

Child Rights and Wellbeing Screening Sheet for Gender Recognition Reform (Scotland) Bill

March 2022



Scottish Government
Riaghaltas na h-Alba
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1. Brief Summary

The Gender Recognition Reform (Scotland) Bill, would, if enacted, introduce reformed arrangements for trans people aged 16 and over who were born or adopted in Scotland or who are ordinarily resident here to apply for legal gender recognition. The reformed arrangements would replace some of the current arrangements under the Gender Recognition Act 2004 (“the GRA”) for Scotland.

“Gender recognition law” is the area of the law which allows a person to be legally recognised in a sex which is different to the one in which they were recorded at birth.

The Scottish Government aims to create a more equal Scotland where people and communities are valued, included and empowered and which protects and promotes equality, inclusion and human rights. The National Performance Framework¹ sets a national outcome for human rights: “we respect, protect and fulfil human rights and live free from discrimination”. In line with this, the policy of the Bill is to improve the process for those applying for legal gender recognition as the current system can have an adverse impact on applicants, due to the requirement for a medical diagnosis and supporting evidence and the intrusive and lengthy process.

The general objectives of the Bill are to remove the need for applicants to provide medical evidence or evidence (apart from a statutory declaration) that they are living in the acquired gender, and to remove the need to apply to a U.K. tribunal, the Gender Recognition Panel. The Bill provides that the minimum age of applicants would be 16. This is in line with the age at which children and young people acquire a number of rights, such as the right to legally marry or civilly partner without parental consent. The current inability for 16- and 17-year olds to obtain a GRC has been identified as having a negative impact on trans young people.

The Scottish Government carried out a consultation from 9 November 2017 to 1 March 2018² 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”).³

Chapter 7 of the independent analysis of 2017 consultation responses recorded comments made by respondents on the draft Impact Assessments included with the 2017 consultation.⁴

The Scottish Government took account of these comments of respondents, and those raised by stakeholders and correspondences after the 2017 consultation, when reaching its decision not to extend legal gender recognition to those under 16 in the Bill and in the light of the mixed evidence highlighted in the draft Child Rights and Wellbeing Impact Assessment published as part of the 2017 consultation.⁵

¹ [National Performance Framework - National Outcomes - Human Right](#)

² The 2017 consultation is available at: [Review of the Gender Recognition Act 2004: consultation](#).

³ The 2019 consultation is available at [Gender Recognition Reform \(Scotland\) Bill: consultation](#)

⁴ The analysis of responses is at [Review of the Gender Recognition Act 2004: consultation analysis](#).

⁵ At: [Review of the Gender Recognition Act 2004: consultation](#).

Scottish Government commissioned an independent analysis of 2019 consultation responses on the draft Bill⁶, and this CRWIA takes account of responses from both consultations.

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

If the Bill is enacted and reduces the minimum age at which a person can apply for gender recognition in Scotland from 18 to 16, this will affect people aged 16 and 17. The Bill does not make provision for those younger than 16 (and nor does the GRA currently).

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

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

4. Which groups of children and young people will be affected?

The children primarily affected by the provisions of the Bill are those aged 16 and 17 who experience issues around their gender identity, including those who would become entitled to apply for legal gender recognition under the Bill provisions, where they satisfy the required criteria.

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

5. Is a Children’s Rights and Wellbeing Impact Assessment required?

Yes.

6. Sign & Date

Deputy Director Signature & Date of Sign Off:
Denise Swanson
Deputy Director
Civil Law and Legal System Division

28/02/2022

⁶ At [Gender Recognition Reform \(Scotland\) Bill: consultation analysis](#)



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The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80435-170-3 (web only)

Published by The Scottish Government, March 2022

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1040550 (03/22)

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