

From: [REDACTED]
Justice: Civil: Family

Cabinet Secretary for Social Security and Older People

CONSULTATION ON DRAFT GENDER RECOGNITION (SCOTLAND) BILL- ANALYSIS OF RESPONSES

Purpose

1. To provide you with advice on taking forward the independent analysis of the responses received, publishing the analysis report before the next Scottish Parliamentary elections and publishing the consultation responses. The recommendation, which [REDACTED] agrees with, is to proceed with the analysis and with the publication of **corporate** responses.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Detail

Consultation analysis and response publication

6. The consultation on the draft Bill said that, in line with usual practice:

“Where respondents have given permission for their response to be made public responses will be made available to the public at <http://consult.gov.scot>.....

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. An analysis report will be made available. ”

7. The consultation also advised that the Scottish Government would check that responses did not contain material which was potentially defamatory, or offensive, or might breach copyright or for which data protection concerns might arise. The consultation

indicated that responses which did contain such material would not be published at all. There were some objections to this approach (which is wider than the usual approach taken by SG to publishing responses) particularly from Women and Girls in Scotland and from MurrayBlackburnMackenzie.

8. The consultation period ended on 17 March. Around 17,100 responses were received. The final number of responses is subject to verification during the analysis process. Subject to this, Annex A contains a breakdown of the responses received by the closing date.

9. On 1 April, the Minister for Parliamentary Business advised Parliament that work on a number of Bills, including the Gender Recognition (Scotland) Bill, had been paused as a result of COVID-19.

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
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- [REDACTED]
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[REDACTED]

[REDACTED]

Work on publishing consultation responses

16. There are a number of options for publishing responses alongside the analysis report:

- Publish no responses either organisational or individual (**Option 1**)
- Publish only the organisational responses (**Option 2**)
- In addition to Option 2, publish (either in the analysis report or separately) the campaign template responses and a small sample of individual responses (**Option 3**)
- Moderate and publish all responses (**Option 4**)

17. There were around 17,100 responses to the consultation in total. We have permission to publish around 14,000 of these responses, but not all of these would require review prior to publication, since some respondents answered only Yes/No questions and did not add comments. Around 12,500 responses would need to be reviewed. Taking Option 4 and reviewing all the consultation responses for the consultation on the draft Bill would be very staff resource intensive (40 weeks of time overall) and seems unlikely to be appropriate or possible, even on an overtime basis, in the current circumstances. For further information on our estimates of the staff resource required to carry out this work, see Annex D.

18. Around 228 respondents reported that they were responding for an organisation through Citizen Space. The Cabinet Secretary may recall that, for the initial consultation on the principles of gender recognition reform, only the organisational responses were published of which there were 165 in total. We were not able to use Citizen Space to publish only the responses from organisations because (as it is designed to do) Citizen Space would also automatically publish all elements of other responses where no moderation was needed, such as the answers to Yes/No questions where permission to publish was given.

19. Taking Option 2 (reviewing and publishing only the organisational responses on the SG website) would significantly reduce the staff resource required. However, we anticipate that at least two weeks of staff time would be required: Annex D provides further details of the estimated staff costs involved. If we only published the organisational responses, it would be possible to redact material that we should not publish and publish the remainder of the response. Redactions would include personal information from the person responding, and any material which is potentially defamatory or offensive or is personal information about a third party. This would be in line with the usual SG approach.

20. Taking Option 1 (publishing no consultation responses) is likely to be subject to criticism. We assume that if you are content for work to recommence on the analysis, you would also wish us to prepare the organisational responses for publication (Option 2). This would mean we would aim to publish the analysis report and all the organisational responses where we had permission to do so.

21. Under Option 3, a variation on option 2, we could also ask the analysts who are awarded the contract for the analysis work to publish some of the standard template responses which were circulating, such as the template responses from For Women Scotland, Women and Girls in Scotland, the SNP Women's Pledge and the Christian Institute, or we could do so separately. In addition, we could publish a small sample of individual responses, reflecting the views of those who responded to the consultation.

22. If Option 2 or 3 were adopted, we would not publish all the individual responses where we had permission to do so, noting that the pressure of Covid-19 work means that we do not have the time to carry out the moderation work.

23. We think that, whichever option on publishing responses is adopted where you are content to proceed with the analysis work, that we should update Citizen Space to confirm that the analysis is now being undertaken and provide information about the number of responses received. There is suggested text for this update in Annex E

24. If we do not publish the individual responses we could, of course, be subject to an FOI request. However, under section 12 of the Freedom of Information (Scotland) Act 2002 if we estimate that the cost of locating, retrieving and providing the information requested will exceed the £600 upper cost limit, we do not have to comply with the request.

[REDACTED]

[REDACTED]

[REDACTED]

Conclusion

27. You are asked to:

- note this submission;

█ [REDACTED]

- agree that officials should prepare to publish the consultation responses from organisations on the Scottish Government website with the intention of doing so when the consultation analysis is published, but should not take forward any work on individual responses at this time (option 2);
- agree that officials should investigate option 3 further (that we should also publish examples of the campaign responses and a small sample of individual responses) with the analysts undertaking the analysis report and other relevant colleagues;
- agree that officials should update Citizen Space on the analysis and publication of the organisational responses, including about the total number of responses received, as set out in Annex E; and

█ [REDACTED]

█
Justice: Civil: Family
█

15 October 2020

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Minister for Older People and Equalities Minister for Parliamentary Business			X		X

Director General Education Communities and Justice
Neil Rennick, Director of Justice

[REDACTED]

Communications COVID-19

[REDACTED]

ANNEX A: BREAKDOWN OF CONSULTATION RESPONSES

The information below about the numbers of consultation responses has not yet been verified. Around 17,100 responses have been received. During the response analysis, duplicate responses from the same respondent may require to be removed. Citizen Space will also contain standard and non-standard campaign responses.

Response Type	Number
Citizen Space responses.	16,680
Postal/hard copy responses.	163
Standard hard copy campaign responses.	337 (all driven by For Women Scotland campaign)
Non-standard hard copy campaign responses.	5

Family Law Policy Unit
October 2020

[REDACTED]

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ANNEX D: ESTIMATES OF REQUIRED STAFF TIME TO REVIEW AND PUBLISH CONSULTATION RESPONSES

Estimate to review and where appropriate publish all consultation responses through Citizen Space

1. We have permission from consultees to publish around 14,300 respondents to publish their responses. Around 1,800 of these just ticked yes/no boxes and made no comments and so do not require to be reviewed.

2. Around 12,500 responses require to be reviewed to see if we should withhold the response from publication for any potentially defamatory material; offensive material; copyright material or personal data belonging to a third party.

5. A sample exercise carried out in relation to the responses to the first consultation¹ suggested it might take 2,577 man-hours to review the 10,000 responses to that consultation which required to be reviewed and carry out redactions in that case: this suggests around quarter of an hour per response. In practice, based on recent experience in relation to consultations on family law and civil partnership we think it would be quicker than that, particularly if we just withhold an individual response containing any potentially defamatory material; offensive material; copyright material or personal data belonging to a third party rather than redact this material.

6. If it takes 7 minutes to review each of the 12,500 responses, this would equate to around 1,400 man-hours in total or around 39 weeks of an individual staff member's time. This work would need to be offered to a high number of staff on an overtime basis in order to attempt to have the responses available for publication at the same time as the analysis report.

Estimate to review and publish only the organisational responses on SG website

7. Information from Citizen Space indicates that there are 228 responses from organisations. (It is possible that numbers may be lower than that as a few people incorrectly say that there a corporate response when they are not). 165 organisations responded to the first consultation.

8. We could extract the organisational responses from Citizen Space, review these and then arrange to publish them on the SG website. Some manual redactions would be necessary which would usually be done automatically in Citizen Space. In particular we would need to remove any personal data of the individual who submitted the response for the organisation, including email addresses. There would also be additional work preparing the website to host the responses.

9. We assume that extracting the response from Citizen Space, reviewing and saving the response in ERDM, and making any redactions would take up to 15 minutes in total. This suggests this task would take 3,420 minutes or 57 hours or, if one person is carrying

¹ To consider the potential costs of a Freedom of Information enquiry to publish the consultation responses.

out the task, the best part of two weeks. That is in line with our experience with the first consultation.

10. There would be additional costs for publishing each response using the usual APS arrangements.

Family Law Policy Unit
October 2020

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- 1. [REDACTED]
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[REDACTED]

Cabinet Secretary for Social Justice, Housing and Local Government

**CONSULTATION ON THE DRAFT GENDER RECOGNITION REFORM
(SCOTLAND) BILL: ANALYSIS REPORT AND FOI REQUEST FOR
CONSULTATION RESPONSES**

Purpose

1. To:

- [REDACTED]
- seek your views on how you wish to proceed following a freedom of information request for all responses to the consultation. We are refusing the FOI on grounds of costs but we still need to consider our approach to the publication of responses.

Priority

2. **Routine.**

Detail

Background

3. The consultation on the draft Bill closed on 17 March 2020, shortly before the first lockdown. Most of the responses are held online on Citizen Space, the SG's digital platform for consultations. A small number of hard copy responses are held in St Andrew's House. For the purposes of this submission, the following table may be helpful:

Category	Number (approx.)
Total number of responses	17,000
On Citizen Space	16,700
Hard copy	300
Permission to publish	14,500
No permission to publish	2,500
Responses still to moderate	12,500
Responses already moderated or are quantitative (only gave yes/no answers)	2,000

4. Work on the draft Bill was paused as a result of the pandemic. However, work on procuring an independent analysis of the consultation responses recommenced in October 2020.
5. It was also agreed that officials should prepare to publish the consultation responses from organisations (215 responses) with the intention of publishing them at the same time as the consultation analysis.
6. It was also agreed then that we would not take forward any work on publishing individual responses. This reflected that we could not justify the staff time it would take to publish the responses from individuals, given the work being generated by the pandemic. (This Unit has continued to be heavily involved with Covid-19 work, particularly in relation to the restrictions on marriage).
7. It is standard SG practice to publish all responses to consultations where the consultee has given permission to publish. The main benefit of publishing responses is that it allows the public and stakeholders to view responses to a consultation, so that they can hold the Government to account for subsequent actions. It follows that the primary risk would be the perceived lack of transparency. This could open the Government to criticism that it is trying to suppress certain points of view. However, we can only publish responses where we have permission to do so whereas all responses are made available for analysis and the report will be published in due course.
8. Before publishing responses we need to check whether they contain any material which should not be published. As the data controller, the Government is responsible for determining the means and purposes of the data processing, as well as the lawful bases for personal data processing and sharing.
9. Since October 2020, the contractor has concluded their analysis of responses and produced their final report and we have been preparing the organisational responses for publication.
10. However, we have received a freedom of information request for all responses to the consultation. We are refusing that request on the grounds of cost but still need to consider our approach generally.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Publishing the responses under FOISA

18. We made respondents aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 (“FOISA”) and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

19. There were around 17,000 responses to the consultation in total. We have permission from consultees to publish around 14,500 responses. However, not all of these would require review prior to publication as some respondents have just given quantitative responses (have only answered Yes/No questions without adding comments). There are around 12,500 responses awaiting review in Citizen Space. There are also some identical hard copy campaign responses that have not been uploaded to Citizen Space (around 300).

20. Under section 12 of FOISA if we estimate that the cost of locating, retrieving and providing the information requested will exceed the £600 upper cost limit, we do not have to comply with the request. We have calculated (see **Annex A**) that the cost of complying with the request would exceed £600, and therefore, we are refusing the request.

Publishing the responses outwith FOISA

21. We are still able to release the requested information outwith FOISA. The options are outlined below:

Option 1 – Proceed with publishing only the organisational responses

22. This would involve officials continuing to review and publish the responses from organisations only.
23. The consultation advised generally that before publication responses would be reviewed to check that they did not contain material which raised concerns about data protection or copyright, they are not potentially defamatory or offensive, and did not contain references to any ongoing court cases. The consultation indicated that responses which did contain such material would not be published at all.
24. This approach was more wide ranging than the usual SG approach and reflected the nature of this particular consultation. However, there was some criticism of this approach from stakeholders. Generally, there are more limited reasons for withholding material and we generally redact material rather than withhold the response as a whole.
25. Reviewing all of the consultation responses which we have permission to publish would be staff resource intensive. Around 12,500 responses require to be reviewed. This work involves checking each response to see if it contains material which should not be published.
26. Therefore, we intended to publish only the organisational responses along with the analysis report and not publish the individual responses.
27. Ms Somerville answered a written PQ on 8 March 2021 (see **Annex B**) in which she confirmed the intention to publish the analysis and the organisational responses after the elections.
28. It is not possible to use Citizen Space to publish only the organisational responses, without also publishing the quantitative responses (responses where the respondent has just answered yes/no to the questions without adding comments) and responses from individuals we were able to moderate before work on the Bill was paused. Therefore, if we just publish only the organisational responses, they need to be published outwith Citizen Space.

Option 2 - Publish the organisational responses, the Yes/No quantitative responses, and the responses from individuals moderated before work was paused

29. This would involve reviewing the organisational responses and publishing them along with the quantitative responses and the responses from individuals that have already been moderated, where we have permission to do so.
30. As outlined above, publishing organisational responses on Citizen Space involves also publishing quantitative responses and previously moderated responses. As a result, this option had been previously discounted. However in light of the freedom of information request, we consider there may be value in publishing the quantitative responses; the responses from individuals that have been moderated and the organisational responses.

31. Taking this option would actually reduce the resource involved in publishing the responses. This is because we would not have to extract the organisational responses from Citizen Space. It would also provide more information to the public generally. However:
- The quantitative responses just give yes/no answers and so do not add much to the debate.
 - We moderated some responses to the consultation as they were submitted and when we were still in the office before the March 2020 lockdown. Therefore, they are a **random** selection of responses but are not necessarily a **representative** selection of responses. They could (inadvertently) disproportionately represent those for or against the proposals.
32. It is possible to publish in batches. Therefore publishing a selection of responses using Citizen Space now would not prevent us from taking forward further work to publish more responses from individuals if prioritisation permits. We could respond accordingly if representations continue to be made that all responses (or all responses we have permission to publish) should be published.

Option 3 – Publish all the responses without any further moderation using Citizen Space

33. This would publish every response received to the consultation via Citizen Space without undertaking any further moderation work. While the logistics of this option were explored in the context of releasing the requested information under FOISA, this is not considered a viable option given the risks outlined in the discussion below.
34. It is possible to bulk approve responses for publishing without moderation. Therefore, we could use Citizen Space to publish the 14,500 responses which we have permission to publish.
35. It would also be possible to publish the responses from respondents who have not given permission to publish. However, as would be publishing the responses outwith FOISA we do not need to consider taking this approach.
36. There are clear risks associated with taking this option as we may publish responses that:
- raise concern about data protection and copyright;
 - are potentially defamatory;
 - are potentially offensive;
 - or contain reference to ongoing court cases.
37. In particular, we would have concerns about a consultee naming another person and saying this other person (e.g. a spouse or a patient) is trans. Information about a person's medical or gender history is likely to be regarded as 'special categories of personal data' for the purposes of the Data Protection Act 2018. Further, the Gender Recognition Act 2004 includes an offence of disclosing "protected information" relating to an application for a gender recognition

certificate, or to a person's gender before the other gender is acquired. Although there are some defences such as where the person has agreed to disclosure, the offence includes where there is a disclosure in carrying out civil service functions.

38. Whilst in some instances a consultee might name another person who is publicly known as trans (e.g. a person in the public eye or a prisoner where the media has already commented), a consultee might name somebody whose trans status is not publicly known.
39. There could also be personal data which is not about a trans person but which could still be sensitive. For example, a consultee might say in their reasons that a (named) friend of theirs holds gender critical views.
40. We could publish a statement on Citizen Space to highlight that the reader is able to bring to our attention any published material that may be of concern. In doing so, those responses could be considered and removed as necessary. However, the material would of course be in the public domain for a period.
41. We could also publish a statement on Citizen Space making it clear that the consultation responses are the views of consultees rather than the views of the SG. However, there could still be criticism of the SG if, for example, we published the name of a trans person who did not wish to be outed.
42. Given the risk of publishing material which should not be published, we do not consider this to be a viable option.

Recommendation

43. As set out at option 1, we could proceed with publishing only the organisational responses as announced. Resource would need to be focused on this task in order to be able to publish with the analysis report before the end of July.
44. We do not consider option 3 to be viable, as there is a risk of publishing material which should not be published.
45. On balance, we recommend option 2. This would enable us to publish more responses and would be less resource intensive for officials.
46. We will receive further representations from stakeholders or correspondents that all or further responses should be made available. We can expect points on this nature to be made in the lead-up to the Bill. Therefore, we may need to be prepared to publish in due course all of the responses we received where we have permission to publish. This would have considerable staff resource implications.

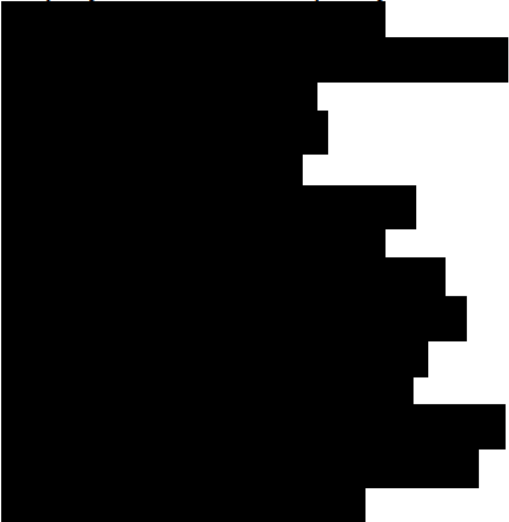

Conclusion

47. You are asked to:

- note that we are refusing an FOI request for all consultation responses on the grounds of cost;
- [REDACTED]
- advise whether you are content with officials preparing to publish the responses as outlined at option 2 (ie publish responses from organisations; quantitative responses; and responses we have already moderated);
- note that we will get further representations to publish all responses.

[REDACTED]
Family Law
30 June 2021

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Minister for Older People and Equalities			X		

Permanent Secretary
 DG Education and Justice
 Director of Justice
 Director for Equality, Inclusion and Human Rights
 Deputy Director for Equality and Inclusion

 Communications

 Spads Admin

ANNEX A: COST ESTIMATE FOR RELEASING RESPONSES UNDER FOISA

Under section 12 of FOISA public authorities are not required to comply with a request for information if the authority estimates that the cost of complying would exceed the upper cost limit, which is currently set at £600 by Regulations made under section 12.

Where we estimate that complying with a request will cost in excess of £600, to meet our duty to advise and assist, we still need to consider what information we might be able to provide within the £600 limit. We should provide this advice in our response to the applicant and ask whether they wish to revise their request to bring it below the £600 limit.

We can charge only for locating, retrieving and providing the information, and the maximum charge for staff time is £15 per hour. We think 2 staff members are required to share this work.

The process

There were 17,058 responses to the consultation on the draft Bill that were made available for analysis.

There are 337 hardcopy responses located in St Andrew's House and 16,835 responses located in Citizen Space (some of these will be duplicate or empty responses).

The hardcopy responses are located in the same location St Andrew's House. Two staff members would go to retrieve the documents. Once located, we would have to scan each response to produce an electronic record ahead of collating the information to provide to the requester.

Once each response is located electronically, exemptions will be applied to these documents under FOISA. We assume exemptions under section 38 relating to personal information would be applied to all documents (e.g. to redact the names and contact information of respondents) and other exemptions under FOISA may be applied to some documents.

Locating, retrieving and providing

We estimate it would take 8 minutes per document to locate, retrieve, apply redactions for exemptions (not counting consideration time) and provide the documents.

337 documents at 8 minutes per document for £15.00 per hour = **£674**

Therefore, the estimated cost of locating, retrieving and providing the documents located in hardcopy in St Andrew's House is **£674**.

Total cost

However, the costs of locating, retrieving, and providing the information requested would exceed the estimated figure. This is because that figure only relates to

information held in hardcopy in St Andrew's House. There are a further 16,835 responses in Citizen Space and so the costs of locating, retrieving and providing the information requested would exceed the estimated figure of **£674**.

Family Law
June 2021

ANNEX B: PARLIAMENTARY QUESTION

Question ref. S5W-35587

Asked by: Gail Ross, Caithness, Sutherland and Ross, Scottish National Party

Date lodged: 26 February 2021

Question

To ask the Scottish Government when it will publish the analysis of the responses to the consultation on the draft Gender Recognition Reform (Scotland) Bill.

Current status: Answered by Shirley-Anne Somerville on 8 March 2021

Answer

We announced our intention in November 2020 to take forward the independent analysis of all the consultation responses and to publish the consultation responses from organisations and groups where we had permission to do so. This was with the intention of publishing both the analysis and the organisational responses together prior to recess on 25 March.

However, the impact of work to respond to the Coronavirus pandemic means it will now not be possible in the time available to ready both the analysis and the organisational responses for publication.

Work will continue and if this administration is returned after the election, my intention is we will proceed with publication of both as soon as practicable in the next session of Parliament.

[Written question and answer: S5W-35587 | Scottish Parliament Website](#)

From: [REDACTED]
Gender Recognition Unit
Justice Directorate
29 July 2021

Cabinet Secretary for Social Justice, Housing and Local Government

GENDER RECOGNITION BILL CONSULTATION: PUBLICATION OF ANALYSIS AND RESPONSES

Purpose

1. Following a meeting between Ms Robison, Ms McKelvie and officials on 21 July, to provide additional information and seek agreement to publish the consultation analysis report Monday 9 August, and responses from organisations on a later date.

Priority

2. Routine

Timing of publication

3. The second gender recognition consultation concluded on 17 March 2020, with around 17,000 responses in total, of which around 14,500 gave permission for publication. There were 215 responses from organisations.

4. Following a pause caused by the pandemic, an analysis of responses was undertaken externally to the SG, and the analysis report was finalised on 7 May 2021.

[REDACTED]

[REDACTED]

[REDACTED]

8. Publication of the responses from organisations requires these to be pulled out individually and prepared for publication on the SG website, rather than using Citizen Space. Officials have started this work but the process is proving more time consuming than expected.

9. As publisher the SG is the data controller and is responsible for the content of any response published. This means they need to be checked for data protection issues, as well as defamatory and offensive language, copyright issues or references to ongoing court cases.

10. It was anticipated that organisational responses would have less material needing redaction than individual responses, and that is still likely to be the case. However, a significant number of organisational responses (significantly, the bulk of those from women's organisations) make reference to individuals' names or make claims that may need to be checked for potential defamation or other issues.

11. In order to do this in time to publish organisational responses alongside the analysis report on 9 August, this process would need to be done at speed, which given the risk of legal liability, would entail a relatively heavy-handed approach to redactions, or simply not publishing any response that includes potential issues.

12. Either of those approaches would have significant presentational issues, because the responses that would be heavily redacted or not published would largely be those from women's organisations who are critical of SG policy. This is likely to lead to criticism and accusations of whitewashing.

13. Taking more time over redactions may allow more of the responses to be published without significant risk of legal issues. [REDACTED]

14. In previous PQ responses we have committed to publishing the analysis report and organisational responses "as soon as practicable after the election" but not that they would be published simultaneously.

15. There are therefore four potential approaches to publishing the organisational responses:

- Publish organisational responses alongside the report on 9 August, excluding any with potential issues (this would mean in effect not publishing responses from women's organisations so very high risk of criticism);
- Publish organisational responses alongside the report on 9 August, with heavy redaction of potential issues (still high risk of criticism because the bulk of the redactions would be in women's organisation responses);
- Publish the report on 9 August with a renewed commitment to publish organisational responses once appropriate legal checks have been done (still likely to face criticism, but taking appropriate time to process documents may mean fewer redactions); or
- Publish the report on 9 August and not publish any responses (very high risk of criticism and contradicting earlier commitment).

16. None of these options is attractive but we advise the third offers the best balance in terms of potential risks of legal challenge and criticism.

17. We therefore recommend the organisational responses are published as soon as possible after 9 August, following robust and careful consideration and redaction. This should be possible before the end of August.

Individual responses

18. It is normal practice following a consultation to publish all responses that gave permission. However, this is not a requirement and is not always done where there is a high number of responses.

19. With around 17,000 responses this is one of the largest consultations done by the Scottish Government. There is precedent with large consultations for only publishing organisational responses, especially where the subject matter is sensitive.

20. The closest comparator is the first consultation on gender recognition, which closed in March 2018. Over 15,500 responses were received. The analysis and organisations responses were published but not individual responses.

21. Similarly, the consultation on same sex marriage, which closed in March 2013, received around 15,000 responses. The analysis and organisational responses were published but not individual responses.

22. The recent consultation on hate crime legislation did publish all individual responses that gave permission, but was on a smaller scale – it received around 1000 responses. The consultation on fireworks that closed in May 2019 received around 16,500 responses and also published individual responses with permission – but this was on a less sensitive subject, with fewer data handling risks.

23. We have permission to publish around 14,300 responses. Around 1,800 of these just ticked yes/no boxes and made no comments and so do not require to be reviewed. Around 12,500 responses would need to be reviewed to see if we should withhold the response from publication for any potentially defamatory material, offensive material, copyright material or personal data belonging to a third party.

24. A sample exercise carried out in relation to the responses to the first consultation¹ suggested it might take 2,577 man-hours to review the 10,000 responses to that consultation which required to be reviewed and carry out redactions in that case: this suggests around quarter of an hour per response.

25. The preparation could be done more quickly if responses containing material that cannot be published are excluded from publication instead of redacting specific sections. If it takes 7 minutes to review each of the 12,500 responses, this would equate to around 1,400 man-hours in total or around 39 weeks of an individual staff member's time.

26. The financial cost to publish individual responses would therefore likely be around £30,000-£50,000. Availability of staff would be a significant constraint, and it is unlikely to be possible in less than six months. Experience of processing the organisational responses suggests that all of these estimates may be conservative.

27. Publishing the individual responses would not preclude criticism, especially as those responses that need to be redacted or withheld would likely include many that are critical of the SG approach.

¹ To consider the potential costs of a Freedom of Information enquiry to publish the consultation responses.

28. Media coverage of the original consultation analysis did not focus on the decision not to publish individual consultation responses. One letter to The Herald from a member of the public raised this question. Around half of articles published in newspapers used the Press Association's wire copy which reported majority support for legislative change. Comments from the Christian Institute questioning whether respondents were truly representative of Scottish society gained some traction. It should be noted that the responses from organisations had already been published some months before the analysis was released. The debate has also become more polarised in the intervening years and we would expect it to attract more attention.

29. We therefore recommend that the analysis report and organisational responses be published, but not the individual responses.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Recommendation

- 37. The Cabinet Secretary is invited to agree:
 - The consultation analysis should be published on Monday 9 August, with a renewed commitment to publishing the responses from organisations following appropriate legal checks;
 - The responses from individuals should not be published, consistent with the approach in the first consultation; and
 - [REDACTED]

[REDACTED]

Gender Recognition Unit, Justice Directorate

29 July 2021

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Minister for Equalities and Older People			X		

Permanent Secretary
DG Education and Justice
Director of Justice
Director for Equality, Inclusion and Human Rights
Deputy Director for Equality and Inclusion

[REDACTED]

Communications Social Justice, Housing and Local Government
[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]

Sent: 28 June 2021 08:20

To: [REDACTED]

[REDACTED]

Cc: Director for Equality, Inclusion and Human Rights [REDACTED]

[REDACTED]

Subject: RE: Gender recognition - draft submission - consultation responses & analysis report

Agreed it is important to set out the risks – I would again argue that at the very least we must publish to the extent that we said we would on the consultation if we are going to maintain trust. That does not need to be done all at once but the programme for publication should be clear and an acknowledgement that the information in all of the consultations has been taken into account in coming to conclusions for the analytical report. (so the hold up in publication is because of the administrative tasks that need to be undertaken to publish safely, rather than any other reason)

[REDACTED]

[REDACTED] [Open Government](#)
Scottish Government | [REDACTED]

From: [REDACTED]

Sent: 28 June 2021 08:13

To: [REDACTED]

[REDACTED]

Cc: Director for Equality, Inclusion and Human Rights <directorEIHR@gov.scot>; [REDACTED]

[REDACTED]

Subject: RE: Gender recognition - draft submission - consultation responses & analysis report

[REDACTED]

Thank you for copying me in. I've a few comments/questions:

I wonder if we need something on the risks associated with publishing/not publishing? For example, not publishing could lead to a view that we are trying to hide the views expressed. In publishing, it might be useful also to say something about our role as data owner and the responsibilities that come with that?

[Redacted]

Happy to chat through – and also take the views of other cc recipients.

Thanks

[Redacted]

From: [Redacted]

Sent: 25 June 2021 14:14

To: [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Cc: Director for Equality, Inclusion and Human Rights <directorEIHR@gov.scot>; [Redacted]

[Redacted]

[Redacted]

Subject: Gender recognition - draft submission - consultation responses & analysis report

Good afternoon

Please see below a draft submission advising Cab Sec of the completion and publication of the analysis report of the consultation responses, and presenting options for publishing the responses following a FOI request which we are refusing on the grounds it exceeds the upper cost limit.

[Redacted]

I would be grateful for any comments before 11am Wednesday 30 June.

Many thanks

[Redacted]

[Redacted]

From: [REDACTED]
To: [REDACTED]
Subject: Shona Robison meeting actions
Date: 21 July 2021 16:46:00

A quick note of the points agreed and actions from the meeting with Ms Robison. Let me know if I've missed anything. I will take these forward with [REDACTED]

- Agreed that we will aim to publish the consultation analysis and organisational responses by Monday 9th August, ahead of FOI responses issuing, subject to further advice on comms handling and feasibility

[REDACTED]

- Ms Robison's initial preference was to publish all responses but she would like additional briefing on precedents for not publishing individual responses

[REDACTED]

- Further advice to be provided to Ms Robison covering:
 - Estimated timing of pulling out organisational responses for publication
 - Estimated timing and costs of considering all individual responses for publication

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Gender Recognition Unit [REDACTED]

[REDACTED]

From: [Redacted]
To: [Redacted] [Cabinet Secretary for Social Justice, Housing & Local Government](#)
Cc: [Minister for Equalities and Older People](#); [Minister for Social Security and Local Government](#); [Permanent Secretary](#); [DG Education & Justice](#); [Director of Justice](#); [Director for Equality, Inclusion and Human Rights](#); [Redacted]
[Redacted] [Communications Social Justice, Housing & Local Government](#); [Redacted]
Subject: RE: Submission: Gender Recognition Consultation Analysis Publication
Date: 19 August 2021 09:42:27

Thanks for copying me in to this, I would simply add for an Open Government perspective our aim is to maintain trust in government by routinely being open and transparent and therefore proactively publishing the information not only from consultees – but also what we have done with the information.

[Redacted]

[Redacted]

[Redacted] [Open Government](#)
Scottish Government | [Redacted]

From: [Redacted]
Sent: 19 August 2021 09:19
To: Cabinet Secretary for Social Justice, Housing & Local Government
<CabSecSJHLG@gov.scot>
Cc: Minister for Equalities and Older People <MinisterEOP@gov.scot>; Minister for Social Security and Local Government <MinisterSSLG@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; DG Education & Justice <dgej@gov.scot>; Director of Justice <DirectorofJustice@gov.scot>; Director for Equality, Inclusion and Human Rights <directorEIHR@gov.scot>; [Redacted]

[Redacted]

[Redacted]

[Redacted] Communications Social Justice, Housing & Local Government <CommunicationsSocialJusticeHousing&LocalGovt@gov.scot>; [Redacted]

[Redacted]

Subject: RE: Submission: Gender Recognition Consultation Analysis Publication

Thanks [Redacted]

In response to Ms Robison's question – the text in the consultation paper about publishing responses is standard text that reflects the usual practice with consultations, but when very large numbers of responses are received that becomes difficult. Similar wording was used in the first gender rec consultation, for which only the analysis and group responses were then published. For the second consultation wording was added to say that responses which contain any redactable material (e.g. potential data protection, offensive or defamatory content) would not be published.

[Redacted]

[Redacted]

[Redacted]

Gender Recognition Unit [Redacted]

[Redacted]

From: [Redacted] **On Behalf Of** Cabinet Secretary for Social Justice, Housing & Local Government

Sent: 18 August 2021 20:28

To: [Redacted] Cabinet Secretary for Social Justice, Housing & Local Government <CabSecSJHLG@gov.scot>

Cc: Minister for Equalities and Older People <MinisterEOP@gov.scot>; Minister for Social Security and Local Government <MinisterSSLG@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; DG Education & Justice <dgej@gov.scot>; Director of Justice <DirectorofJustice@gov.scot>; Director for Equality, Inclusion and Human Rights <directorEIHR@gov.scot>; [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted] Communications Social Justice, Housing & Local Government <CommunicationsSocialJusticeHousing&LocalGovt@gov.scot>; [Redacted]

Subject: RE: Submission: Gender Recognition Consultation Analysis Publication

Hi [Redacted]

Ms Robison has noted and is content. She has asked though why did the consultation paper say this when this wasn't done in the first consultation: ***Why haven't you published individual responses when the consultation paper said you would?***

Thanks

[Redacted]

From: [Redacted]

Sent: 18 August 2021 16:02

To: Cabinet Secretary for Social Justice, Housing & Local Government <CabSecSJHLG@gov.scot>

Cc: Minister for Equalities and Older People <MinisterEOP@gov.scot>; Minister for Social Security and Local Government <MinisterSSLG@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; DG Education & Justice <dgej@gov.scot>; Director of Justice <DirectorofJustice@gov.scot>; Director for Equality, Inclusion and Human Rights <directorEIHR@gov.scot>; [Redacted]

[Redacted]

[Redacted] Communications Social Justice, Housing & Local

Government <CommunicationsSocialJusticeHousing&LocalGovt@gov.scot>; [REDACTED]

[REDACTED]

Subject: Submission: Gender Recognition Consultation Analysis Publication

[REDACTED]

Please find attached a submission for Ms Robison with various items for clearance ahead of next Thursday's publication of the gender recognition consultation analysis and group responses.

[REDACTED]

[REDACTED]

<< File: Gender Recognition - Submission - Publication of analysis report and group reponses with comms handling - 17.08.2021.docx >>

Thanks

[REDACTED]

[REDACTED]

Gender Recognition Unit [REDACTED]

[REDACTED]