full gender recognition certificate is issued to a person, the person’s gender becomes for all purposes the acquired gender (so that, if the acquired gender is the male gender, the person’s sex becomes that of a man and, if it is the female gender, the person’s sex becomes that of a woman).”

This UK Parliamentary research paper (<http://researchbriefings.files.parliament.uk/documents/RP04-15/RP04-15.pdf>) which was published during the Bill’s progress notes that concerns were raised earlier in the Bill’s progress

about the lack of clarity in a version of the Bill which had used only gender/acquired gender, as to whether legislation referring to sex (such as the then applicable sex discrimination law) would apply to that recognised person. The paper discusses this at pages 25 and 26. There is likely to be more information around this within the Hansard reports on debates and in committee, which you may be able to locate.

We'll share our note of the meeting once ready. As we indicated, we will be advising the Cabinet Secretary, Angela Constance, about our meeting and will raise with her your concerns about freedom of speech.

Sarah
Scottish Government Family and Property Law Team
[REDACTED]

From: [REDACTED]@gmail.com]
Sent: 09 February 2018 20:45
To: Duncan SE (Sarah) (Justice)
Subject: RE: Scottish Government- Consultation process about the Gender Recognition Act 2004

Dear Sarah,

Thank you so much for taking the trouble to arrange this.
I will let the others know.

Looking forward to meeting you and your colleagues on the 22nd.

Kind Regards

[REDACTED]

On 9 Feb 2018 9:47 a.m., [REDACTED] wrote:

[REDACTED]

I have located meeting space to allow your two colleagues to attend. The meeting will now be at the same time but at Saughton House. Details for getting there can be found here:

<https://beta.gov.scot/about/contact-information/buildings/>

Sarah
[REDACTED]

From: [REDACTED]@gmail.com]
Sent: 02 February 2018 12:47
To: Duncan SE (Sarah) (Justice)
Subject: RE: Scottish Government- Consultation process about the Gender Recognition Act 2004

Hello Sarah,

Apologies for yet another email, but I would like to add [REDACTED] and [REDACTED] to our list of attendees. They were out of the country when I put the calling notice out and I have only just had a response from them.

I hope this doesn't cause too much inconvenience at your end.

Kind Regards,

[REDACTED]

On 29 Jan 2018 9:26 a.m., [REDACTED] wrote:

[REDACTED]

Thanks for your reply confirming that 22 February is the best date for you.

This website contains information about visiting St Andrew's House, including the telephone number for reception: <https://beta.gov.scot/about/contact-information/buildings/>. There are no special instructions as such, but when you arrive, speak to the officers at the reception desk, who will have your names and the details of the meeting. They will advise us of your arrival and I will take you to the meeting room. There will likely be four of us attending.

We look forward to meeting you next month.

Thanks,

Sarah E Duncan

Scottish Government: Family and Property Law Team

[REDACTED]

From: [REDACTED]@gmail.com]
Sent: 28 January 2018 14:04
To: Duncan SE (Sarah) (Justice)
Subject: RE: Scottish Government- Consultation process about the Gender Recognition Act 2004

Hello Sarah,

Apologies for the delay, I had to consult with the group to determine which date was suitable for those who were likely to attend and this took longer than anticipated, particularly since many of us have work or childcare commitments to accommodate.

We would like to request a meeting with you and/or other relevant Scottish Government representatives on Thursday 22nd February at 2pm.

The list of attendees will be:

- [REDACTED]

I look forward to hearing from with your confirmation along with instructions about access to St Andrews House and any other necessary information.

Kind Regards,

[REDACTED]

On 16 Jan 2018 9:58 a.m., [REDACTED] [@gov.scot](mailto:[REDACTED]@gov.scot)> wrote:

[REDACTED]

Thanks for your reply.

I'd initially propose three possible dates for the meeting:

21st February 14:00

22nd February 14:00

27 February 14:00

Our office is St Andrew's House, Regent Road, Edinburgh. Further information about [getting here](#) is available.

Let me know which of these dates/times, if any, suits you all best. As I need to organise meeting rooms well in advance, can you let me know how many colleagues of yours would be attending and whether you or any of your colleagues have disability requirements. I will also need to know their names nearer the time to advise our reception.

I look forward to hearing from you shortly.

Thanks,

Sarah E Duncan

Scottish Government: Family and Property Law Team

From: [REDACTED]@gmail.com]

Sent: 15 January 2018 10:21

To: Duncan SE (Sarah) (Justice)

Subject: Re: Scottish Government- Consultation process about the Gender Recognition Act 2004

Dear Sarah,

Many thanks for your reply and letter in response to my email regarding the consultation on the GRA. Your comprehensive response is much appreciated.

You state in your letter that you would be willing to arrange a meeting to discuss issues arising from the consultation. I would like to take up this offer. I wish to attend along with a few members of Women's Spaces in Scotland, a group of women who are interested in preserving the principle of women and girls centred services and provisions in Scotland, advancing the cause of women's rights, and encouraging the participation of women in public life.

We would like to request that a meeting be arranged for mid February.

I would be grateful if you could confirm possible dates with me as soon as possible in order that we can schedule our diaries with as much prior notice as possible.

Kind Regards,

[REDACTED]

On 18 Dec 2017 10:04 a.m. [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)> wrote:

Thank you for your email regarding the Scottish Government consultation about reforming the Gender Recognition Act 2004. Please find attached our letter responding to your enquiry.

Sarah E Duncan

Family and Property Law Team

[REDACTED]

From: [REDACTED] <[\[REDACTED\]@gmail.com](mailto:[REDACTED]@gmail.com)>

Sent: 30 November 2017 17:35

To: SG Consultations

Subject: Consultation process on GRA reform

To whom it may concern.

I am contacting you regarding the consultation process for the proposed reform to the Gender Recognition Act as it applies in Scotland.

I note that there is an online consultation with a closing date of 1st March 2018.

However, I would be grateful if you could inform me of any other means by which the public can respond to this consultation. By this, I mean will there be any public "conversations" hosted by the Scottish Parliament, or information sessions, or opportunities to submit more nuanced responses than the online survey allows?

I would also be grateful if you could supply me with the following information;

- By what process were the consultation questions and composition of the final online consultation decided upon?
- What organisations and lobbying groups were involved in the drawing up of the final consultation questions?
- Was the final consultation checked for bias, and if so, by whom?
- To whom should I write to if I have further questions, concerns, or other matters to raise with regard to the content or composition of the online survey?

I look forward to your swift response to my enquiry.

Kind Regards,



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Tha am post-d seo (agus faidhle neo ceanglan còmhla ris) dhan neach neo luchd-ainmichte a-mhàin. Chan eil e ceadachd a chleachdadh ann an dòigh sam bith, a' toirt a-steach còraichean, foillseachadh neo

sgaoileadh, gun chead. Ma 's e is gun d'fhuair sibh seo gun fhiosd', bu choir cur às dhan phost-d agus lethbhreac sam bith air an t-siostam agaibh agus fios a leigeil chun neach a sgaoil am post-d gun dàil.

Dh'fhaodadh gum bi teachdaireachd sam bith bho Riaghaltas na h-Alba air a chlàradh neo air a sgrùdadh airson dearbhadh gu bheil an siostam ag obair gu h-èifeachdach neo airson adhbhar laghail eile. Dh'fhaodadh nach eil beachdan anns a' phost-d seo co-ionann ri beachdan Riaghaltas na h-Alba.

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[REDACTED]

From: Duncan SE (Sarah) (Justice)
Sent: 23 February 2018 14:57
To: [REDACTED]
Cc: Stockwell SW (Simon); [REDACTED]
Subject: RE: Scottish Government- Consultation process about the Gender Recognition Act 2004

[REDACTED]

I didn't remember this morning that we also confirmed we would send on the report analysing the responses received by Scottish Government to the consultation on the registration of civil partnerships and the extension of marriage to same sex couples.

Here is a link to that report (<http://www.gov.scot/Publications/2012/07/5671/8>). The report contains a breakdown of respondents by their location and particular questions are also broken down including information about the location of respondent. Question 10 in that consultation was "Do you agree that the law in Scotland should be changed to allow same sex marriage?". See paragraph 6.1 onwards in particular where a table breakdown the views of respondents based on their location. You can also see that we gave a breakdown on the type of response received, such as pre-prepared forms and so on .

I hope this is helpful.

Sarah

[REDACTED]

From: Duncan SE (Sarah) (Justice)
Sent: 23 February 2018 12:06
To: [REDACTED]
Cc: Stockwell SW (Simon); [REDACTED]
Subject: RE: Scottish Government- Consultation process about the Gender Recognition Act 2004

[REDACTED]

Following yesterday's meeting, I'd like to thank you and your colleagues for your time in attending and discussing your views and concerns about the consultation and its proposals.

- I attach a pdf of the Scottish Prison Service's policy on Gender Reassignment etc;

<< File: SPS policy.pdf >>

- The evidence identified in the partial Child Rights and Wellbeing Impact Assessment about the sense of gender identity and when feelings of incongruence were reported is at paragraph 4.1 footnote, being Kennedy, N. & Hellen, M. (2010) Transgender children: more than a theoretical challenge. *Graduate Journal of Social Science*, **7 (2)**, 25–43. There is no link in the Child Rights and Wellbeing Impact Assessment to this but I have now identified that you can find it in this publication- [http://www.academia.edu/1455407/Transgender children more than a theoretical challenge](http://www.academia.edu/1455407/Transgender_children_more_than_a_theoretical_challenge).
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<< File: Judgment A.P., Garçon and Nicot v. France - change of entries concerning sex on birth certificates.pdf >>

At the meeting you had questions about the use/conflation of 'gender' and 'sex' within the 2004 Act which is reflected in the consultation document. We had indicated that there was intentional use of both gender and sex within for example section 9(1) of the 2004 Act. That states:

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We'll share our note of the meeting once ready. As we indicated, we will be advising the Cabinet Secretary, Angela Constance, about our meeting and will raise with her your concerns about freedom of speech.

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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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To: Duncan SE (Sarah) (Justice)

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Sarah E Duncan

Family and Property Law Team

[REDACTED]

From: [REDACTED] [\[REDACTED\]@gmail.com](mailto:[REDACTED]@gmail.com)]

Sent: 30 November 2017 17:35

To: SG Consultations

Subject: Consultation process on GRA reform

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I look forward to your swift response to my enquiry.

Kind Regards,



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Dh'fhaodadh gum bi teachdaireachd sam bith bho Riaghaltas na h-Alba air a chlàradh neo air a sgrùdadh airson dearbhadh gu bheil an siostam ag obair gu h-èifeachdach neo airson adhbhar laghail eile. Dh'fhaodadh nach eil beachdan anns a' phost-d seo co-ionann ri beachdan Riaghaltas na h-Alba.

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<< File: SPS

policy.pdf >>

[REDACTED]

From: Stockwell SW (Simon)
Sent: 23 February 2018 16:49
To: [REDACTED] Marshall J (Jan); [REDACTED]
[REDACTED] Duncan SE (Sarah) (Justice); Communications CSSE; Campbell J (Jeanette)
Subject: Gender Recognition Act - freedom of speech.

Colleagues

For info.

I spoke today to [REDACTED] of the Equality Network/STA after the meeting which some of us had with women's spaces yesterday. [REDACTED] indicated that:

- He would have no difficulty with any future gender recognition Bill including provision similar to section 16 of the Marriage and Civil Partnership (Scotland) Act 2014:
<http://www.legislation.gov.uk/asp/2014/5/section/16/enacted>
- He would have no difficulty with the SG saying, if required, that people opposed to the proposed reforms are not necessarily transphobic.
- He would be unlikely to have any difficulty in participating in any round table discussion on the proposed reforms facilitated by the SG with women's spaces present.

Simon Stockwell
Family and Property
X [REDACTED]



From: Stockwell SW (Simon)
Sent: 26 February 2018 12:17
To: [redacted]; Communications CSSE; Duncan SE (Sarah) (Justice); [redacted]
Cc: Marshall J (Jan); [redacted] Campbell J (Jeanette)
Subject: Gender recognition: meeting with Women's Spaces: draft submission
Importance: High



[redacted]
[redacted]

Comms

Sarah



1. I attach a draft submission to CabSec following last week's meeting at official level with Women's Spaces.
2. Grateful for comments by close tonight. I'd like to put up before the Equality Network reception in the Parliament tomorrow evening.
3. [redacted] will wish to note the reference to trans prisoners and that I would intend to copy the CEO of the SPS into the submission.
4. Could Sarah please update the stats on the number of responses to the consultation.
5. Are [redacted] aware of any existing briefing on what the SG does to support women? I think there's a lot we can say in that area, and it may be that there is some existing briefing on that which we could use.

Simon Stockwell
Family and Property
X [redacted]

From: Sarah Duncan
Justice: Civil: Family & Property

Cabinet Secretary for Communities, Social Security and Equalities

REVIEW OF GENDER RECOGNITION ACT 2004

Purpose

1. To
 - Advise you about a recent meeting between officials and the organisation Women's Spaces in Scotland;
 - [REDACTED]
 - [REDACTED]

Priority

2. Routine.

Detail

Meeting with Women's Spaces in Scotland

3. Officials from the Family and Property Law Team and from the Equality Unit met on 22 February with representatives from a group called Women's Spaces in Scotland.
4. Women's Spaces in Scotland raised a number of points:
 - The use of both "sex" and "gender" within the 2004 Act and the consultation, and the lack of a definition of 'gender'. [Their point here is that "gender" and "sex" should be seen as distinct concepts. The effect of the 2004 Act as it stands is that a person who obtains a full Gender Recognition Certificate acquires both a gender and a sex].
 - Their view that the number and nature of women's organisations who had been directly consulted was unsatisfactory. [The published list of organisations sent the consultation includes just 3 women's organisations and a far larger number of religious bodies. We noted that a number of radical feminists opposed to the proposals had responded to the consultation. The consultation makes it clear that "any organisation or individual with an interest in this consultation is encouraged to submit their views using Citizen Space or by post"].
 - Whether the consultation was confusing for the public. [We noted the large number of responses already received]
 - The proposals would go beyond people who have gender dysphoria. [Under the current system, people applying to the Gender Recognition Panel must usually provide evidence of a diagnosis of gender dysphoria. The proposals would remove that requirement but would still require people to make a statutory declaration

confirming their permanent intention to live, as the case may be, as a man or a woman].

- Concerns that male offenders will seek to declare themselves women for the purpose of being accommodated in a female prison unit, and the implications for the safety of other prisoners and prison staff. [We noted that the Scottish Prisons Service already have a Gender Identity and Gender Reassignment Policy for those in their custody and that policies needed to be based around the risk caused by any particular offender]
- The impact of any reform for children and young people and in particular on those seeking access to what they consider potentially unsafe puberty blockers and cross sex hormones. [We noted that the consultation was not about medical and surgical treatment and that the consultation was highly consultative about what approach should be taken on the availability of legal gender recognition for those under 16].
- The impact of increased numbers of people recognised under a self-declaratory process on statistical evidence about crime and for statistics about equality between women and men. And whether this might lead to the Scottish Government altering its policy approach to gender equality and gender-based violence. [We noted the strong SG commitment to gender equality and to tackling gender-based violence as shown, for example, in a number of areas such as the Domestic Abuse (Scotland) Bill, the Equally Safe Delivery Plan, the Gender Representation on Public Boards (Scotland) Bill].

5. Women's Spaces expressed concerns that their right to freedom of expression and of assembly are being impacted adversely by some trans activists. They allege that these activists have disrupted their public meetings and sought to intimidate those who attend or who are at or near the venue, by wearing masks, following any women that they suspect will be attending and taking photographs of those emerging from the venues.

6. Women's Spaces said it would help if the SG emphasised its commitment to freedom of speech and if the Scottish Government could state publicly that the expression of disagreement with the reform of the 2004 Act is not transphobic. [Similar points arose in relation to the opposition by some religious bodies to same sex marriage. Section 16 of the Marriage and Civil Partnership (Scotland) Act 2014 provides that nothing in Part 1 of the Act insofar as it makes provision for the same sex marriage and for the solemnisation of same sex marriages affects the exercise of rights to freedom of thought, conscience, religion and of expression].

7. They would like any statements of this nature to be made soon (ie while the consultation is still live – it closes on Thursday 1 March at 5PM). We said this was unlikely to be possible and it would be preferable to seek other opportunities to make statements of this nature.

8. Women's Spaces would be prepared to attend a round table discussion on the proposed reforms to the Act, if we should wish to hold one.



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Conclusion

14. You are invited to:

- note this submission;

[REDACTED]

SARAH DUNCAN
Justice, Civil Law, Family and Property
X [REDACTED]

26 February 2018