

Child Rights and Wellbeing Impact Assessment (CRWIA) for Gender Recognition Reform (Scotland) Bill

March 2022

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Introduction

As set out in Part 1 of the Children and Young People (Scotland) Act 2014, Scottish Ministers must keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements, and if they consider it appropriate to do so, take any of the steps identified by that consideration. Undertaking a CRWIA helps Ministers to fulfil this duty.

There are two key considerations when undertaking a CRWIA:

Participation: The United Nations Convention on the Right of the Child (UNCRC) sets out that children have the right to participate in decisions which affect them. When assessing the impacts of the policy/measure, you are recommended to consult with children and young people. You can do this directly, through organisations that represent children and young people or through using existing evidence on the views and experiences of children where relevant. Participation of children and young people should be meaningful and accessible.

Evidence: You are recommended to gather evidence when assessing the impact of the policy/measure on children's rights and also for measuring and evaluating the policy/measure. If you identify any gaps in the evidence base, you can discuss how you will address these with analytical colleagues.

1. Which articles of the UNCRC does this policy/measure impact on?

1.1. The following articles are considered to be impacted by the proposals in the Gender Recognition Reform (Scotland) Bill:

- **Article 2** – non-discrimination
- **Article 3** – best interests of the child
- **Article 5** – parental guidance and a child's evolving capacities
- **Article 12** – respect for the views of the child

1.2. The following articles are considered to be connected to the rights of children surrounding gender identities and transition more generally, but not particularly impacted by the proposals in the Gender Recognition Reform (Scotland) Bill:

- **Article 6** – life, survival and development
- **Article 8** – protection and preservation of identity
- **Article 13** – freedom of expression

2. What impact will your policy/measure have on children's rights?

2.1. The Scottish Government considers that this Bill will have a positive impact on children's rights.

2.2. Under the current process, 16- and 17-year-olds are not permitted to apply for gender recognition, despite being able to vote, get married and consent to surgical and medical procedures at that age. This has been identified as a negative impact on trans young people. Lowering the application age to 16 enables young people aged 16 and 17 to obtain legal recognition of their gender. This would align with a number of existing areas in Scotland where young people obtain rights at 16. It would enable young applicants to have consistent documentation of their gender at a transitional age and would likely reduce their experience of discrimination as they go onto further education or enter employment.

2.3. The Scottish Government carried out a consultation from 9 November 2017 to 1 March 2018¹ on proposals for reforming the GRA ("the 2017 consultation"), and a further consultation from 17 December 2019 to 17 March 2020 on a draft bill ("the 2019 consultation").² A majority (56%) of respondents were in favour of lowering the minimum legal age for gender recognition to 16, and there were a range of differing opinions expressed on the possible impact on children and children's rights. There is more detailed discussion on the two public consultations at section 6 below.

2.4. The Scottish Government does not consider there to be robust evidence that lowering the application age to 16 would be harmful to children or young people, but that there is substantial evidence that keeping the age limit at 18 can negatively impact the wellbeing of young trans people and their ability to live dignified lives free from discrimination.

2.5. Some respondents to the consultation suggested additional safeguards such as parental consent, or a role for the courts of additional guidance could be put in place for young applicants. The Scottish Government has considered various options in relation to mentions of safeguarding in the consultation responses. As the point of this Bill is to reduce barriers to accessing a GRC on the basis of self-determination in order to reduce the harm that is caused under the current system, it is not considered to be in the best interests of trans young people to simply replace the current system with new barriers or additional hurdles.

2.6. Under the oversight of the Registrar General, National Records of Scotland will routinely give additional and careful consideration of applications from 16 and 17 year-olds. They will provide support on the process, and where necessary will undertake sensitive investigation, and this could include face-to-face conversations with applicants. NRS officials already have considerable experience working with 16- and 17-year olds, for example in regards to marriage, and giving careful

¹ The 2017 consultation is available at: [Review of the Gender Recognition Act 2004: consultation](#).

² The 2019 consultation is available at [Gender Recognition Reform \(Scotland\) Bill: consultation](#)

consideration and support to ensure that young people are safeguarded while still having full access to their rights.

2.7. Every 16 or 17 year old who applies will be offered the option of a conversation with NRS to talk through the process.

2.8. In Ireland, applications by those aged 16/17 must be accompanied by a court order permitting their application to proceed. The court order is granted if there is parental consent and medical evidence about the young person's capacity and transition to their acquired gender. In November 2019, the Irish Minister published a response to the recommendations of a Review of the Act³ which included that the Government were minded to legislate to simplify the arrangements for those aged 16 and 17.

2.9. The Scottish Government is not aware of any robust evidence to suggest that any countries who have lowered the minimum legal age for gender recognition to 16 have experienced a negative impact on children's rights as a result.

3. Will there be different impacts on different groups of children and young people?

3.1. This Bill will affect children and young people aged 16 and 17, in that they will now be eligible to apply for legal gender recognition if they wish. The Bill will not change the current legal position for children and young people below 16, who will remain ineligible.

3.2. Some responses to both consultations which were broadly in support of lowering the age to 16 also stated that reasoning for doing so would also extend to children under 16. The Scottish Government's view is that there is a careful balance to be struck in relation to people under 16. On the one hand, we should treat children with dignity and respect, giving weight to their views and wishes in line with their individual capacity. On the other hand, we should ensure that children have the right protection and care.

3.3. The Scottish Government's view is that lowering the age of application below 16 without any further safeguards would take no account of the capacity of a child below that age to take decisions, nor their physical maturity and would allow a child below that age to apply irrespective of their capacity to understand the nature and consequences of their decision. The Scottish Government considers that the UNCRC Articles do not appear to confer a right on under 16s to obtain legal gender recognition, and that the proposed reform of lowering the minimum age to 16 strikes the right balance between furthering children and young people's rights while maintaining appropriate levels of protection and care.

3.4. The Scottish Government is also mindful that these proposals may not impact on all members of a given group equally, for example whilst there are positive

³ Published at [Gender Recognition Act 2015: Report to the Oireachtas under Section 7 of the Act](#)

impacts identified for some trans people aged 16 and 17 for others, including those who identify as non-binary, there may be no impact.

3.5. A 2014 research paper sets out the finding of a range of studies estimating the numbers of children and adults who might be trans or experience gender dysphoria.⁴ For example, it notes that in one study from the Netherlands, parents reported 1.4% of boys and 2% of girls want to be the opposite sex and that in another, for people aged 15 to 70 years old, 0.6% of men and 0.2% of women reported an ambivalent or incongruent gender identity.

3.6. If we assume that an average of the figures in paragraph 3.4 for boys and girls and men and women aged 15-70 , i.e. that 1.05% might be trans, is representative in Scotland, then extending gender recognition to those aged 16 and 17 could affect around 1,150 people aged 16 and 17 in Scotland.⁵ The UK Government's LGBT Survey published in July 2018 was open to respondents aged 16 and over. Of the 6,910 respondents who identified as trans men and women, 15.5% were aged 16 and 17.⁶ (However, compared to general UK population, young people were over-represented in this survey.)

3.7. A number of countries permit those younger than 18 to obtain legal gender recognition. The table in Appendix A contains information about other countries and territories which have processes for people aged under 18. There is also some data available about the numbers of under 18 year olds doing so. Numbers are generally low as a percentage of those otherwise obtaining recognition. The Republic of Ireland and Norway have similar populations to Scotland though they have differing recognition systems. Between September 2015 and December 2020, 14 young people aged 16 and 17 have obtained legal recognition in the Republic of Ireland.⁷

3.8. This is 2.4% of the total number of people who had changed their legal gender there (579) by the end of December 2020. There have been three revocations of GRCs made since September 2015 in the Republic of Ireland, all from applicants aged over 18 years. In Norway, which does not have a court process for children between 6 and 16, between 1 July 2016 and September 2016, nine children changed their legal gender. This is 3.6% of the total applicants in the same period (250).

⁴ Kuyper, L & Wijzen, C (2014) Gender Identities and Gender Dysphoria in the Netherlands, *Archives of Sexual Behaviour* (Volume 43 Issue 2)

⁵ As at mid-2020 there was an estimated Scottish population of 110,139 16 & 17 year olds (56,560 males and 53,579 females). Source: National Records of Scotland, 2021. Mid-2020 population estimates Scotland. Available at: [National Records of Scotland: Mid-2020 Population Estimates Scotland](#) in the data spreadsheet.

⁶ At: [National LGBT Survey: Research report](#) in Annex 3 Characteristics.

⁷ Government of Ireland, Department of Social Protection Gender Recognition Annual Report 2020, available at [Gender Recognition - Annual Reports](#)

4. If a negative impact is assessed for any area of rights or any group of children and young people, can you explain why this is necessary and proportionate? What options have you considered to modify the proposal, or mitigate the impact?

4.1. The Scottish Government does not consider there to be any negative impact on the rights of any children and young people as a result of the proposed reform.

5. How will the policy/measure give better or further effect to the implementation of the UNCRC in Scotland?

5.1. The proposed Bill will give children and young people aged 16 and 17 the ability to apply for legal gender recognition if they wish. This will give further effect to:

- Their Article 3 right to have their best interests prioritised;
- Their Article 5 right to have their increasing capacity to make their own choices recognised;
- Their Article 12 right to have their views, feelings and wishes considered and taken seriously.

6. How have you consulted with relevant stakeholders, including involving children and young people in the development of the policy/measure?

6.1. The Scottish Government carried out a consultation from 9 November 2017 to 1 March 2018⁸ on proposals for reforming the GRA (“the 2017 consultation”), and a further consultation from 17 December 2019 to 17 March 2020 on a draft bill (“the 2019 consultation”).⁹

6.2. In addition to the two consultations, the Cabinet Secretary for Social Justice, Housing and Local Government met members of LGBT Youth Scotland in December 2021. Scottish Government officials met members of LGBT Youth Scotland groups aged 13 and over in 2017. The Cabinet Secretary for Social Security and Older People has met with members of the LGBT Youth Commission on Gender Recognition and the Minister for Older People and Equalities also met a group of young people from LGBT Youth Scotland. The groups expressed their strong view that a person should be able to transition and live with documentation consistent in disclosing their acquired gender before they have to take their qualifications or go to university. They felt that this would better support their rights not to be discriminated against, for example, at school. A high proportion expressed the desire for their parents (or other people with responsibility for them) to be involved and supporting them through the recognition process. However, they were also of the view that legal gender recognition should be made available to people younger than 16 and for those who identify in a non-binary way and not as men and women, boys and girls.

⁸ The 2017 consultation is available at: [Review of the Gender Recognition Act 2004: consultation](#).

⁹ The 2019 consultation is available at [Gender Recognition Reform \(Scotland\) Bill: consultation](#)

6.3. Prior to publication of the 2017 consultation, the Scottish Government met:

- Members of LGBT Youth Scotland¹⁰ groups aged 13 and over; and
- Gender identity specialists from the Sandyford Clinic,¹¹
- Gender identity specialists from the Chalmers Centre in Edinburgh;¹² and
- a representative from the support group TransparenTsees,¹³ which supports parents and family members as well as children and young people.

The 2017 consultation: views on proposals

6.4. The 2017 consultation sought views of respondents on reducing the age at which gender recognition can be obtained from 18 to 16, on whether gender recognition should be extended to those under 16 and if so, what the best option was for doing so.

6.5. A majority of respondents to the 2017 consultation, (61% of those answering the question), agreed that people aged 16 and 17 should be able to apply for and obtain legal recognition of their acquired gender.

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

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

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

¹⁰ At: [LGBT Youth Scotland](#).

¹¹ At: [Sandyford - Gender Services](#)

¹² At: [Lothian Sexual Health](#)

¹³ TransparenTsees was founded in 2013 by a parent. In 2016, three other autonomous groups were established in Edinburgh, Perth and Elgin. TransparenTsees offers email and telephone support as well as the opportunity for parents and other family members to meet each other.

experience. Further points included that gay or lesbian young people may see themselves as trans rather than recognising and accepting their sexuality.

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

The 2017 consultation: views on the draft CRWIA for that consultation

6.10. Specifically on the draft CRWIA published with the 2017 consultation, the independent analysis of the consultation responses noted the following points made by consultation respondents:

- There is no consideration of the impact on children who are not trans of being in single sex spaces with a child who is trans.
- That Article 3(3), which covers the care or protection of children, particularly in the areas of safety and health, may be relevant in relation to health advice and treatment provided to trans children and to children concerned about their gender identity.
- On Article 5, some respondents considered that the right to gender reassignment is not recognised in the UNCRC.
- Article 13, on children's right to freedom of expression, could be an issue if children are considered transphobic if they for example questioned a trans child or professionals may feel they are transphobic if they were to offer an alternative view.
- Article 17, which covers the important function performed by the mass media and ensuring that children have access to information and material from a diversity of national and international sources, may be relevant in relation to trans children and there may be actions the Scottish Government could take in relation to the supply of information to meet the needs of individual trans children and to meet the wider needs of children.

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

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

The 2019 consultation: views on the draft Bill.

6.13. The 2019 consultation sought views of respondents on whether the minimum age for applying for legal gender recognition should be reduced to 16.

6.14. Just over half of the 9,401 respondents (56%) answered 'yes' when asked whether the minimum age at which a person can apply for legal gender recognition should be reduced from 18 to 16, while 42% thought it should not and 2% did not know. This comprised 54% of the 107 organisations and 56% of the 9,294 individuals who responded. However, based on the comments made, it appears that some respondents who answered 'yes' did so meaning that they wished to make a comment rather than to indicate support for the proposal. Likewise, based on their comments to other questions, some respondents who answered 'no' to this question may have done so to express that they did not want to make a comment.

6.15. Respondents who identified themselves as resident in Scotland were evenly divided, with 49% agreeing that the age should be reduced to 16, 49% disagreeing and 3% saying that they did not know. The balance of views among organisations in Scotland was similar to organisations as a whole: of those in Scotland, 55% agreed and 39% disagreed.

6.16. Arguments in favour of the proposal to reduce the minimum age for legal gender recognition to 16 were similar to those raised in the 2017 consultation, including that a young person in Scotland is legally an adult at 16 and lowering the age would bring gender recognition in line with many others rights exercised at 16 (e.g. getting married, joining the army, gaining employment, voting in elections, consenting to medical treatment and surgery). Various positive impacts on mental health were noted in support of lowering the age to 16, including alleviate dysphoria and distress, improving wellbeing and quality of life, and reducing depression and suicide rates. Conversely, making younger people wait longer to have their gender legally recognised was suggested to be cruel and unnecessary, which could have negative impacts on mental health. Reasoning included the fact that children and young people are widely held to be credible authorities on their own lives, and their opinions or wishes are properly taken into account for most decision-making processes that involve or impact them. Supportive respondents argued that lowering the age to 16 would enable young trans people to have consistent documentation of their gender at a transitional age, and would likely reduce their experience of discrimination as they go onto further education or enter employment.

6.17. Among those opposed to the proposal to reduce the minimum age for legal gender recognition to 16, the majority made it clear that they did not think the age should be reduced at all. Some respondents stated a view that a 16-year-old is still a child, and some cited a the UNCRC as defining children as those aged under 18 years old. In support of the argument, some respondents cited a lack of emotional or life experience among 16 year olds, and referenced evidence suggesting that the brain does not mature fully until at least 25. It was argued that many of the rights exercised at 16 are reversible in a way that legal gender recognition does not appear to be. Some respondents had concerns that removing the need for a medical diagnosis of gender dysphoria could leave children without proper support for making the decision to seek legal gender recognition.

The 2019 consultation: views on the draft CRWIA for that consultation

6.18. The independent analysis of the 2019 consultation noted views on the accompanying CRWIA.

6.19. Respondents who were broadly supportive of the draft bill stated that the evidence presented in the draft CRWIA was robust and helpful, and that extension of legal gender recognition to 16- and 17-year olds was a reasoned response to available evidence. It was contended that the rights based arguments for lowering the age to 16 also apply to children under the age of 16, and that the impact on under 16s had not been properly considered.¹⁴ Comments were raised that the CRWIA focused on children experiencing gender incongruence and whether that would extend to adulthood, but not on children and young people who are confident of their gender. Challenges were made to the assertion that children and young people may not be 'clear' about gender or sexuality, and that furthermore sexuality should not be considered in relation to legal recognition of gender.

6.20. Respondents who were broadly opposed to a statutory declaration-based system often argued that the CRWIA does not consider the impact of the proposals on children other than those seeking to change their gender legally (i.e. all children), nor had there been consultation of children who are not trans. Concerns were also raised that the CRWIA downplays parental rights, and that the Scottish Government considers that the impact on and wellbeing of all children has been properly taken into account through the extensive public consultation process. Multiple organisations that responded to the consultation in support of reform and lowering the age to 16 are involved in the rights and wellbeing of all children and young people, not just trans children, and have provided responses in line with that remit. Examples of this include the charity Children in Scotland, the Scottish Children's Reporter Administration, the Scottish Human Rights Commission, and NUS Scotland.¹⁵

Meetings with groups/organisations after the publication of the 2017 consultation¹⁶

6.21. Since the 2017 consultation and during the 2019 consultation, the Cabinet Secretary for Social Security and Older People met with a range of groups to gather further information and evidence:¹⁷

- Women's Spaces in Scotland;
- CARE for Scotland;
- The Free Church of Scotland;

¹⁴ Commentary on Scottish Government response to this is mentioned above in section 3.

¹⁵ Responses to the 2019 consultation from these example organisations are published at [Gender Recognition Reform \(Scotland\) Bill consultation](#)

¹⁶ Responses to the 2017 consultation from organisations are published in alphabetical order at [Review of GRA - Responses from Organisations - Published Responses from Organisations](#), and responses to the 2019 consultation from organisations are published in alphabetical order at [Gender Recognition Reform \(Scotland\) Bill consultation](#)

¹⁷ In addition, a meeting was scheduled on a number of occasions with the group Women and Girls in Scotland who were unable to attend: [Women and Girls in Scotland](#). Their views were instead set out in correspondence.

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

6.22. In addition, Scottish Government officials met with:

- The Scottish Catholic Education Service;
- The Catholic Parliamentary Office of the Bishops' Conference of Scotland;
- MurrayBlackburnMackenzie.

6.23. The Cabinet Secretary for Social Justice, Housing and Local Government has met with:

- Stonewall Scotland
- Equality Network and Scottish Trans
- LGBT Youth
- LGBT Health and Wellbeing
- LGB Alliance
- For Women Scotland
- Fair Play for Women
- Women Voting With Our Feet
- Murray Blackburn Mackenzie
- Equality and Human Rights Commission
- Woman's Place UK
- Faith and Belief Representatives

6.24. In addition, Scottish Government officials met with:

- National Records of Scotland
- Children and Young People's Commissioner
- Scottish Civil Justice Council
- Engender
- Scottish Women's Aid
- Transgender Trend
- Women Speak Scotland

Correspondence

6.25. The points made in correspondence with Scottish Government concerning access to gender recognition for children and young people have also been considered. Such correspondence reflected the range of views expressed by respondents to the 2017 and 2019 consultations, as highlighted at paragraph 6.3 – 6.12 above.

7. What evidence have you used to inform your assessment?

7.1. The Scottish Government has decided not to seek to extend gender recognition to those younger than 16. The draft CRWIA published with the 2017 consultation set out research evidence the Scottish Government had identified and which has been considered as part of decisions made in relation to the Bill provisions.¹⁸

7.2 The Gender Identity Development Service (“GIDs”), a specialised clinic for young people presenting with difficulties with their gender identity commissioned by NHS England has published details of the ages of those children and young people who are referred to the GIDs between 2010-11 and 2020-21 in England, Wales and the Republic of Ireland.¹⁹ Of the 2,383 referrals in 2020-21, 91% of referrals (2,188) were for those aged 11 to 17, with a peak among those aged 15 years (539 referrals). The average age of referrals to the Young Person’s Gender Service at Sandyford, Glasgow was 13.8 years old in 2017.²⁰

7.3. Evidence indicates that there may be a difference of experience between boys and girls. The GIDs has published statistics on the numbers of girls and boys who are referred to them each year. In 2020/21, the most recent year for which there is complete data, 1,512 (63%) of the young people referred were registered as female at birth, and 704 (30%) were registered as male (167 was unknown).²¹

7.4. There is evidence suggesting that trans young people are more than twice as likely as non-trans people to be diagnosed with depression (50.6% compared to 20.6%) and with anxiety (26.7% compared to 10%).²² There is evidence that this is not an inherent feature of their being transgender.²³ There is also some evidence that transitioning to living in their preferred gender and being supported with gender

¹⁸ The draft CRWIA published as part of the 2017 consultation is available at: [Review of the Gender Recognition Act 2004: consultation](#).

¹⁹ At: [Gender Identity Development Services - Number of Referrals](#).

²⁰ The Scottish Public Health Network, at: [Scottish Public Health Network \(ScotPHN\) - Health Care Needs Assessment of Gender Identity Services](#), page 46

²¹ At: [Gender Identity Development Services - Number of Referrals](#).

²² Mental Health of Transgender Youth in Care at and Adolescent Urban Community Health Centre: A Matched Retrospective Cohort Study, Sari L. Reisner and Ors, Journal of Adolescent Health March 2015 Vol 56 Issue 3 pages 274-279 at: [Mental health of transgender youth in care at an adolescent urban community health center: A matched retrospective cohort study](#)

²³ Rebeca Robles et al “Removing transgender identity from the classification of mental disorders: a Mexican field study for ICD-11” [Removing transgender identity from the classification of mental disorders: a Mexican field study for ICD-11](#)

confirming medical interventions may help improve mental health, in many cases reaching levels experienced in the general population.²⁴

7.5. The independent analysis report for the responses to the 2017 consultation²⁵ notes that a small number of respondents highlighted that a higher proportion of young people referred to gender identity clinics were autistic.²⁶ The draft EQIA at Annex J of the 2017 consultation analysis report considers this more generally. Likewise, in the 2019 consultation, respondents broadly opposed to a statutory declaration-based system raised concerns about the number of autistic people presenting as trans. However, those broadly in support of a statutory declaration-based system, questioned the relevance of evidence suggesting a higher prevalence of autistic spectrum disorders in the trans population.

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

7.7. A considerable volume of research and evidence was referred to in responses to both the 2017 and 2019 consultations. This included anecdotal evidence, and studies undertaken by individuals or groups with a specific view. In considering all available evidence carefully, the Scottish Government has attached more weight to research that has been peer reviewed over speculative or anecdotal evidence. Care was also taken not to overly rely on research carried out by major stakeholders on either side of the debate in order to maintain balance, and preference was given to evidence from independent bodies. Views from major stakeholders and organisations with specific views or interests were still considered in the form of their consultation responses, as mentioned in section 6.

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

7.8. As outlined above in section 6, Scottish Ministers and Scottish Government officials have met extensively with LGBTQI+ youth groups.

7.9. LGBT Youth Scotland gave evidence to the Women and Equality Select Committee inquiry into Transgender Equality which set out the views of trans people aged under 18²⁷ about the benefits of legal gender recognition in terms of reducing discrimination and improving their mental health. LGBT Youth Scotland also

²⁴ Dhejne C et al "Mental Health and gender dysphoria: A review of the literature (2016)

²⁵ At: [Review of the Gender Recognition Act 2004: consultation analysis](#), page 51

²⁶ The GIDs website [Gender Identity Development Service - Evidence Base](#) indicates that there seems to be a higher prevalence of autistic spectrum conditions in young people diagnosed with gender dysphoria than in the general population, but also notes that the reasons why this is the case are still unknown.

²⁷ At: [Written evidence submitted by LGBT Youth Scotland to the Transgender Equality Inquiry](#)

responded to the 2017 consultation and 2019 consultation and set out the views of individuals in their response^{28, 29} as mentioned in section 6 above.

7.10. The evidence suggests that:

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

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

8. How will the impact of the policy/measure be monitored?

8.1. There is provision in the Bill which would require annual reports to be made by NRS on the operation of the new system. We anticipate that this would be supplemented by further measures to capture the lived experiences of how the new system functioned for people, and would include monitoring on the wellbeing of children and young people. NRS will undertake satisfaction surveys with people who apply for legal gender recognition once reforms are in place, and this would include 16- and 17-year old applicants. The Scottish Government also carries out social research in the form of the Scottish Social Attitudes Survey which could be used to capture public opinion on the effects of the policy, including its impact on children and young people. The Scottish Government will also continue to hold regular meetings with stakeholder groups to hear feedback and views on the impact of the policy.

9. How will you communicate to children and young people the impact of the policy/measure on their rights?

9.1. The Cabinet Secretary for Social Justice, Housing and Local Government as well as Scottish Government officials will continue to meet with representatives from youth stakeholder groups, and will communicate the impact of the Bill.

9.2. NRS will be providing specific guidance for 16- and 17-year old applicants who would like to apply for or know more about legal gender recognition (as mentioned in section 2), and the Scottish Government will revisit and update guidance on trans issues for schools in line with the policy change.

²⁸ At: [Response to Review of the Gender Recognition Act 2004](#).

²⁹ [Response to Gender Recognition Consultation Scotland](#)

9.3. The Scottish Government considers that the rights of children and young people who are not trans will not be affected by this policy, nor will the rights of children and young people under the age of 16. This policy will impact on children and young people aged 16 or 17 who wish to apply for legal gender recognition. The Scottish Government considers those children and young people to be capable of fully understanding the impact of this policy and making their own decisions on it from the available information – therefore a separate child-friendly CRWIA is not considered necessary.

10. Sign & Date

Deputy Director Signature & Date of Sign Off:

Denise Swanson

Deputy Director

Civil Law and Legal System Division

28/02/2022

Appendix A- CRWIA - Evidence Base

Scottish Government's Understanding of Legal Gender Recognition Processes for Children in Other Countries

Country/territory	Minimum age	Court process	Administrative process	Who can apply and evidence required
Argentina	None	Only where disagreement.	National Registry of Persons' office	Application by person's legal representatives but must be express consent of person under 18. If the legal representatives cannot agree, application is made through a court.
Australian Capital Territory ³⁰	None	-	Registrar-General	For under 18s, those with parental responsibility must apply. They must declare that application is in child's best interests. In addition, a doctor or psychologist must confirm the child has had appropriate clinical treatment for alteration of their sex ³¹ .
Belgium	16	-	Civil Registrar	Persons aged 16 and 17 may request the civil registrar to change their

³⁰ Births, Deaths and Marriages Registration Act 1997, section 24(2).

³¹ At the URL below [Access Canberra](#)

Country/territory	Minimum age	Court process	Administrative process	Who can apply and evidence required
				recorded sex, provided there is parental authorisation and after consultation with a psychiatrist.
British Columbia ³²	None	-	Vital Statistics Agency	People aged 18 and under apply themselves. Their legal guardians must consent and they must also enclose a statutory declaration from a physician or psychologist confirming their gender identity.
Chile	14	Yes		An individual aged 14 to 17 can apply to the family court. The court will consider evidence, including psychological or psychosocial reports.
France	16	Yes	-	Emancipated minors (those aged 16 and above who have been emancipated by an order of the guardianship judge) may apply using the same court based

³² Information on the process is at [Instructions for the Application for Change of Gender Designation](#). The legislation is the Vital Statistics Act, at section 27 here - [Vital Statistics Act](#).

Country/territory	Minimum age	Court process	Administrative process	Who can apply and evidence required
				procedure as a person of 18.
Republic of Ireland ³³	16	Yes- for 16 and 17 year olds an order of court must be submitted with application.	Client Identity Services of Department of Social Protection.	Court must be satisfied that applicant's parents or legal representatives consent. Two medical reports must confirm the applicant's capacity and that they have transitioned or are transitioning to live in their preferred gender. ³⁴
Malta ³⁵	None	Yes		Parents apply to the Civil Court of Registry who must 1. ensure that the best interests of the child are the paramount consideration and 2. give due weight to the child's views based on their age and maturity
New Zealand ³⁶	18, (those aged 16 and over can apply if they	Yes		The person must demonstrate they:

³³ At [Gender Recognition Act 2015](#)

³⁴ In November 2019, the Irish Minister published a response to the recommendations of a Review of the Act which included that the Government were minded to legislate to simplify the arrangements for those aged 16 and 17. The response is at [Gender Recognition Act 2015: Report to the Oireachtas under Section 7 of the Act](#)

³⁵ At [Gender Identity, Gender Expression and Sex Characteristics Act](#)

³⁶ At [Information for Transgender Applicants.](#)

Country/territory	Minimum age	Court process	Administrative process	Who can apply and evidence required
	are married or in civil union or de facto relationship. ³⁷⁾			1. have assumed the gender identity of person of the nominated sex; 2. have undergone appropriate medical treatment; and 3. will maintain a gender identity of a person of the nominated sex. ³⁸
Norway	6 ³⁹		Tax office- National Population Register	Application by both child seeking recognition <u>and</u> those with parental responsibilities. If parents don't agree, application is to the County Governor of Oslo and Akershus.

³⁷ At [Births, Deaths, Marriages, and Relationships Registration Act 1995](#) and [Youthlaw - Legal Ages](#) .

³⁸ New Zealand passed a Bill to simplify the process of legal gender recognition in December 2021, which includes removing the need to have undergone medical treatment. 16- and 17-year olds will be able to apply with parental consent. Details on the Bill can be found at [The Births, Deaths, Marriages, and Relationships Registration Bill](#)

³⁹ Unless the child has an intersex condition/variation in sex characteristics, in which case an application can be made notwithstanding they are under 6 years of age.



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