

Email excerpt 1

From: [Redacted] (Justice)

Sent: 15 August 2018 16:12

To: Cabinet Secretary for Social Security and Older People [Redacted]@gov.scot>

Cc: DG Education, Communities & Justice <DGECJ@gov.scot>; Director of Justice <DirectorofJustice@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>; [Redacted]@gov.scot>

Subject: eview of Gender Recognition- briefing- stakeholder meetings 22 August 2018

PS/Cabinet Secretary,

I attach in ERDM and word briefing for four stakeholder engagement meetings on 22 August.

[Redacted]

Ext [Redacted]

Email excerpt 2

[Redacted],

I understand that you have an interest in respect of harassment in schools.

For information, I attach a draft note of a meeting involving our Cabinet Secretary, Ms Somerville, and a group whom she met (Women's Spaces in Scotland) who raised issues impacting on education and not directly related to SG proposals to reform the legal gender recognition process. We noted in particular that they expressed concerns about the harassment of girls in schools. Their points in this area are covered at paragraph 8 of the minute.

I've also included [Redacted] for the reference to the LGBTI working group in the same paragraph.

[Redacted]

Minutes of meetings

REVIEW OF GENDER RECOGNITION ACT 2004 NOTE OF MEETING ON 22 AUGUST 2018 ST ANDREW'S HOUSE, EDINBURGH

Attendees:

Shirley-Anne Somerville	Cabinet Secretary for Social Security and Older People
[Redacted]	Scottish Youth Parliament Public Affairs Officer
[Redacted]	MYSP Convener, Equality and Human Rights Committee
[Redacted]	MSYP
[Redacted]	Former MSYP

[Redacted]	Scottish Government
[Redacted]	Scottish Government

Welcome and introductions

1. The Cabinet Secretary opened the meeting by welcoming the attendees and thanking them for taking time to meet her. She emphasised that, while she had been briefed on the content of the report of the SYP on aspects of the consultation, she wanted to directly discuss the issues with them and hear their views in more detail, to bear in mind as the Scottish Government took this area of work forward.

The Scottish Youth Parliament

2. Attendees thought it might be useful for the Cabinet Secretary to hear more about the constitution of the SYP and their purpose and made the following points:

- In general terms, MSYPs who range from 14 to 25 represent the same constituencies as the Scottish Parliament MSPs although there are also 11 voluntary organisations who elect members
- The SYP fundamentally is a rights-based organisation, and is grounded in the United Nations Convention on the Rights of the Child (UNCRC) which they want to be incorporated into Scots law.
- In particular, the SYP's purpose embodies Article 12: that young people have the right to express their views freely and have their opinions listened to in all matters affecting them.

3. Attendees made a number of points about their report on the consultation and its findings:

- A key area based on the report's findings where SG could take forward work is in relation to the awareness and education of young people and in particular the need for inclusive education.
- In particular, teachers need specific training to deal with pupils appropriately
- Schools' uniform policies are typically very gendered and this should be addressed

- Their pre-SYP meeting survey had 120 responses, the majority of which were from young women and girls. A percentage of these were trans or LGB.
- The survey looked at three questions: Whether it was a good idea for under 16s to have access to legal gender recognition; if this was a good idea, what process should be used; about recognition of non-binary people.
- The responses typically showed a lack of awareness. While the issues are known well to trans young people, they are little talked about by others. Respondents needed more information before making their responses;
- There is a lack of education around the issues.
- A lack of knowledge leads to myths and misconceptions taking hold. These should be dispelled by more information. Debate doesn't need to be acrimonious.
- From their perspective, the media/public debate is too focussed on whether trans people should exist
- As a rights based organisation they favour children being able to apply for legal gender recognition on their own behalf, as the child based option ultimately ensuring the primacy of the child's voice.

4. Attendees made the following points about their experience and knowledge of trans young people more generally:

- Trans people know they are trans at a young age, but many take a very long time to come out.
- It is hard to exist as a trans person in society and recognition would help trans young people be set up and ready for their future while they are at high school.
- Trans people are effectively required to out themselves in all kinds of situation and are also asked for their gender when this appears to bear no direct relationship to the service they seek. One example they mentioned was being asked to confirm their gender when they were ordering a waste bin from the local council
- They had met the LGBT Youth 'Youth Commissioners on gender recognition' and knew that no one came forward as trans merely for a laugh
- They noted that no gay person coming out is asked to demonstrate their lived experience as gay
- Non-binary people were particularly disheartened (and this was mentioned in a survey response) that they are not treated as a person in their true identity
- The LGBT Youth Scotland Survey "Life in Scotland for LGBT Young People" should be considered in developing further proposals for young people.
- This evidence suggested that legal recognition should improve the mental health of trans young people as they do not currently feel valued or taken seriously. Legal recognition would empower them to exist.

5. The Cabinet Secretary asked what further work the Scottish Government could take to help. Attendees raised these areas:

- Training for teachers. Guidance on handling LGBT students doesn't seem to be part of teacher training and teachers may panic when sought out for help by pupils who want to come out. There would be a trickle effect if teachers were properly trained
- Education for young people, referencing the Time for Inclusive Education campaign.

- Work has to be in all schools and not just some of them, though they did not single out any particular schools or school type
- On the review of Personal and Social Education which is expected, there needs to be a focus and decisions on which parts of PSE education need to be mandatory, should there be other topics which are mandatory.
- LGBT Youth Scotland's work involved groups in Edinburgh and Glasgow and online support for people elsewhere, more was needed in terms of practical assistance.
- Trans young people were expected to wait 2 years to get their first appointment at Sandyford clinic in Glasgow, this is too long
- GPs need to be more capable of helping and they need more support in order to do so. dical training for students should include trans issues
- High schools shouldn't be able to ignore or refuse to acknowledge a trans person's preferred name and gender
- Legislation on gender recognition would send a key message to the public.

6. The Cabinet Secretary agreed that societal change might be triggered by legislation but wholesale societal change would involve more work.

Conclusion

7. The Cabinet Secretary thanked attendees for their time in attending the meeting and going further into their views and consultation response. She was keen to listen to the voice of trans and non-binary people and would consider meeting with the LGBT Youth Youth Commissioners to get more information.

**Scottish Government
Family Law
September 2018**

**REVIEW OF GENDER RECOGNITION *PCT* 2004
NOTE OF MEETING ON 22 AUGUST 2018
ST ANDREWS HOUSE, EDINBURGH**

Attendee s:

Shirley-Anne Somerville	Cabinet Secretary for Social Security and Older People
[Redacted]	Equality Network
[Redacted]	Scottish Trans Alliance
[Redacted]	Stonewall Scotland
[Redacted]	LGBT Youth Scotland

[Redacted]	Scottish Government
[Redacted]	Scottish Government

Welcome and introductions

1. The Cabinet Secretary opened the meeting by welcoming the attendees and thanking them for taking time to meet her, noting that she would be taking forward the bill on gender recognition reform . She wanted to hear more about their views for her to

consider alongside their responses, as Scottish Government took this area of work forward.

The Equal Recognition campaign

2. The following points were made by the attendees:

- All the organisations represented at the meeting agreed with the calls made under the Scottish Trans Alliance's Equal Recognition Campaign which began in 2014.
- One of the calls in that campaign was for under 16s to have access to legal gender recognition on the basis of parental consent, which they argued would be consistent with the basis on which a child's name on their birth certificate can be changed and with the process for showing them in their acquired/preferred gender on their UK passport
- On non-binary people, the campaign seeks for non-binary people to be recognised legally in full, and not just as a matter of adding another response option on gender monitoring forms but taking this to the extent which some other countries like parts of Australia and Canada and allowing their birth certificate to show their acquired/preferred gender as non-binary.
- They wanted Scotland to adopt a self-declaration process based around a statutory declaration or the equivalent, which would be in line with international best practice now being demonstrated in a number of European and South American countries, such as Malta, the Republic of Ireland, Belgium and Denmark.

Reflection period

3. The Cabinet Secretary, in response to the mention of the Denmark and Belgium which have a self-declaration process but which also have a reflection period, asked whether there was a parallel with the Scottish approach to marriage where there was a waiting period.

4. In response, attendees suggested that:

- The comparison with the marriage notice period was interesting but that the reflection period and the notice period for marriage were not, in their view, directly comparable
- The minimum 28 day notice period for marriage is not an absolute requirement and is noticeably shorter than the reflection periods in legal gender recognition in Denmark (6 months) or Belgium (3 months). (The marriage notice period can be circumvented in exceptional circumstances.)
- In their view, a reflection period would add nothing when an applicant can always seek to withdraw their application for gender recognition at any time before it is processed
- Statutory declarations in the wording suggested by the consultation would not be made before a justice of the peace or a notary public on a whim.
- A two stage process might unhelpfully suggest that trans people do not know their own minds or reinforce the notion that being trans is itself a mental health disorder. For young trans people in particular they fear not being believed, and a reflection period would resemble too closely a judgement process such as is used now in the 2004 Act

- Possibly there are some people who apply in Denmark or Belgium at the first stage and do not re-confirm their application, but some of those may not have changed their mind. They may simply have forgotten and could re-apply at any time.
- It is not against the law to marry 'on a whim' and in contrast to the proposed wording of the statutory declaration in legal gender recognition (and that used now) people do not complete a marriage notice indicating their intention is that they will remain permanently married.
- A knowingly and wilfully false statutory declaration would be an offence and this is sufficient for the purposes to ensure applications are not made on a whim.
- Having a reflection period would not change the minds of those who are opposed to the proposed reform of the gender recognition process.

5. Attendees made these additional points:

- that reassurance for those concerned by gender recognition reform should focus on "myth-busting" and saying what the policy does not affect.
- In Scotland, trans groups and Violence against Women and Girls groups work closely and well together and trans women can access the services they need without this adversely affecting other users
- On single sex services, there is established case law on toilets for example that indicates that a trans person can use the toilets of their preferred gender whether or not they have a gender recognition certificate
- On objections about the impact for sport, there was a clear exception in the Equality Act 2010, so gender recognition reform did not impact on this
- Obtaining legal gender recognition does not of itself "enable" unlawful behaviour
- Sex offences have already been made gender-neutral
- Gender recognition does not hide a perpetrator's past offences or enable concealment of identity
- SPS manage prisoners according to their risk as well as considering their gender before deciding on appropriate accommodation. In their opinion, trans prisoners would not be able to make a statutory declaration that they are living permanently in their acquired/preferred gender.

Young people

6. The Cabinet Secretary said that she had noted that there had been quite a mixed response to the question about the options for under 16s in the consultation and how one organisation had highlighted that in their view there simply was not enough information on which to validly base a decision to allow under 16s to access gender recognition. She also asked about support systems in place for parents and young people.

7. In response, the following points were made:

- Young people and their families do not rush a child into transitioning. In their experience this is a slow controlled process and would proceed for some time before legal gender recognition was ever applied for
- Young people are particularly keen to have gender recognition because their privacy would be better protected by ensuring that their identity documentation in

all consistent. They often need to show their birth certificate which is not really the case for adults.

- Reformed legislation for gender recognition which allowed under 16s to apply would be catching up with reality rather than encouraging transition.
- The medical support for young people was not about determining their identity journey for them.
- Medical services are under strain.
- Any legal gender recognition process for under 16s should not be medicalised or a matter for judgement for a third party.
- For children who are not supported by their parents, their main issue is not gender recognition but is more about services for them and their family and SG needed to consider funding for support services for children and their families and help for the Child Law Centre for example
- Much of the media debate focussed in England around treatment and support for children experiencing distress about their gender identity/sex is simply caused by a lack of clear information about what the position was- SG needs to be forthright about what is not true.

Non-binary people

8. On the recognition of non-binary people, attendees made these points around how they thought this could be done:

- A statutory gloss such as is used in the Interpretation Act 1978 and the Scottish equivalent could be used to change the meaning of text to be inclusive of recognised non-binary people
- Legislation could be updated in the future when reviewed
- Work is needed now on areas like human fertilisation and on parental rights and responsibilities
- Religious groups can be reassured that they would not have to marry non-binary people if they did not wish to do so
- The Gender Recognition Bill could provide that software could be updated over time: a step-wise approach was sensible
- Passports and the Equality Act are reserved of course and there might also be implications for pensions which assume gender characteristics
- Hate crime legislation already recognises non-binary gender identity
- Recognition of non-binary people need not mean that there must be an amendment to the sex protected characteristic, but the gender reassignment characteristic would require to be amended

9. The Cabinet Secretary noted that Equality and Human Rights Commission had suggested that SG needed to do more research in order to identify what actions they should take in relation to non-binary people before legislating. Attendees responded with the following points:

- The approach suggested by EHRC was wrong and such research would not shed light on the issues when SG already had the responses to the consultation which could be analysed for this sort of evidence and information

- European Court of Human Rights case law suggests that it how a person lives their life that needs to be respected
- As SG develops legislation it will be important to engage in testing this through an open dialogue with them and affected groups

Timetabling

10. The Cabinet Secretary noted that the legislative timetable for Year 3 and 4 was currently being finalised. Attendees suggested that it would be reassuring for trans people to be advised by SG that reform was proceeding and to give them an update if there was a delay in the process. The attendees stressed that they would not wish legal recognition of non-binary people to be dropped to make the SG timescales.

Conclusion

11. The Cabinet Secretary thanked attendees for their time in attending the meeting and going further into their views and consultation responses.

**Scottish Government
Family Law
September 2018**

REVIEW OF GENDER RECOGNITION ACT 2004 NOTE OF MEETING ON 22 AUGUST 2018 ST ANDREW'S HOUSE, EDINBURGH

Attendees:

Shirley-Anne Somerville	Cabinet Secretary for Social Security and Older People
[Redacted]	Women's Spaces in Scotland
[Redacted]	Women's Spaces in Scotland
[Redacted]	Women's Spaces in Scotland
[Redacted]	Scottish Government
[Redacted]	Scottish Government

Welcome and introductions

1. The Cabinet Secretary opened the meeting by welcoming the representatives from Women's Spaces in Scotland (WSS) and thanking them for taking time to meet her, noting that she would be taking forward a bill on gender recognition reform. She wanted to hear more about the organisation and asked them to set out their views on the consultation for her to consider as Scottish Government took this area of work forward.

2. WSS expressed their appreciation for the opportunity to discuss their views with the Cabinet Secretary. The group had come together as they share an interest in the impact of policies for women and girls and want to encourage the participation of women and girls in public life.

3. WSS made the point that their views are often being framed as being anti-trans , and emphasised that they just want to express their views about the impact of gender recognition reform on women and girls and meet with others to discuss those views. WSS emphasised that that they were not anti-trans. WSS considered that people should be free to express their gender identity but this should not detract from protections and rights which women have through their sex.

4. WSS mentioned that a meeting of their group in February had been disrupted.

5. In response, the Cabinet Secretary emphasised that from her perspective and that of Scottish Government, the consultation and the meetings she was hosting with stakeholders were opportunities for people to express their views, including concerns, about the impact of proposed changes in an open and respectful way.

6. She noted that LGBT groups she had met with had asked that she extend an invitation to WSS to meet with them face to face to exchange their views. WSS indicated that they would be happy to attend a meeting of this nature.

The consultation

7. WSS made the following points:

- They had concerns around the language being used in the consultation, pointing to the breadth of the definition of “transgender” used by trans organisations.
- The fundamental issue from their perspective is that you cannot change your sex: your sex is an objective, measurable fact.
- The Equality Act 2010 (the 2010 Act) has protections for women on the basis of their sex, because women are oppressed as a sex, and they need to have places where they can be together and feel safe. Single sex spaces need to be the default. The exceptions in the 2010 Act for single sex services exist with good cause. Inclusion of others should be the exception not the rule.
- On single sex spaces, women’s refuges need to be able to apply the 2010 Act exemptions permitting the exclusion of people undergoing or who have undergone gender reassignment without being at risk of legal challenge to do so. Refuges should not have to worry about using their limited funding to defend legal challenges against a decision to apply an exception.
- The 2010 Act exemptions were not being applied correctly by some refuges and other services for women. They are under pressure from LGBT organisations to be trans-inclusive.
- There should be clearer guidance on the 2010 Act and how to apply the exceptions . Any such guidance must be clear and consistent in the use of terms.
- Some service providers and local authorities were not using the correct language any more. ‘Gender’ or ‘gender identity’ are not protected characteristics under the 2010 Act: sex is the protected characteristic Official forms should ask for sex, though they could ask about gender identity too.
- It was extremely important that sex-disaggregated data was collected. They noted that data collection as an issue was also raised by Engender, in its response to the consultation. The Cabinet Secretary agreed that the collection of data was important in relation to analysing trends and policy development.

Education guidance

8. On schools and guidance for schools, WSS made these points:

- The Equality and Human Rights Committee's report ("It is not Cool to be Cruel") on the bullying and harassment of children in schools had highlighted that sexual harassment and intimidation is disproportionately impacting girls and young women.
- They also noted that this was highlighted in the Girl Guiding Girls' Attitudes' Survey.
- However, they believed that the Scottish Government has not taken clear action to address this aspect of the committee report. The subsequent "Respect for All" refreshed National Approach to Anti-Bullying published by the Scottish Government following on the Committee report does not address the sexual harassment and intimidation of girls. It is not clear what separate action the Scottish Government has taken to address this issue.
- Dealing with the sexual harassment and intimidation of girls seems to have been dropped. Instead the focus of Scottish Government work in this area appeared to be on LGBTI issues, for example with the LGBTI Inclusive Education Working Group.
- While the guidance produced by LGBT Youth Scotland on Supporting Transgender Young People was dealing with an important issue, this guidance did not take proper account of the interests and rights of all pupils and in particular the privacy and safety of girls.
- In particular, local authorities had not adequately considered the impact of the guidance before endorsing it. WSS noted that none of the councils who had endorsed the guidance undertook impact assessments before doing so.

Young people

9. On children and young people more generally, WSS noted:

- That more and more girls are now identifying as trans and non-binary.
- They suggested research should be done on "rapid onset" gender dysphoria and why there had been an increase in the number of girls identifying as trans.
- They asked whether, in identifying as trans, girls were actually reacting to their experience of discrimination and oppression.

10. The Cabinet Secretary noted that she was very aware of the broader cultural context. She added that not all of the potential work in this area was about legislating and she wanted to make sure that all the different voices were heard.

Services

11. WSS noted that, for women in crisis seeking to access the right services, it was very important that they did not feel excluded or judged in any way about their feelings and views. Women in crisis should not be labelled as transphobic if they want to be helped by a woman of their choosing and not by a trans woman. Service providers need to be aware of this and not impose their own views at a difficult time, which might lead to women not accessing their service and instead remaining in risky situations.

Conclusion of meeting

12 On further work and research, WSS indicated that this should be evidence based and that the evidence used should be subject to careful scrutiny, including care being taken in terms of how the work was carried out and the participants included.

13 The Cabinet Secretary emphasised her commitment to ensuring that the lessons from people's lived experiences play their full part in policy making.

14 She thanked the representatives of WSS for coming to meet with her and for setting out their views. Officials agreed to prepare a note of the meeting and to share this with WSS.

Scottish Government August 2018

REVIEW OF GENDER RECOGNITION ACT 2004 NOTE OF MEETING ON 22 AUGUST 2018 ST ANDREW'S HOUSE, EDINBURGH

Attendees:

Shirley-Anne Somerville	Cabinet Secretary for Social Security and Older People
[Redacted]	Engender
[Redacted]	Scottish Women's Aid
[Redacted]	Close the Gap
[Redacted]	Zero Tolerance
[Redacted]	Scottish Government
[Redacted]	Scottish Government

Welcome and introductions

1. The Cabinet Secretary opened the meeting by welcoming the attendees and thanking them for taking time to meet her, noting that she would be taking forward the bill on gender recognition reform. She wanted to hear more about their views for her to consider alongside their responses, as Scottish Government took this area of work forward.

General

2 The following points were made by the attendees:

- In their experience, the debate south of the border around reform of the 2004 Act is particularly febrile and the situation in Scotland is different
- They were broadly in favour of the proposals as set out and generally welcoming of improvements in recognition of non-binary people, but wanted to see more detail

around the complexity of the option of full legal recognition and the potential consequential impact for law generally and for reserved areas.

- They felt that it was questionable whether there was a sufficiently strong evidence based for amending the sex protected characteristic in the Equality Act 2010, but are supportive of change which might result in the need to amend the gender reassignment protected characteristic to explicitly cover non-binary people
- Their key concern was around what recognition of non-binary people might mean for data collection more generally
- The increasing recognition in society that some people do not identify as either male or female appears to have resulted in confusion among organisations about whether they should continue to provide gender disaggregated data
- In terms of the way forward on reform of the 2004 Act, their feeling was that more work needs to be done to solidify the understanding of where Scotland has reached in terms of trans inclusion and address the misconceptions that seem to have arisen. The debate here still demonstrates the lack of awareness of how women's services are delivered.
- Part of the solution is to say what the proposed reform here is not about.

3. The Cabinet Secretary noted that there is some suggestion from those opposed to reform around whether their groups favoured reform because they have no choice as they are funded by SG, which the attendees indicated they did not. On their concerns around data, the Cabinet Secretary noted that she recognised that this is not a side issue here.

Data

4. On data collection, the following points were made by attendees:

- Data is key to understanding the evidence based on women's lives;
- Public bodies are required to gather, use and publicise gender disaggregated statistics re employment but it seems like public bodies are not reporting this data particularly well
- Data is also important for ensuring good service delivery.
- Some public bodies and employers are wrongly assuming that gender disaggregated data needs to stop being collected in order to be fair to non-binary people
- GDPR has potentially resulted in further confusion as some groups now see gender or sex data to be too sensitive to collect
- Data is also important in terms of the need to measure the impact of policy
- They would be happy to be involved in a working group with Equality network looking at the collection of data and since the public sector duty is SG's duty too their involvement will provide further impact
- One area that should be looked at is how disaggregated data can help clearly identify the level of violence perpetrated against trans people and there needs to be improvement in relation to court data on disposals

Prisons and single sex/safe spaces

5. Attendees said that they wanted to understand better how SPS manages trans prisoners in the Scottish prison estate. Their concerns around this stem from

evidence presented to the Women and Equalities Select Committee and though they understand that the SPS policy takes a risk assessment based approach they want to meet with SPS and the Scottish Trans Alliance to increase their understanding.

6. Attendees noted that much of the debate has raised concerns around service provision intended for women. They made these points:
 - In practice in the women's sector here, gender recognition reform will not make a practice difference.
 - In 8 years of service provision on a trans inclusive basis they had not encountered issues. This was supported by evidence collected directly from women's aid groups on the ground.
 - In fact those groups key concern was whether they were actually supporting trans women appropriately.
 - The 36 autonomous women's aid groups in Scotland all risk assess potential clients and put the service users at the centre of the decision making process
 - 'reassuring' statements around safety might however simply increase fear; possibly statement need to emphasise that trans inclusion and reform of the GRA are about the type of Scotland we want to be and balancing the rights of all people to services
 - There will be some groups opposed to reform who cannot be persuaded.
 - There needed to be a debate around what recognition of non-binary people should look like and how this impacts or does not impact on the protected characteristic of sex in the Equality Act. This doesn't seem to be a live debate at an academic level.
7. The Cabinet Secretary said that she was keen that there be an informed debate around safe spaces. We need to inform people about how safe spaces operate normally to explain clearly that reform of the GRA does not affect that functioning.

Conclusion

8. The Cabinet Secretary thanked attendees for their time in attending the meeting and going further into their views and consultation responses.

**Scottish Government
Family Law
September 2018**

Briefing Excerpts

MEETING BETWEEN CABINET SECRETARY FOR SOCIAL SECURITY AND OLDER PEOPLE AND REPRESENTATIVES OF THE SCOTTISH YOUTH PARLIAMENT	
TIMING	22 August 2018 10.00 - 11.00 1W-11, St Andrews House
ATTENDEES	[Redacted] MYSP [Redacted] MSYP [Redacted] , former MSYP [Redacted] , SYP Public Affairs Officer <u>Official Support</u> [Redacted] , ext [Redacted] (Family Law, Justice Directorate) [Redacted] , ext [Redacted] (Family Law, Justice Directorate)
AGENDA	1. Scottish Youth Parliament (SYP) response to gender recognition consultation 2. Update on gender recognition consultation and key outcomes
YOUR MAIN OBJECTIVE	This meeting will provide you with an opportunity to hear about the response of SYP to the gender recognition consultation, including the challenges faced by transgender young people and to update them on progress with the gender recognition reform work including key outcomes from the consultation.
COPY LIST	DG Education, Communities and Justice; Director of Justice; [Redacted]

ITEM 1	SYP response to gender recognition consultation
ISSUE/ BACKGROUND	<p><u>Background</u></p> <p>1. The SYP responded to the consultation as part of its "Right Here Right Now" national campaign on young people's rights. This campaign seeks to influence law and policy to take a human rights-based approach to young people's rights, and to protect rights of LGBTI and marginalised Orientations, Gender identities, and Intersex (MOGAI) individuals in line with an SYP manifesto commitment.</p> <p>2. The SYP's consultation response was informed by this commitment, along with:</p> <ul style="list-style-type: none"> • MSYP discussions with young people in their constituencies. • Responses to an online survey of constituents using three questions developed in conjunction with officials. • The outcome of a workshop with the SYP's Equality and Human Rights Committee (EHRC) and officials called "Gender recognition: the legal stuff". <p><u>Key points in the SYP response</u></p> <p>3. The online survey was aimed at people aged 12 to 25 and had 120 responses to all or some of three questions.</p> <p><i>Q1- Do you think allowing under 16s to obtain gender recognition is a good idea?</i></p> <p>3.1 There was no consensus of young people's views on this question with 41% agreeing, 40% disagreeing and the remainder did not know. the SYP concluded that the lack of consensus in the survey outcomes indicates that young people require more information in order to be able to participate meaningfully in policy development in this area.</p> <p>3.2 The SYP response notes that, in contrast, a consensus was reached at the workshop. Members of the EHRC considered that under 16 year olds should not be allowed to obtain legal gender recognition on the condition that the SG ensure that they are nonetheless able to fully explore their gender identity and are respected in doing so, particularly in schools. [At the workshop officials noted that some committee members were concerned that under 16s might be experiencing "just a phase" and that experiencing puberty appeared to be important as a factor determining gender identity.]</p> <p><i>Q2 What sort of process do you think there ought to be?</i></p> <p>3.3 This survey question asked respondents in favour of allowing people under 16 to obtain gender recognition, to state their preference for the process.</p> <ul style="list-style-type: none"> • Court -6%

	<ul style="list-style-type: none"> • Parent or other person responsible for young person - 14% • Child or young person who can understand the result of the decision - 40% • Child or young person aged 12 or over who is mature enough to apply in the same way as an adult - 21% • None of these options - 19% <p>3.5 The SYP conclude from this that there is a lack of consensus and a "probable lack of clarity in terms of public understanding around these".</p> <p><i>Do you think the law should be changed so that a person's birth certificate can be changed to show them as identifying with a gender other than female or male? (Recognition of non-binary people)</i></p> <p>3.6 Nearly half the respondents to the online survey said the law should be changed. 30% of respondents disagreed and 20% did not know.</p> <p>3.7 SYP highlight comments from respondents to the survey pointing out that lack of recognition infers lack of existence and contributes to a sense of not belonging. Respondents also felt that more certainty around gender identity could improve mental health outcomes for non-binary young people.</p> <p>4. In their consultation response, the SYP linked the need for more information in certain key areas to SYP policy on education, where it believes that schools and teachers should receive training on bullying relating to LGBTI+ matters, that education should be provided on LGBTI+ issues and equality, and schools should promote equality and not encourage gender stereotypes through uniform policy. That is largely consistent with the SYP EHRC workshop conclusion that under 16s who wish to explore their gender identity should be supported at and by schools.</p>
<p>WHAT THE STAKEHOLDER MAY SAY/ASK</p>	<ul style="list-style-type: none"> • Can you be certain that any changes you make will protect the rights of young people? [SG will complete a Child Rights and Wellbeing Impact Assessment as part of this work.] • What can the Scottish Government do to improve education and raise awareness about issues in schools? [SG are already working in this area, having set up a working group with key organisations to improve the education experience of LGBTI young people. Other people have expressed concerns to us in this area and we will consider this further.]
<p>KEY MESSAGE(S)</p>	<ul style="list-style-type: none"> • We are grateful to SYP and to everyone involved in providing the response, facilitating the workshop and to those responding to the online survey. It's really important to SG that we engage openly and fully with young people as part of our decision making process.

SUGGESTED QUESTION(S)	<ul style="list-style-type: none"> • Why do you think there was a difference in approach between the survey responses and the view of the EHRC? • The EHRC mentioned issues in trans young people's experiences in Education. Can you give me more information about these? • What sorts of things do you think SG can do to make experiences of trans young people better? • Is there anything SG can do to improve on how we engaged with SYP on this occasion?
CONTPCT POINT	[Redacted] ext [Redacted]

ITEM 2	High level outcomes of the consultation
ISSUE/ BACKGROUND	<p><i>Proposa l to adopt self-declaration processfor those aged 16 and over</i></p> <ol style="list-style-type: none"> 1. There were over 15,500 responses to the consultation. There was majority support amongst respondents for these proposals: in particular, 65% of respondents resident in Scotland were in favour of adopting self-declaration and 66% of such respondents agreed with extending legal gender recognition to those aged 16 and over. [SYP did not address self-declaration process generally or reducing the minimum age of applicants to 16 as the areas they sought views on were limited to people under 16 and non-binary people.] <p><i>Opposition to self-declarationprocess</i></p> <ol style="list-style-type: none"> 2. The draft analysis report indicates that the more frequently raised issues among those opposed to a self-declaration process were <ul style="list-style-type: none"> • That this may pose a risk to women's safety in spaces including toilets, changing rooms, hospital wards and refuges and would be open to abuse by men to gain access to women's spaces. • That the proposal if implemented would constitute an erosion of the identity and rights of 'natal' women for example in that trans women could take their places on boards 3. Some religious bodies who responded have suggested that: <ul style="list-style-type: none"> • Removingthe requirement for a diagnosis of gender dysphoria might result in trans people not getting appropriate support. • That the Yogyakarta Principles¹ are not an acceptable basis for deciding what is international best practice in the area of gender recognition. <p><i>View\IS on the options for under 16s</i></p> <ol style="list-style-type: none"> 4. On the range of options discussed in the consultation for those aged under 16, the most favoured option was to do nothing, although overall most respondents favoured permitting access to legal gender recognition for under 16s. Parental application (favoured by all of the attendees at this meeting.) was supported by 27% of Scottish resident respondents and 23% of such respondents preferred children with sufficient capacity being able to apply. 5. The mixed picture in relation to applications by under 16s is reflected in the responses of some key organisations. 6. For example, the <u>Equality and Human Rights Commission</u> note in their response "that further research and consideration of the effects of legal recognition on children and younger people should be carried out before there is any extension of the gender recognition system to those below 16" and "that the Scottish Government cannot currently make "an informed decision on such an important extension of the qender recoqnition system"

and " that further research and consideration of the effects of legal recognition on children and younger people should be carried out before there is any extension of the gender recognition system to those below 16".

7. In contrast, the Children and Young People's Commissioner strongly supports the option of allowing capable children to apply. They also express the view that either denying children under 16 the ability to exercise a right to legal gender recognition or making the success of their application contingent on parental consent may constitute a breach of article 2 of the UNCRC which requires states to respect children's rights without discrimination.

Non-binary people

8. A majority of respondents, 62% of those answering the question, thought that Scotland should take action to recognise non-binary people.

9. Of the options for taking recognition forward, the most frequently chosen option, selected by 75% of those answering the question, was Option 4 - full recognition using the proposed self-declaration system. Option 1 (changes to administrative forms) and Option 6 (amendment of the 2010 Act) also received a high level of support, being chosen by 68% and 62% respectively.

10. The EHRC suggest that while they "*welcome the Scottish Government's commitment to increasing recognition of non-binary people....there is need for detailed research to better understand the nature of their problems and identify appropriate solutions*". In their view taking action on existing administrative forms to allow non-binary people to be included would help aid this research.

Other points and next steps

11. Unusually, a majority of respondents were resident outwith Scotland (51%). 38% of respondents were resident in other parts of the UK and the remainder from outwith the UK.

12. The analysis of responses indicates that 165 organisations or groups submitted responses, the majority of them based in Scotland.

13. We anticipate publishing the analysis report at the end of August. We need to complete a review of individual responses before publication and cannot give a timescale at present. We are currently working on the intersex consultation.

¹ The Yogyakarta Principles a set of non-binding international principles developed by human rights academics and others, relating to the application of human rights in the areas of sexual orientation and gender identity.

	<p>UK Government (UKG) position</p> <p>5. The UKG is currently consulting on its own approach to gender recognition. This opened on 3 July 2018, and will close on 19 October 2018. This does not propose the introduction of a self-declaration system; rather, it asks respondents for their views on a range of questions about retention (or not) of parts of the existing process.</p> <p>6. On reducing the minimum age of applicants, UKG has indicated that it does not intend to reduce the minimum age of applicants from 18.</p> <p>7. On the same day that the UKG's consultation was launched, it also announced an action plan stemming from a UK-wide survey of LGBT people that had more than 108,000 responses. As part of that, the UKG has stated that it intends to ban gay conversion therapy across the UK. SG have committed to engaging with the UKG on their plans around ending the practice of conversion therapy.</p>
<p>WHAT THE STAKEHOLDER MAY SAY/PSK</p>	<ul style="list-style-type: none"> • How long might it take to change the law? [Our Fairer Scotland commitment is to reform the process by 2020.] • Will you ask for views again as part of the bill process? [Stage 1 process in the Parliament will do so.] • We understand that the UK Government has stated that it intends to ban conversion therapy. Is the Scottish Government going to do anything about this? [SG have committed to engaging with the UKG on their plans around this.]
<p>KEY MESSAGE(S)</p>	<ul style="list-style-type: none"> • Our commitment to reform of the 2004 Act is unchanged • The SG are giving thought to our scheme for reform in light of the consultation outcomes.
<p>SUGGESTED QUESTION(S)</p>	<p>The responses to the SG consultation were mixed on the options for the under 16s and although the majority were in favour of permitting under 16s to obtain legal recognition, there was not a clearly preferred option. Do you have any thoughts on why might be?</p>
<p>CONTACT POINT</p>	<p>[Redacted] , ext [Redacted]</p>

ANNEX A: SCOTTISH YOUTH PARLIAMENT AND LGBT YOUTH SCOTLAND

1. The Scottish Youth Parliament was established on 30 June 1999 (making it one day older than the Scottish Parliament). Its purpose is to represent the young people of Scotland, and it is accountable to people aged between 12 – 25, and its work is underpinned by four key values: democracy, rights, inclusion and political impartiality.

2. Fundamentally, the SYP is a rights-based organisation: its mission, vision and values are grounded in the United Nations Convention on the Rights of the Child. In particular, its work is linked to Article 12, which sets out that young people have the right to express their views freely and to have their opinions taken into account in matters that affect them.

3. That informs the SYP's vision for Scotland: a nation that listens to and values the meaningful participation of its children and young people. It aims to provide a national platform for young people to discuss the issues that are important to them, and to campaign to effect the change they wish to see.

4. Members of the Scottish Youth Parliament (MSYPs) represent constituencies in all 32 local authorities in Scotland, as well as several national voluntary organisations. There are up to 200 MSYPs, ranging in age between 14 to 25 years old. MSYPs are not aligned to political parties.

5. Elections are held over a fortnight every two years, mostly recently from 3 to 17 March 2017. 80,147 votes were cast in that election. The next election fortnight will run from 15 to 29 March 2019.

6. LGBT Youth Scotland is a charity with offices in Edinburgh (its headquarters), Glasgow and Dumfries. Its vision is that Scotland is the best place to grow up for lesbian, gay, bisexual, transgender and intersex young people, and its mission is to play a leading role in the provision of quality youth work to LGBTI young people that promotes their health and wellbeing, and to be a valued and influential partner in LGBTI equality and human rights.

7. It has key national programmes that focus on four key areas: Schools & Teachers, Policy Influencing, Domestic Abuse and the co-ordination of LGBT History Month in Scotland. It also provides extensive advice and support for LGBTI young people in Scotland through online and text support services, its digital advice centre that provides information on a wide variety of subjects including coming out and bullying, and details of local support groups.

ANNEX B: BIOGRAPHIES

[Redacted]

MEETING BETWEEN CABINET SECRETMY FOR SOCIAL SECURITY AND OLDER PEOPLE and EQUALITY NETWORK/SCOTTISH TRANS ALLIANCE, LGBT YOUTH AND STONEWALL SCOTLAND	
TIMING	<p>22 August 2018 11:15 to 12:15</p> <p>1W-11 St Andrew's House</p>
ATTENDEES	<p>[Redacted] , Equality Network [Redacted] , Scottish Trans Alliance [Redacted] LGBT Youth [Redacted] , Stonewall Scotland (Annex A contains biographies and information about each organisation)</p> <p><u>Official Support</u> [Redacted] , ext [Redacted] (Family Law, Justice Directorate) [Redacted] , ext [Redacted] (Family Law, Justice Directorate)</p>
AGENDA	<ul style="list-style-type: none"> • Key points raised by attendees in their consultation responses and their views on the arguments of those opposed to reform • High level outcomes of the consultation and next steps.
YOUR MAIN OBJECTIVE	<p>Reform of the Gender Recognition Act 2004 remains a key SG equality commitment, but in advance of final decisions on the scheme of reform, we think it likely you will wish to manage expectations, particularly around under 16s and legal recognition of non-binary people. You may also wish to consider their reaction to the potential reassurances for those opposed.</p>
Copy list	<p>DG Education, Communities and Justice; Director of Justice; [Redacted]</p>

ITEM 1	Key points raised in attendees' responses
<p>ISSUE/ BACKGROUND</p>	<p>1. Annex B contains background on the 2004 Act arrangements.</p> <p><i>Self-declaration for applicants aged 16 and over</i></p> <p>2. All the organisations are in favour of the proposals in the consultation for those aged 16 and over to be able to use a self-declaration process. In their view, the existing requirements are:</p> <ul style="list-style-type: none"> • Based on the incorrect view that being trans is a mental illness [gender dysphoria is no longer categorised as a mental illness]. • Intrusive, humiliating, and a violation of trans people's rights to privacy (for example, they note the Gender Recognition Panel sometimes requires applicants to disclose their sexual orientation²). • Contrary to the recommendation of the World Professional Association for Transgender Health which opposes all medical requirements for gender recognition processes. • Impacting adversely on applicants' mental health and wellbeing. • In contrast to simpler mechanisms for changing other official documents like passports, driving licences or academic records. • Logistically very difficult for applicants to meet. <p>3. They want the application process to be open to everyone and not just to those who were born or adopted in Scotland and to those resident here. [We think the UK Government (UKG) will have concerns around recognition of a Scottish GRC if the process here is open to everyone.]</p> <p><i>Under 16s</i></p> <p>4. All three organisations favour permitting under 16s to obtain gender recognition by parental application. Their concern with the option of permitting capable children to apply is that this might involve the assessment of the child's gender identity. [They may refer to a review of the arrangements in the Republic of Ireland that has recommended that people under 18 there should be able to apply with parental consent.]</p> <p>5. They all consider that where there is a lack of parental support that there should be a fall-back mechanism and that this is where a process for capable children may be appropriate.</p> <p><i>Recognition of non-binary people</i></p> <p>6. All favour action to recognise non-binary people. LGBT Youth for instance see this as "a matter of validating identities and experiences". Equality Network/Scottish Trans (EN/STA) and Stonewall both refer to a statement made by the First Minister at the LGBT hustings in 2016 set out in Annex C.</p> <p>7. All the organisations favour SG taking action through four of the options on recognition of non-binary people:</p> <ul style="list-style-type: none"> • Option 1- review of administrative forms by SG and public bodies.

	<ul style="list-style-type: none"> • <u>Option 3-</u> SG to seek changes to other identity documents like passports and driving licences (reserved areas of law). • <u>Option 4-</u> full legal recognition using self-declaration process (without this LGBT Youth consider SG would not be meeting the aspiration to be in line with international best practice) [Not all countries with self-declaration recognise non-binary people under that process. Malta does. Some states permit non-binary people to select 'X' on their passport rather than M or F, for example Denmark and New Zealand. The consultation notes recognition of non-binary people would be radical and require careful thought and there are potentially significant legal and financial impacts.] • <u>Option 6-</u> SG to pursue changes to the Equality Act 2010 with UKG [largely reserved]. [The UKG consultation asks only open questions on non-binary people and we understand that they will issue a call for evidence later this year. Annex E summarises their consultation.] <p><i>On the arguments of those opposed to a self-declaration process</i></p> <p>9. None consider that additional elements of process are required to address the arguments of those opposed to the proposed reform. EN/STA suggest that a period of reflection such as is used in Denmark and Belgium would reinforce the assumption that trans people are not capable of taking the decision themselves to be recognised and would undermine the move to self-declaration process.</p> <p>10. They note that access to services is not determined by a trans person having legal recognition in their acquired gender, and that in Scotland, many services already operate on the basis of trans inclusion. They note that other countries with self-declaration have not experienced abuse of their arrangements.</p> <p>11. Annex D sets out their views on the other consultation questions.</p>
WHAT THE STAKEHOLDER MAY SAY/ASK	What is SG's view of the UKG's recent consultation? [SG believe we are working closely and well with UKG Equalities Office and others. We will continue our regular communication with them as we reach decisions on our proposed arrangements.]
KEY MESSAGE(S)	We are grateful for the extensive and detailed responses they submitted by them to the consultation. This will be helpful as SG reach our decisions on next steps and take forward with them and other stakeholders further work, such as on the impact assessments.
SUGGESTED QUESTION(S)	What is your reaction to the arguments being used to oppose reform?
CONTPCT POINT	[Redacted] ext [Redacted]

² The Gender Recognition Panel has a statutory discretion to request "any other information or evidence which the Panel may require".

ITEM 2	High level outcomes of the consultation on 2004 .Act
ISSUE/ BACKGROUND	<p><i>Proposal to adopt self-declaration process for those aged 16 and over</i></p> <p>1. There was majority support amongst respondents (over 15,500) for these proposals: in particular, 65% of respondents resident in Scotland were in favour of adopting self-declaration and 66% of such respondents agreed with extending legal gender recognition to those aged 16 and over.</p> <p><i>Opposition to self-declaration process</i></p> <p>2. The draft analysis report indicates that the more frequently raised issues among those opposed to a self-declaration process were</p> <ul style="list-style-type: none"> • That this may pose a risk to women's safety in spaces including toilets, changing rooms, hospital wards and refuges and would be open to abuse by men to gain access to women's spaces. • That the proposal if implemented would constitute an erosion of the identity and rights of 'natal' women for example in that trans women could take their places on boards <p>3. Some religious bodies who responded have suggested that:</p> <ul style="list-style-type: none"> • Removing the requirement for a diagnosis of gender dysphoria might result in trans people not getting appropriate support. • That the Yogyakarta Principles³ are not an acceptable basis for deciding what is international best practice in the area of gender recognition. <p><i>View on the options for under 16s</i></p> <p>4. On the range of options discussed in the consultation for those aged under 16, the most favoured option was to do nothing, although overall most respondents favoured permitting access to legal gender recognition for under 16s. Parental application (favoured by all of the attendees at this meeting.) was supported by 27% of Scottish resident respondents and 23% of such respondents preferred children with sufficient capacity being able to apply.</p> <p>5. The mixed picture in relation to applications by under 16s is reflected in the responses of some key organisations.</p> <p>6. For example, the <u>Equality and Human Rights Commission</u> note in their response "that further research and consideration of the effects of legal recognition on children and younger people should be carried out before there is any extension of the gender recognition system to those below 16" and "that the Scottish Government cannot currently make "an informed decision on such an important extension of the gender recognition system" and " that further research and consideration of the effects of legal recognition on children and younger people should be</p>

carried out before there is any extension of the gender recognition system to those below 16".

7. In contrast, the Children and Young People's Commissioner strongly supports the option of allowing capable children to apply. They also express the view that either denying children under 16 the ability to exercise a right to legal gender recognition or making the success of their application contingent on parental consent may constitute a breach of article 2 of the UNCRC which requires states to respect children's rights without discrimination.

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9. Of the options for taking recognition forward, the most frequently chosen option, selected by 75% of those answering the question, was Option 4 - full recognition using the proposed self-declaration system. Option 1 (changes to administrative forms) and Option 6 (amendment of the 2010 Act) also received a high level of support, being chosen by 68% and 62% respectively.

10. The EHRC suggest that while they "*1 Welcome the Scottish Government's commitment to increasing recognition of non-binary people... there is need for detailed research to better understand the nature of their problems and identify appropriate solutions*". In their view taking action on existing administrative forms to allow non-binary people to be included would help aid this research.

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12. The analysis of responses indicates that 165 organisations or groups submitted responses, the majority of them based in Scotland.

13. We will publish the independent analysis report shortly. We need to complete a review of individual responses before publication and cannot give a timescale at present. We are currently working on the intersex consultation.

³ The Yogyakarta Principles a set of non-binding international principles developed by human rights academics and others, relating to the application of human rights in the areas of sexual orientation and genderidentity.

WHAT THE STAKEHOLDER MAY SAY/ASK	When do you anticipate that the SG will announce its decisions on next steps in reforming the 2004 Act and introduce a Bill to Parliament?
KEY MESSAGE(S)	<ul style="list-style-type: none"> • Our commitment to reform of the 2004 Act is unchanged • We are considering the consultation responses before we make our decisions on the scheme we take forward.
SUGGESTED QUESTION(S)	<p>The Equality and Human Rights Commission has said that SG need to do more research to identify appropriate solutions for non-binary people. What is your view on this?</p> <p>In relation to under 16s, there is only a small difference between people in favour of children under 16 being able to apply through their parent and those who think that capable children should be able to apply on their own behalf. What is your reaction to that?</p>
CONTACT POINT	[Redacted] ext [Redacted]

ANNEX It. BIOGRAPHIES

[Redacted]

The Equality Network/Scottish Trans Alliance's Equal Recognition Campaign

The campaign called on the SG to:

- Remove the psychiatric diagnosis requirement from legal gender recognition.
- Reduce the age at which people can get legal recognition of the gender they live as.
- Provide legal recognition for people who do not identify as men or women.

That campaign has been publicly endorsed by LGBT Youth Scotland and Stonewall Scotland (along with 20 other Scottish organisations, including Scottish Women's Aid and Engender).

ANNEX B - EXISTING ARRANGEMENTS UNDER THE 2004 ACT

1. The 2004 Act permits a person aged at least 18 to seek legal recognition in their acquired gender by three routes or "tracks": the standard, alternative and overseas tracks. There is a statutory fee for an application which is currently £140, but the fee can be remitted to either £30 or £0 depending on the income of the applicant.¹

Standard track

2. The standard track is used most often. An applicant under this track must:

- satisfy the Gender Recognition Panel that they have, or have had, gender dysphoria and produce two medical reports detailing this diagnosis;
- satisfy the Gender Recognition Panel that they have lived in the acquired gender throughout a period of two years ending with the date on which the application is made. The Gender Recognition Panel's guidance indicates that evidence

demonstrating this such as a passport, driving licence, pay slips, or utility bills, should accompany the application; and

- make a statutory declaration before a person authorised to take oaths that they have lived in their acquired gender throughout the period of two years ending with the date of the application and intend to live in their acquired gender until their death.

Alternative track

3. The alternative track was introduced for Scotland by the Marriage and Civil Partnership (Scotland) Act 2014. The applicant must be married or in a civil partnership and:

- have been living in the acquired gender for six years before 16 December 2014, continued to live in that gender until the application and intend to continue to live in the acquired gender until death;
- have had gender dysphoria or have undergone surgical treatment or other treatment as prescribed by Scottish Ministers^[79] by Order for the purpose of modifying their sexual characteristics and produce a medical or psychological report to this effect;
- be resident in Scotland or England and Wales;
- provide a statutory declaration.

Overseas track

4. Under the overseas track, an applicant has to show that they have been recognised in their acquired gender in an approved jurisdiction. The approved jurisdictions are listed in the Gender Recognition (Approved Countries and Territories) Order 2011. They must provide a statutory declaration. No medical or psychological report is required.

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ANNEX C: QUOTE FROM LGBTI HUSTINGS BY FIRST MINISTER: 31 MAR. 2016

Q. When do you plan on recognising non-binary gender identities in law?

A I think we should, and I think we should do it in the next Parliament, and that's one of the specific things I think we should look to take forward in terms of reviewing the gender recognition law. I think it is no longer, in this day and age, appropriate for people not to have their perfectly legitimate identity recognised legally, because from that lack of legal recognition comes many of the other problems that we're talking about; a lack of general recognition in the population, a lack of understanding of the issues and the barriers that people face. I don't believe, and not just in this issue, I don't believe this generally, that change in the law, very often, in and of itself, solves the problem. Often, most problems take much more to solve than simply changing what's on the statute book, but very often, you cannot solve the other problems until you take that step of recognising something very clearly in law. So just as we went into the last Parliament, I think many of us hoping that there would be equal marriage by the end of that Parliament, I hope that this is one of the achievements that the next Parliament, by the time we're sitting here in five years, can boast about as well. **Nicola Sturgeon.**

ANNEX D: SUMMARY OF ORGANISATIONS' RESPONSES TO CONSULTATION

- All the organisations are content that statutory declarations continue to be required of applicants under the proposed self-declaration process, with some concerns around the exact wording and a preference for the applicant to declare that they intend to remain 'permanently' in their acquired gender, as opposed to that they will intend to do so "until death".
- None of them favour a limit on the number of times that an applicant can obtain gender recognition under the proposed arrangements.
- All favour self-declaration being open to those aged 16 and over (a reduction from the age of 18) citing that trans people at this age are often at a point of change in their lives and may be entering employment or full-time education.
- All believe that there should be no requirement for spousal consent. [The Gender Recognition Panel can only issue a full Gender Recognition Certificate (a GRC, which gives legal recognition) to a married applicant if their spouse has confirmed that they are content to stay in the marriage. If evidence of the non-applying spouse's consent is not submitted with the application for recognition, the Gender Recognition Panel may only issue an interim GRC. Where the marriage is a marriage solemnised in Scotland the party who is seeking recognition may then apply to the sheriff court for a full GRC.]

- Where one of the parties in a civil partnership applies for gender recognition, their view is that they ought to be able to remain in that if both parties wish rather than converting this to a marriage or be dissolved.
- All consider that gender recognition should no longer be a ground of divorce, and that the other ground of divorce (that the marriage has broken down irretrievably and which can be evidenced in a number of ways) is sufficient.
- On the provisions in the 2004 Act prohibiting the disclosure of certain information, none of the organisation believe that changes in the legal arrangements are needed. They support the development of better guidance on how the arrangements should operate in practice, in particular around trans people in the courts and in respect of data collection.
- All agree with the proposal in the consultation that if we adopt a self-declaration process, those who have been recognised in their acquired gender under the process in another state ought to be automatically recognised here.
- All have offered suggestions for the development and improvement of the impact assessments and the areas of law and practice on which recognition of non-binary people might impact.

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ANNEX E: UK GOVERNMENT CONSULTATION

1. The consultation does not propose that a self-declaration process be adopted. The Ministerial Foreword indicates that: *“...no firm decisions on our eventual approach have been taken.....We also want to be clear that this is an explorative consultation.”*

2 On freedom of speech (a point raised by several stakeholders here), the consultation notes that: *“The public debate in recent months has been at times unkind or even discriminatory. We urge all those...who respond to this consultation to treat each other respectfully”.*

3. There are 22 questions in the consultation. In addition to those highlighted in the briefing, consultees’ views are sought on the following areas:

- Whether there should be a reflection period before a full GRC is issued.
- Whether the requirement for spousal consent should be retained.
- Whether there should be a fee for an application.
- Whether the privacy arrangements in the 2004 Act are adequate.
- The operation of the exceptions in the Equality Act 2010 associated with the protected characteristic of gender reassignment (such as the single and separate sex services) and how reform of the 2004 Act might impact on these exceptions . [There are other relevant exceptions relating to sport, occupational requirements , communal accommodation, the armed forces, the religious solemnisation of marriages and insurance about which views are also sought.]
- Whether changes to the 2004 Act might impact on other areas of law and public services.
- If the 2004 Act should be changed to accommodate people who identify as non-binary.

- Whether removing the requirement for a diagnosis of gender dysphoria and any requirement for a report detailing treatment or other changes would help intersex people. [Some people with chromosomal intersex conditions may experience difficulties in obtaining a diagnosis of gender dysphoria.]

4. The UKG consultation follows a large scale survey which the UKG carried out of LGBT people. A number of questions in their consultation are aimed specifically at identifying evidence from trans, non-binary people and intersex people about them and their experiences.

5. On the same day that the UKG's consultation was launched, it also announced an action plan stemming from the survey of LGBT people that had more than 108,000 responses. As part of that, the UKG has stated that it intends to ban gay conversion therapy across the UK. SG have committed to engaging with the UKG on their plans around ending the practice of conversion therapy.

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MEETING BETWEEN CABINET SECRETARY FOR SOCIAL SECURITY AND OLDER PEOPLE and WOMEN 'S SPACES IN SCOTLAND (WSS)	
TIMING	<p>22 August 2018 13:00-14:00</p> <p>1W -11 St Andrew's House</p>
ATTENDEES	<p>[Redacted] [Redacted] [Redacted] [Redacted]</p> <p>(Annex A contains information about Women's Spaces in Scotland and [Redacted] .)</p> <p><u>Official Support</u> [Redacted] ext [Redacted] (Family, Justice Directorate) [Redacted] , ext [Redacted] (Family, Justice Directorate)</p>
AGENDA	<ul style="list-style-type: none"> • Key points raised in the Women's Spaces in Scotland's consultation response. • High level outcomes of the consultation and potential reassurances including additional process
YOUR MAIN OBJECTIVE	<p>This is an opportunity for you to listen to the views of WSS on reform of the 2004 Act and ascertain whether there are any actions that SG could take to alleviate some of their concerns.</p>
COPYLIST	<p>DG Education, Communities and Justice; Director of Justice; [Redacted]</p>

ITEM 1	Response of WSS to the consultation
ISSUE/ BACKGROUND	<p data-bbox="491 259 836 293"><u>Self-declaration process</u></p> <p data-bbox="491 331 1560 472">1. WSS are strongly opposed to the adoption of a self-declaration process for legal gender recognition. A summary of a meeting with officials in February 2018 is in Annex B. We have included the potential reassurances being considered in Annex C.</p> <p data-bbox="491 517 1560 880">2. Their response says that the proposed reform : "has implications for single sex exemptions under the Equality Act 2010" (2010 Act) and "that men. . . will be able to access women only spaces and services simply by declaring their acquired gender is now female". [In Scotland, for example, most domestic violence refuges are already trans-inclusive and risk assessments are undertaken. The UK Government (UKG) consultation states that, in their view, "having a GRC is not a complete answer" for accessing single sex or separate sex services but have asked respondents to provide further evidence around concerns. See Annex C for further information.]</p> <p data-bbox="491 925 1560 1176">3. WSS note evidence produced by the British Association of Gender Specialists to the Westminster Women and Equalities Select Committee that some sex offenders in prison are identifying as trans or pretending to be trans for nefarious purposes. [Scottish Prison Service (SPS) already have a trans-inclusive policy, but use risk assessments as part of their decision-making. Officials are working with SPS and prison policy colleagues to consider any concerns they have.]</p> <p data-bbox="491 1220 1560 1400">4. WSS feels that it would be difficult to enforce a gender recognition system based on a statutory declaration even with an offence for a false declaration, because this is <i>"really just a feeling they have.. it's not observable material biological fact."</i> [It would be possible to have more process in place: see Annex C for potential reassurances]</p> <p data-bbox="491 1444 756 1473"><u>Age of applicants</u></p> <p data-bbox="491 1518 1560 1727">5. The consultation proposed that people aged 16 and over should be able to apply using the proposed process . WSS are opposed to a reduction in the minimum age of applicants from 18. In their view this is unnecessary as children already have protections under the 2010 Act and that children may also change their views during puberty [evidence of this was in the Child Rights and Wellbeing Impact Assessment].</p> <p data-bbox="491 1771 1560 2016">6. They are concerned about the lack of studies on the effect of puberty blockers and cross sex hormones for children and young people experiencing distress about their experience of their gender. [The 2004 Act does not regulate access to medical treatment or support. We understand puberty blockers are sometimes used in NHS Scotland in children who have started puberty and who are distressed about their experience of incongruence between their sex and their gender. Cross-sex hormones</p>

	<p>(gender affirming hormones) have masculinising and feminising effects and under the existing NHS Scotland Gender Reassignment Protocol cannot be prescribed to anyone under 16.]</p> <p><u>Non-binary people</u></p> <p>7. They are opposed to action to recognise non-binary people, considering that <i>"Non-binary refers to people feeling they aren't stereotypes, but they are still male or female"</i>.</p> <p><u>General</u></p> <p>8. They consider that the Equality Impact Assessment (EQIA) was inadequate in relation to the impacts for single sex services (including prisons), and on statistics, such as those for the gender pay gap. [Other women's groups including Engender agree that the EQIA requires further work. The consultation specifically sought views on the impact assessments.]</p> <p>9. In their evaluation of using Citizen Space, WSS said: <i>"anybody trying to engage in debate s faced wth threats and abuse. Venues ooich hosted meetings came under attack on social media and their business threatened. It HeS disheartening that no-one from the Scottish government could state publicly that democratic debate about a proposed change in the law is fundamental to democracy."</i> [SG decided following the meeting with WSS at official level in February to wait for an appropriate opportunity to express SG's ongoing commitment to freedom of expression.]</p> <p>10. They are particularly concerned about the conflation of sex, gender and gender identity in the consultation and in the 2004 Act. [SG recognise that gender and sex are distinct. Under the 2004 Act, on the legal recognition of a person's acquired gender their legal sex also changes. Repeal of the 2004 Act is not a feasible option.]</p>
WHAT THE STAKEHOLDER MAY SAY/ASK	Will SG proceed with legislation to reform the 2004 Act notwithstanding the opposition from women and women's groups like ours?
KEY MESSAGE(S)	While the SG remains committed to reforming the 2004 Act, we are considering all the responses to the consultation as part of reaching our final decisions. Where we can do so, we will take action to alleviate concerns.
SUGGESTED QUESTION(S)	Two countries with a self-declaration process have a reflection period (Denmark and Belgium) before a person obtains full recognition. Would including a reflection period be useful from the perspective of WSS?
CONTPCT POINT	[Redacted] ext [Redacted]

ITEM 2	High level consultation outcomes																					
<p>ISSUE/ BACKGROUND</p>	<p><u>Proposal to adopt self-declaration process for those aged 16 and over</u></p> <p>1. There were over 15,500 responses to the consultation. There was majority support amongst respondents for the proposals to adopt a self-declaration process for those aged 16 and over: in particular, 65% of respondents resident in Scotland were in favour of adopting self-declaration and 66% of respondents agreed with extending legal gender recognition to those aged 16 and over.</p> <p>2. The draft analysis report has highlighted that many of the issues raised in the WSS response are also mentioned by others opposed. The draft analysis report notes that those opposed raise concerns such as about:</p> <ul style="list-style-type: none"> • Women's safety in spaces including toilets, changing rooms, hospital wards and refuges. • Potential abuse, exploitation or false declarations. • That 'predatory men' or 'biological men' could gain access to women's spaces where they could threaten women's safety. • The adverse impact in their view for prisons and sport. • The conflation of sex and gender. <p><u>Views on the options for under 16s</u></p> <p>2. On the range of options discussed in the consultation for those aged under 16, the most favoured option was to do nothing, although overall most respondents favoured permitting access to legal gender recognition for under 16s.</p> <table border="1" data-bbox="491 1294 1528 1637"> <thead> <tr> <th>Option</th> <th>% respondents</th> <th>% respondents resident in Scotland</th> </tr> </thead> <tbody> <tr> <td>Do nothing</td> <td>31%</td> <td>28%</td> </tr> <tr> <td>Court Process</td> <td>6%</td> <td>6%</td> </tr> <tr> <td>Parental Application</td> <td>23%</td> <td>27%</td> </tr> <tr> <td>Minimum age of 12</td> <td>7%</td> <td>7%</td> </tr> <tr> <td>Capable children can apply</td> <td>23%</td> <td>23%</td> </tr> <tr> <td>None of the options</td> <td>8%</td> <td>8%</td> </tr> </tbody> </table> <p>3. The mixed picture is reflected in the responses of key organisations.</p> <p>4. For example, the <u>Equality and Human Rights Commission</u> note in their response "that further research and consideration of the effects of legal recognition on children and younger people should be carried out before there is any extension of the gender recognition system to those below 16" and "that the Scottish Government cannot currently make "an informed decision on such an important extension of the gender recognition system ".</p>	Option	% respondents	% respondents resident in Scotland	Do nothing	31%	28%	Court Process	6%	6%	Parental Application	23%	27%	Minimum age of 12	7%	7%	Capable children can apply	23%	23%	None of the options	8%	8%
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Minimum age of 12	7%	7%																				
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None of the options	8%	8%																				

	<p>5. In contrast, the <u>Children and Young People's Commissioners</u> supports the option of allowing capable children to apply (Option 5). They also express the view that either denying children under 16 the ability to exercise a right to legal gender recognition or making the success of their application contingent on parental consent may constitute a breach of article 2 of the UNCRC which requires states to respect children's rights without discrimination.</p> <p><u>Non-binary people</u></p> <p>6. A majority of respondents, 62% of those answering the question, thought Scotland should take action to recognise non-binary people. Of the options for taking recognition forward, the most frequently chosen option was full recognition using the proposed self-declaration system (Option 4), selected by 75% of those answering the question. Option 1 (changes to administrative forms) and Option 6 (amendment of the 2010 Act) were chosen by 68% and 62% respectively.</p> <p><u>Other points and next steps</u></p> <p>7. Unusually, a majority of respondents were resident outwith Scotland (51%). 38% of respondents were resident in other parts of the UK and the remainder from outwith the UK.</p> <p>8. The analysis of responses indicates that 165 organisations or groups submitted responses, the majority of them based in Scotland. This includes around 25 women's organisations and third sector support groups.</p> <p>9. We will publish the independent analysis report shortly. We need to complete a review of individual responses before publication and cannot give a timescale for their publication at present. We are currently working on the intersex consultation.</p>
<p>WHAT THE STAKEHOLDER MAY SAY/ASK</p>	<p>How many responses from women's organisations and groups did you receive? [There were around 25 responses from women's groups and third sector support groups.] Have you made decisions about how you will proceed?</p>
<p>KEY MESSAGE(S)</p>	<p>The Scottish Government remains committed to reforming the 2004 Act. We are considering all the responses to the consultation as part of reaching our final decisions. Where we can do so, we will take action to alleviate concerns.</p>
<p>SUGGESTED QUESTION(S)</p>	<p>Does the outcome of the consultation mean that you will proceed with reform without taking account of our views?</p>

CONTACT POINT	[Redacted] ext [Redacted]
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ANNEX A- INFORMATION ABOUT WOMEN 'S SPACES IN SCOTLAND (WSS)

1. WSS describe the organisation as:

"a diverse group of oomen with a shared goal to protect our country's single-sex services. Under proposed changes to the Gender Recognition Act, it may soon be possible to legally declare yourself a member of the opposite sex simply by matter of self-identification. We are concerned about the potential impact this w/1 have on oomen".

2. WSS (Edinburgh) responded to the consultation. There was a separate response from WSS (North East Scotland).

3. The WSS (Edinburgh)response describes the group as interested in preseNing the principle of women and girls centred seNices and provisions in Scotland, advancing the cause of women's rights, and encouraging the participation of women in public life.

4. **[Redacted]** spoke on behalf of Women's Spaces in Scotland at "A Woman's Place Loves Women's Rights", a feminist discussion event about reform of the 2004 Act, held in Edinburgh on 14 February. She is described in the marketing literature for the event as a:

"feminist activist and blogger from Edinburgh. Her witing has included in the anthology, 'Female Erasure: What You Need To Know About Gender Politics' War on Women, the Female Sex and Human Rights' 1M1ere she wote about her experiences as a "Transwdow': her search for support, and her journey to a deeper understanding of how 'gender' harmsoomen."

5. [Redacted] tweets under the twitter handle "@Scottish Women". Recently, many tweets have focussed on their disagreement with the guidance for schools produced by LGBT Youth Scotland on trans inclusion (supported by SG), and draft teaching materials on gender/gender identity published by Education Scotland".

ANNEX B - SUMMARY OF POINTS MADE BY WSS AT MEETING OF 22 FEBRUARY 2018

Points raised included:

1. The use of both "sex" and "gender" within the 2004 Act and the consultation, and the lack of a definition of "gender". [Their point is that "gender" and "sex" should be seen as distinct concepts. The effect of the 2004 Act as it stands it that a person who obtains a full Gender Recognition Certificate acquires both a gender and a sex.]

2. 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 3 women's organisations and a far larger number of religious bodies. The list has developed as a result of other consultations undertaken by the Family and Property Team, including on same sex marriage. We said to Women's Spaces that a

number of women opposed had responded to the consultation. The consultation makes clear that “any organisation or individual with an interest in this consultation is encouraged to submit their views”.]

3. Whether the consultation was confusing for the public. [We noted the large number of responses already received.]

4. 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 a man or a woman.]

5. Concerns that male offenders will seek to declare themselves as 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 has 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.]

6. 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.]

7. 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. Women’s Spaces also suggested 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, and the Gender Representation on Public Boards (Scotland) Bill.]

8. 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 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.

9. Women’s Spaces suggested 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.]

Family

ANNEX C: POSSIBLE REASSURANCES

Those opposed to the proposals are making a wide variety of points, summarised in the table below along with possible reassurances.

No.	Point	Possible reassurance
1	Outright opposition (on religious grounds or radical feminist grounds or for other reasons) to the concept of gender recognition and to trans women being treated as women (and to trans men being treated as men)	<p>None.</p> <p>The logic of this argument is that the Gender Recognition Act 2004 should just be repealed and nothing put in its place – so it would cease to be possible to obtain legal gender recognition in Scotland.</p> <p>That is not a feasible option on either policy or legal grounds.</p>
2.	Too easy to obtain a Gender Recognition Certificate	<p>Emphasise the need for the person making the application to supply a statutory declaration that they intend to live in their acquired gender until death (and that it is a criminal offence to make a false statutory declaration). The Scottish Trans Alliance are content with this approach.</p>
3	Concerns about impact on women’s spaces in refuges, prisons etc.	<p>The UK Government’s consultation states that no amendments are planned to exceptions in the 2010 Act for women-only spaces (eg refuges). We could make it clear that we agree with this. (There is, though, one point here. The exceptions in the Equality Act permit for example, a service provider to treat a person with the protected characteristic of gender reassignment differently in relation to accessing a single sex service, where this is “a proportionate means of achieving a legitimate aim”. Whether such an exception can be applied where a trans person has a full GRC is unclear and we will be making it easier to obtain a full GRC.)</p> <p>There are risk assessments in place when people are housed in enclosed areas such as refuges and prisons.</p>
4	Safety of women (in bathrooms, changing areas, refuges, prisons etc).	<p>We could emphasise that attacks on women are criminal offences, regardless of whether or not the attacker is trans and/or holds a Gender Recognition Certificate.</p>

		It is possible at the moment for an application to be made to the courts to quash a Gender Recognition Certificate on the grounds that it has been secured by fraud. The consultation noted that it would be appropriate in a self-declaratory system for the Scottish Ministers to apply to the courts to have a Scottish GRC quashed on the basis that it had been secured by fraud. The Scottish Trans Alliance are unlikely to have concerns about this.
5	Impact on sport.	There is also an exemption in the 2010 Act which allows sporting bodies to restrict the participation of trans people in sport if this is necessary to secure fair competition or the safety of competitors. We could make it clear that we agree this should remain in place.
6	Impact on statistics.	<p>Establish a working group on sex and gender in statistics, with the papers and minutes being published in line with transparency.</p> <p>This working group could consider:</p> <ul style="list-style-type: none"> • Where there is a need for gender disaggregated data (eg to help inform policy on gender equality). • Where there is no such need. • Whether there are any issues arising in relation to the inclusion of trans people skewing data (eg any unexpected increases in the number of women being recorded as having committed sex offences). • What steps could be taken to include non-binary people in statistical returns (and, as indicated above, if there are areas where gender disaggregation of data could be discontinued).
7	Impact on freedom of speech	We could emphasise the Scottish Government's commitment to freedom of expression. This would be welcomed by Women's Spaces in Scotland and the Scottish Trans Alliance would be happy with it as well.
8	Impact on religious bodies	The consultation noted that there is existing provision in the 2010 Act which provides that it is not unlawful for an approved celebrant to refuse to marry or register a civil partnership for a person the approved celebrant reasonably believes holds a full GRC under the 2004 Act. We went on to say that the SG was not seeking a change to the substance of this provision but it may need to be amended to add a reference to the new proposed Scottish legislation on obtaining legal gender recognition.

		We could emphasise that the SG remains committed to the substance of this provision in the 2010 Act.
9	The partial Equality Impact Assessment [EQIA]	There has been some criticism by women's groups of the partial Equality Impact Assessment [EQIA] issued as part of the consultation. We will prepare a further draft of the EQIA, and run that past women's groups.

**Family Law
August 2018**

From: [Redacted]
Justice: Civil: Family

Cabinet Secretary for Social Security and Older People

GENDER RECOGNITION- MEETING WITH WOMEN'S SPACES IN SCOTLAND

Purpose

To provide you with:

- more detail on the areas Women's Spaces in Scotland (WSS) have said they want to raise with you at the meeting on 22 August; and
- suggested lines to take in response.

Priority

2. Routine.

Detail

3. WSS have emailed a list of areas that they wish to discuss with you at the meeting on 22 August. These areas, and suggested lines to take in response, are set out in Annex A

4. Annex B includes further background information.

Conclusion

5. You are asked to note this submission.

[Redacted]
Justice: Civil Law: Family
X [Redacted]

21 August 2018

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constituent Interest	General Awareness

DG Education, Communities and Justice
 Director for Justice
 [Redacted]

ANNEX A- WSS POINTS AND SUGGESTED LINES

Area of concern	Suggested lines
<p>The impact of the language and definitions used in the consultation and supporting documents on GRA reform, and in general information/guidance currently issued by the Scottish Government and public sector bodies with regard to "sex", "gender" and "gender identity".</p>	<p>The Scottish Government recognises the distinction between “sex” and “gender”. [Gender relates to the characteristics that are culturally associated with being male or female. Sex relates to people’s biological characteristics.]</p> <p>We are proposing to improve an existing gender recognition process. Under that process, a trans man or woman acquires not only a recognised gender but also a new legal sex. They can then access a new birth certificate where they were born in the UK.</p> <p>We don’t believe that our work on gender recognition reform affects our ongoing commitment to improving women’s equality. Discrimination against women occurs for a range of complex reasons and the Scottish Government does not believe such discrimination is driven only because of biological sex.</p>
<p>The framing of the conversation prior to and to date around GRA reform, and the consequent effect on the public participation (in particular the participation of women) in that ongoing dialogue.</p>	<p>We are aware of the concerns expressed about freedom of speech in relation to reform.</p> <p>Our consultation has allowed the wide range of views in this area to be expressed. Around 20 women’s groups and 7 third sector support groups have replied to the consultation setting out their views.</p> <p>My officials and I are meeting with a range of those who have responded to the consultation over the summer. The independent analysis of all the consultation responses will also help draw out the key concerns around</p>

Area of concern	Suggested lines
	reform which will inform decisions on next steps.
<p>Equality Impact Assessments, with particular regard to guidance issued by third sector parties to schools and other public sector bodies on the topic of trans inclusion, and the potential impact on women and girls.</p>	<p>On gender recognition, we sought the views of respondents on the pre-consultation Equality Impact Assessment. Other groups have told us we need to improve this and how we can go about doing that. We will use the consultation responses and propose to do further work with groups who raised concerns to help inform the next stage of the Equality Impact Assessment.</p> <p>The Scottish Government is supportive of the LGBT Youth Scotland guidance to schools. The guidance is non-statutory and it is for individual schools and local authorities what approaches they use bearing in mind discrimination law and the guidance published separately by the Equality and Human Rights Commission.</p>
<p>How to ensure we create and support services which are inclusive to all lesbians, bearing in mind that many currently self-exclude due to a discrepancy between their definition of "lesbian" and the one prevailing in the voluntary sector.</p>	<p>While this does not concern gender recognition reform, we agree that it is important people can access the services they want to meet their needs. Service providers of course must bear in mind the prohibitions on discrimination, including the legal scope for excluding particular groups of people from their services.</p>

Family Law Team
August 2018

ANNEX B: BACKGROUND MATERIAL

Conflation of sex and gender in consultation and more widely

1. The draft analysis report suggests that respondents opposed to self-declaration making comments often argued that maintaining a clear distinction between sex and gender is extremely important.

2. Some feminists consider the 2004 Act to be regressive legislation which “inscribes traditional gender roles into law so that they can be identified and regulated by the state”.⁴ [The Gender Recognition Panel do not meet applicants and reach on view on whether they have been living in their acquired gender on the basis of documentary evidence such as their passport, utility bill and academic records.] These feminists reject the “notion of transgenderism since this requires the acceptance of ‘gender’ as a useful category”,⁵ when they consider gender fundamentally to be a construction of male dominance.

Guidance issued to schools and other public sector bodies on trans inclusion

3. In raising the issue of guidance to schools, WSS may be referring to either or both of:

- guidance for schools published by LGBT Youth Scotland in November 2017 “Supporting Transgender Young People”; or
- recent media attention about material on relationships, sexual health and parenthood (RSHP) education that is part of ongoing work led by NHS Greater Glasgow and Clyde, involving partners from health boards and local authorities to deliver a new web-based teaching resource in line with Curriculum for Excellence.

4. On the LGBT Youth guidance, while Scottish Government is supportive, it does not endorse the guidance as such. Following correspondence from the Christian Institute directed to Scottish Government, the published version of the guidance was changed to make this clear. It is non-statutory guidance.

5. Officials are aware that a number of bodies who endorsed the guidance (including some local authorities, the Children and Young People’s Commissioner Scotland and NHS Lothian) have been asked to confirm whether they carried out an equality impact assessment before endorsing the guidance.

6. The RSHP draft resource remains under development. It aligns with Curriculum for Excellence and how teachers may deliver RSHP education. The draft resource is published on the draft website currently being created on behalf of the partnership of agencies led by NHS Greater Glasgow and Clyde and views are being sought. A final version of the new online resource is anticipated by summer 2019.

7. Separately, the Scottish Government is working with the Time for Inclusive Education campaign, “to deal with LGBTI bullying, discrimination and prejudice in schools”, through the LGBTI Inclusive Education Working Group. Recommendations from the Working Group are expected in Autumn 2018.

Inclusive services for lesbians

⁴ Sheila Jeffreys “They know it when they see it: The UK Gender Recognition Act 2004” BJOIR 2008 Vol 10, 328-345 at 331.

⁵ Sheila Jeffreys “They know it when they see it: The UK Gender Recognition Act 2004” BJOIR 2008 Vol 10, 328-345 at 338.

8. The WSS response to the consultation expresses concern around the impact of gender recognition reform for lesbians, though not in the context of services, saying:

“Worryingly, many non-conforming teenage lesbians will be told they must be male. There is an erasure of lesbianism with the rise of transgenderism.”

“There needs to be an impact assessment for lesbians and gay men. Sexual orientation is a protected characteristic, if sex is the same as gender which is the same as gender identity - how can people be protected from discrimination on the basis of same sex attraction if anyone can id into an acquired gender? Lesbians already face threats and taunts of bigotry for refusing to have sexual relationships with trans identified males who have completely intact male bodies.”

9. Officials are aware of reports that at Pride in London there was a protest by a group of lesbians (calling themselves ‘Get the L Out’) who handed out leaflets one of which, in addition to expressing disagreement with reform of the 2004 Act, included the statement:

“the trans movement with the complicity of ‘queer’ LGBT politics is coercing lesbians to have sex with men. We firmly condemn this visions form of anti-lesbianism disguised as protest.”

10. Another said:

“we want to create and protect lesbian culture and lesbian only spaces.”

Family Law Team
August 2018

MEETING BETWEEN CABINET SECRETARY FOR SOCIAL SECURITY AND OLDER PEOPLE and ENGENDER. SCOTTISH WOMEN 'S AID, CLOSE THE GAP, RAPE CRISIS SCOTLAND AND ZERO TOLERANCE	
TIMING	<p>22 August 2018 2.15pm-3.15pm</p> <p>1W-11 St Andrew's House</p>
ATTENDEES	<p>(Redacted], Executive Director, Engender (Redacted] , Executive Director, Close the Gap (Redacted], Chief Executive, Scottish Women's Aid (Redacted] , Chief Executive, Rape Crisis Scotland (Redacted] Policy & Research Officer, Zero Tolerance (Annex A contains biographies)</p> <p><u>Official Support</u> (Redacted] Family, Justice Directorate ext (Redacted] (Redacted] Family, Justice Directorate ext (Redacted]</p>
AGENDA	<ul style="list-style-type: none"> • Key points raised by attendees in their consultation responses. • High level outcomes of the consultation and next steps.
YOUR MAIN OBJECTIVE	<p>This an opportunity for you to hear the supportive views of this groups of key women's groups about reform of the 2004 Act, and the concerns they have raised about the implications of reform, as well as their views on the objections raised by some women and women's groups opposed to reform.</p>
Copy list	<p>DG Education, Communities and Justice; Director of Justice; (Redacted]</p>

ITEM 1	Key points raised in their response to the consultation
<p>ISSUE/ BACKGROUND</p>	<p><i>General</i></p> <ol style="list-style-type: none"> 1. Engender submitted a response to the consultation on behalf of a group of national women's equality and violence against women organisations: Scottish Women's Aid (SWA), Engender, Close the Gap, Rape Crisis Scotland, Zero Tolerance and Equate Scotland (the coalition response). 2. Annex B contains a summary of the outcomes of a survey and workshop carried out by SWA involving their 36 local groups and their Supporting Women forum set out in a separate consultation response <p><i>Support for the proposals in the coalition response</i></p> <ol style="list-style-type: none"> 3. Their response confirms that they support the proposals to adopt a self-declaration system for legal gender recognition. 4. In particular, the response states: <ul style="list-style-type: none"> • The adoption of a self-declaration process for gender recognition will "have no impact on our services or work. All access to membership and services is based on self-identification. This will continue". [The separate response from SWA indicates that they do however want the existing exceptions in the Equality Act 2010 (2010 Act) permitting a trans person to be excluded from a service or treated differently or to be excluded from particular employment roles in certain circumstances to be retained. The UK Government (UKG) consultation has confirmed they do not intend to amend the exceptions in the 2010 Act.] • That rape crisis and women's aid services receiving SG funding have been providing trans-inclusive services for over 6 years and this has not given rise to any concerns or challenges of which we are currently aware. [SG funding for Violence against Women projects is conditional on the production of an action plan to ensure trans-inclusivity. Women's groups opposed to gender recognition reform have suggested that fear of loss of funding is a reason why the coalition are supportive of the SG proposals.] • All the organisations have processes to respond to perpetrators who attempt to disrupt women-only space or to harass or hurt users. <p><i>Concerns raised in the coalition response</i></p> <ol style="list-style-type: none"> 5. The coalition response notes some areas of concern: <ul style="list-style-type: none"> • On provision for non-binary people, they are concerned about what changes SG might recommend to the UK Government (UKG) in respect of the 2010 Act. [Their point is that they don't want any changes to adversely affect how the 2010 Act works to protect people and particularly women against discrimination on the basis of sex. The consultation notes that provisions to recognise non-binary people are

	<p>radical and require careful thought. No firm proposals were made in the consultation regarding recognition of non-binary people.]</p> <ul style="list-style-type: none"> • Their concern that some public authorities and agencies consider that the increase in awareness around non-binary people means that they should stop collecting gender-disaggregated data. They consider more clear guidance may be needed possibly through SG working with the Equality and Human Rights Commission (EHRC) [Officials have discussed this further with Emma Ritch who noted that they want more gender-disaggregated data to be collected, for example in relation to court statistics.] • About the suggestion that some male sex offenders may falsely be claiming to be transgender females to obtain access to women's prison accommodation or to secure parole. [Officials are in contact with Scottish Prison Service and prison policy officials to ascertain how we can address concerns that they have about reform of the 2004 Act.] <p>6. Annex C sets out the potential reassurances that SG are considering following on the consultation.</p> <p><i>Equality Impact Assessment</i></p> <p>7. The coalition response suggests the EQIA published with the consultation is of "poor quality" and does not sufficiently engage with the views and concerns about the impact for women's equality. They believe that we ought to have consulted them during its preparation. [The consultation specifically sought views from respondents on developing the impact assessments. Officials met separately with [Redacted] who has helpfully provided suggestions to improve the EQIA. Once decisions on next steps are reached, we will look to engage with them on further work on the EQIA to ensure that we are addressing their concerns.]</p>
<p>WHAT THE STAKEHOLDER MAY SAY/MK</p>	<p>Will you involve us in taking forward this work in so far as it impacts on our concerns?</p>
<p>KEY MESSAGE(S)</p>	<p>We are grateful for the detailed response they submitted as a group to the consultation. Also for the separate work done by Scottish Women's Aid in seeking views and feedback from local women's aid groups and others. This will be helpful as SG reach our decisions on next steps and take forward with them and other stakeholders further work such as on the impact assessments.</p>
<p>SUGGESTED QUESTION(S)</p>	<ul style="list-style-type: none"> • Can you set out for me your areas of concerns about reform? • Some women's groups opposed to self-declaration suggest that you are expressing support for reform because you are funded by SG. What is your view on this?
<p>CONTACT POINT</p>	<p>[Redacted] ext [Redacted]</p>

ITEM 2	High level outcomes of the consultation on 2004 Act
ISSUE/ BACKGROUND	<p><i>Proposal to adopt self-declaration process for those aged 16 and over</i></p> <p>1. There was majority support amongst respondents (over 15,500) for these proposals: in particular, 65% of respondents resident in Scotland were in favour of adopting self-declaration and 66% of such respondents agreed with extending legal gender recognition to those aged 16 and over.</p> <p><i>Opposition to self-declaration process</i></p> <p>2. The draft analysis report indicates that the more frequently raised issues among those opposed to a self-declaration process were</p> <ul style="list-style-type: none"> • That this may pose a risk to women's safety in spaces including toilets, changing rooms, hospital wards and refuges and would be open to abuse by men to gain access to women's spaces. • That the proposal if implemented would constitute an erosion of the identity and rights of 'natal' women for example in that trans women could take their places on boards <p>3. Some religious bodies who responded have suggested that:</p> <ul style="list-style-type: none"> • Removing the requirement for a diagnosis of gender dysphoria might result in trans people not getting appropriate support. • That the Yogyakarta Principles⁶ are not an acceptable basis for deciding what is international best practice in the area of gender recognition. <p>4. The coalition response did not offer views in relation to children under 16 but commended for our consideration that of the Children and Young People's Commissioner and of the Equality Network/Scottish Trans Alliance.</p> <p><i>Non-binary people</i></p> <p>5. A majority of respondents, 62% of those answering the question, thought that Scotland should take action to recognise non-binary people.</p> <p>6. Of the options for taking recognition forward, the most frequently chosen option, selected by 75% of those answering the question, was Option 4 - full recognition using the proposed self-declaration system. Option 1 (changes to administrative forms) and Option 6 (amendment of the 2010 Act) also received a high level of support, being chosen by 68% and 62% respectively.</p> <p>7. On responses of organisations, we note that the EHRC suggest that while they "tAelcom e the Scottish Government's commitment to increasina recoanition of non-binary oeoole....there is need for detailed</p>

	<p><i>research to better understand the nature of their problems and identify appropriate solutions" .</i></p> <p><i>Other points and next steps</i></p> <p>8. Unusually, a majority of respondents were resident outwith Scotland (51%). 38% of respondents were resident in other parts of the UK and the remainder from outwith the UK.</p> <p>9. The analysis of responses indicates that 165 organisations or groups submitted responses , the majority of them based in Scotland.</p> <p>10. We anticipate publishing the analysis report at the end of August. We need to complete a review of individual responses before publication. We are currently working on the intersex consultation.</p> <p>11. The UK Government's consultation does not make a proposal to adopt self-declaration process, but instead asks respondents their views on a range of potential changes to the arrangements in England and Wales. Their consultation indicates that they do not propose to alter the existing exceptions in the 2010 Act which permit otherwise unlawful discrimination against a person with the protected characteristic of gender reassignment.</p>
WHAT THE STAKEHOLDER MAY SAY/ASK	When do you anticipate that the Scottish Government will announce its decisions on next steps in reforming the 2004 Act and introduce a Bill to Parliament?
KEY MESSAGE(S)	<ul style="list-style-type: none"> • The SG remains committed to reform of the 2004 Act. • We are considering the consultation responses before we make our decisions on the scheme we take forward.
SUGGESTED QUESTION(S)	Have you reached a decision on taking reform forward
CONTACT POINT	[Redacted] ext [Redacted]

⁶ The Yogyakarta Principles a set of non-binding international principles developed by human rights academics and others, relating to the application of human rights in the areas of sexual orientation and gender identity .

ANNEX A: BIOGRAPHIES

[Redacted]

ANNEX B – SWA SURVEY AND WORKSHOP OUTCOMES

1. The response reflects information obtained through:
 - A survey distributed to all 36 Women’s Aid groups throughout Scotland which asked about the options for children and young people under 18, spousal consent, areas of challenge for services like self-identification and any problems which had arisen as a result of trans-inclusion; and
 - A focus group with attendees at a regular meeting of SWA’s Supporting Women Forum seeking information about any issues or concerns around the 2004 Act or about trans-inclusion policy and practice.

2. There were 21 responses to the survey questions and the key feedback was that Women’s Aid services want to be accessible and inclusive and they support a self-identification model. The responses did note their lack of experience in supporting trans women and concerns around training and lack of confidence in ensuring non-discriminatory services.

3. Three key themes emerged from their internal consultation process:
 - Support for self-identification.
 - The need to place children’s voices and rights at the centre of any considerations for children and young people.
 - Removing any need for spousal consent as part of the gender recognition process.

4. The conclusion of the response from SWA to the consultation notes that:

“SWA and local Women’s Aid groups have collaborated with a range of organisations over the years to ensure that our services responses continue to be LGBT inclusive. We do not foresee that the proposed changes to adopt a self-identification model would significantly impact Women’s Aid existing practice, and we therefore can support proposals to move to that model, with the caveats above.”

5. The caveats are:
 - That the 2010 Act exemption remains unchanged and consequently, they have continued flexibility to adapt or refuse particular services to transgender individuals where the services finds this to be proportionate and necessary. “Possession of a gender recognition certificate does not circumvent in any way.....existing risk management procedures.”
 - That the 2010 Act exemption permitting employers “to choose to apply a genuine occupational requirement that a trans person cannot hold a particular job role”.
 - That appropriate solutions are identified to ensure adequate gender disaggregated data continues to be collected.

Family Law Team
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ANNEX C: POSSIBLE REASSURANCES

Those opposed to the proposals are making a wide variety of points, summarised in the table below along with possible reassurances.

No.	Point	Possible reassurance
1	Outright opposition (on religious grounds or radical feminist grounds or for other reasons) to the concept of gender recognition and to trans women being treated as women (and to trans men being treated as men)	<p>None.</p> <p>The logic of this argument is that the 2004 Act should just be repealed and nothing put in its place – so it would cease to be possible to obtain legal gender recognition in Scotland.</p> <p>That is not a feasible option on either policy or legal grounds.</p>
2.	Too easy to obtain a Gender Recognition Certificate	<p>Emphasise the need for the person making the application to supply a statutory declaration that they intend to live in their acquired gender until death (and that it is a criminal offence to make a false statutory declaration). The Scottish Trans Alliance are content with this approach.</p>
3	Concerns about impact on women's spaces in refuges, prisons etc.	<p>The UK Government have indicated that their consultation will make it clear that no amendments are planned to exceptions in the 2010 Act for women-only spaces (eg refuges). We could make it clear that we agree with this. (There is, though, one point here. The exceptions in the Equality Act permit for example, a service provider to treat a person with the protected characteristic of gender reassignment differently in relation to accessing a single sex service, where this is “a proportionate means of achieving a legitimate aim”. Whether such an exception can be applied where a trans person has a full GRC is unclear and we will be making it easier to obtain a full GRC.)</p> <p>There are risk assessments in place when people are housed in enclosed areas such as refuges and prisons.</p>
4	Safety of women (in bathrooms, changing areas, refuges, prisons etc).	<p>We could emphasise that attacks on women are criminal offences, regardless of whether or not the attacker is trans and/or holds a Gender Recognition Certificate.</p> <p>It is possible at the moment for an application to be made to the courts to quash a Gender Recognition</p>

		<p>Certificate on the grounds that it has been secured by fraud. The consultation noted that it would be appropriate in a self-declaratory system for the Scottish Ministers to apply to the courts to have a Scottish GRC quashed on the basis that it had been secured by fraud. The Scottish Trans Alliance are unlikely to have concerns about this.</p>
5	Impact on sport.	<p>There is also an exemption in the 2010 Act which allows sporting bodies to restrict the participation of trans people in sport if this is necessary to secure fair competition or the safety of competitors. We could make it clear that we agree this should remain in place.</p>
6	Impact on statistics.	<p>Establish a working group on sex and gender in statistics, with the papers and minutes being published in line with transparency.</p> <p>This working group could consider:</p> <ul style="list-style-type: none"> • Where there is a need for gender disaggregated data (eg to help inform policy on gender equality). • Where there is no such need. • Whether there are any issues arising in relation to the inclusion of trans people skewing data (eg any unexpected increases in the number of women being recorded as having committed sex offences). • What steps could be taken to include non-binary people in statistical returns (and, as indicated above, if there are areas where gender disaggregation of data could be discontinued).
7	Impact on freedom of speech	<p>We could emphasise the Scottish Government's commitment to freedom of expression. This would be welcomed by Women's Spaces in Scotland and the Scottish Trans Alliance would be happy with it as well.</p>
8	Impact on religious bodies	<p>The consultation noted that there is existing provision in the 2010 Act which provides that it is not unlawful for an approved celebrant to refuse to marry or register a civil partnership for a person the approved celebrant reasonably believes holds a full GRC under the 2004 Act. We went on to say that the SG was not seeking a change to the substance of this provision but it may need to be amended to add a reference to the new proposed Scottish legislation on obtaining legal gender recognition.</p>

		We could emphasise that the SG remains committed to the substance of this provision in the 2010 Act.
9	The partial Equality Impact Assessment [EQIA]	There has been some criticism by women's groups of the partial Equality Impact Assessment [EQIA] issued as part of the consultation. We will prepare a further draft of the EQIA, and run that past women's groups.

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August 2018