

# **Gender Recognition Reform (Scotland) Bill**

## **Equality Impact Assessment**

**March 2022**



**Scottish Government**  
Riaghaltas na h-Alba  
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## Equality Impact Assessment Record

<b>Title of policy/ practice/ strategy/ legislation etc.</b>	The Gender Recognition Reform (Scotland) Bill
<b>Minister</b>	Cabinet Secretary for Social Justice, Housing and Local Government
<b>Directorate: Division: Team</b>	Civil Law and Legal System
<b>Is this new policy or revision to an existing policy?</b>	Revision to existing policy (Gender Recognition Act 2004)

### Purpose of this Equality Impact Assessment (EQIA)

1. In line with legal duties when proposing a new or revised policy, including Bills, the Scottish Government has prepared this EQIA. The aim of this EQIA is to assess any impacts of applying a proposed new or revised policy or practice against the needs relevant to the Scottish Government's duty to meet the Public Sector Equality Duty (PSED). It considers the impact of this policy proposal on people with one or more of the protected characteristics listed in the Equality Act 2010. In line with good practice this EQIA will be kept under review.

2. Reform of the Gender Recognition Act 2004 (the GRA) would contribute to the Scottish Government's National Outcome of: "We respect, protect and fulfil human rights and live free from discrimination".<sup>1</sup> It would do this by improving the process for applying for legal gender recognition, as the current process can have an adverse impact on applicants due to the requirement for a medical diagnosis and supporting evidence, and the intrusive and lengthy process. In doing this, the Scottish Government remains committed to upholding the rights and protections that women and girls currently have under the 2010 Act.

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<sup>1</sup> Information on Scotland's National Performance Framework is at [National Performance Framework \(nationalperformance.gov.scot\)](https://nationalperformance.gov.scot)

3. In developing this policy the Scottish Government is mindful of the three needs of the PSED (eliminate unlawful discrimination, harassment and victimisation; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not) and recognises that while the measures may positively impact on one or more of the protected characteristics, they may have a negative impact on other protected characteristics.<sup>2</sup> 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 impacts identified for some trans people for others, including those who identify as non-binary, there may be no impact. Where any negative impacts have been identified, we have sought to mitigate/eliminate these. We are also mindful that the equality duty is not just about negating or mitigating negative impacts, as we also have a positive duty to promote equality.

## Consultation

4. The Scottish Government carried out a consultation from 9 November 2017 to 1 March 2018 on proposals for reforming the GRA.<sup>3</sup> A second consultation was carried out between December 2019 and March 2020, seeking responses on a draft Bill.<sup>4</sup> Comments made by consultees on the draft Impact Assessments included with both consultations were recorded in two independent analyses.<sup>5</sup> The Scottish Government has taken account of these comments when preparing this EQIA.<sup>6</sup>

5. The Bill amends the GRA to introduce a new process for applying for legal gender recognition in Scotland, and new criteria which require to be satisfied by applicants to obtain a Gender Recognition Certificate (GRC). This reflects that although the Bill changes the process by which legal gender recognition can be obtained and the criteria, it does not change the effects of a GRC and the rights and responsibilities which a person has on obtaining legal gender recognition. Applicants must either have been born in Scotland or be ordinarily resident here.

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<sup>2</sup> Section 4 of the Equality Act 2010: [Equality Act 2010 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2010/154/section/4)

<sup>3</sup> The first consultation and related documents are at [Review of the Gender Recognition Act 2004 - Scottish Government - Citizen Space \(consult.gov.scot\)](https://www.consult.gov.scot/consultations/2017-2018/gender-recognition-reform)

<sup>4</sup> The second consultation and related documents are at [Gender Recognition Reform \(Scotland\) Bill: consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/consultations/2019-2020/gender-recognition-reform)

<sup>5</sup> The analysis of the 2017/2018 consultation is at [Review of the Gender Recognition Act 2004: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/consultations/2017-2018/gender-recognition-reform/analysis) and the analysis of the 2019/2020 consultation is at [Gender Recognition Reform \(Scotland\) Bill: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/consultations/2019-2020/gender-recognition-reform/analysis)

<sup>6</sup> Responses from organisations to the 2017 consultation are [Gender Recognition Reform \(Scotland\) Bill consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/consultations/2017-2018/gender-recognition-reform/organisations) and to the 2019 consultation are at [Gender Recognition Reform \(Scotland\) Bill consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/consultations/2019-2020/gender-recognition-reform/organisations)

6. There are a number of policy changes since the 2017 consultation. In particular:
- The Scottish Government has decided not to extend legal gender recognition to those under 16. In taking this decision, the Scottish Government has taken account of the mixed evidence in the Child Rights and Wellbeing Impact Assessment (CRWIA) on the effect of obtaining legal gender recognition of those under 16. The Scottish Government does consider that those uncertain of their gender identity should be supported. The second consultation gathered views on whether the minimum age for applying for legal gender recognition should be reduced from 18 to 16.
  - The Scottish Government has decided not to extend legal gender recognition at this stage to non-binary people. The Scottish Government considers that legal recognition of non-binary people would raise a number of issues in relation to areas such as registration, data, rights and responsibilities, changes to legislation, service delivery and costs. The Scottish Government convened a Working Group on Non-Binary Equality in 2021.<sup>7</sup>
7. Responses to the 2019 consultation, including comments on the draft EQIA, referred to potential consequences for women as a consequence of the reform of the GRA. Chapter 5 of the consultation discusses the potential consequences for women and the section of this EQIA which considers the protected characteristic of “sex” also discusses the potential consequences for women of GRA reform. In particular, reference is made to various exceptions in the Equality Act 2010 (“the 2010 Act”) which allow trans people to be excluded in specified circumstances where this is proportionate and is to achieve a legitimate aim.

### **Meetings with groups/organisations**

8. Subsequent to the 2017 consultation and during the 2019 consultation, the then Cabinet Secretary for Social Security and Older People met with a range of groups to gather further information and evidence.<sup>8</sup>
- Women’s Spaces in Scotland;
  - CARE for Scotland;
  - The Free Church of Scotland;

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<sup>7</sup> [Non-Binary Working Group - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>8</sup> In addition, a meeting was scheduled on a number of occasions with the group Women and Girls in Scotland who were unable to attend: [About - Women and Girls Scotland \(wgscotland.org.uk\)](http://www.womenandgirls.org.uk). 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.

9. In addition, during this period Scottish Government officials met with:

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

10. After the conclusion of the 2019 consultation, the Cabinet Secretary for Social Justice, Housing and Local Government has met with:

- Stonewall Scotland
- Equality Network and Scottish Trans



## **Stage 1: Framing**

### **Results of framing exercise**

In line with usual practice, Scottish Government officials held an internal framing meeting. This is designed to ensure that officials in addition to those leading in a policy area consider at an early stage points which then need to be considered in more detail in the EQIA.

The exercise identified that the following protected characteristics were particularly affected by this Bill, and so were particularly relevant for this EQIA (other protected characteristics under the Equality Act were however also fully considered):

- Disability (including reduced capacity);
- Age (not just young people but older people);
- Gender reassignment;
- Sex;
- Religion/belief.

## Stage 2: Data and evidence gathering, involvement and consultation

There is limited evidence about the numbers of trans people in Scotland and their experiences.

Characteristic	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and steps taken
Age	<p>1. The draft Child Rights and Wellbeing Impact Assessment sets out the evidence gathered in relation to people under 18.</p> <p>2. In 2005/06, 1,181 full GRCs were granted across the UK (there was pent up demand for legal gender recognition in the early period after the GRP was established). Of these, 348 (29%) were issued to people aged 56 and over (born up to 1948). The number of GRCs issued began to plateau in 2007/2008 with 392 people were issued with full GRCs. Of these, 67 (17%) were aged 58 and over.<sup>10</sup> The latest available data shows that, in 2020/21, 427 people were issued with full GRCs, with 82 (19%) issued to people aged 60 and over.</p> <p>3. A report about the mental health and wellbeing of trans people reported that of the 889 trans people surveyed in 2012, the average age at which participants began</p>	<p>1. <a href="http://www.scotland.gov.uk/Publications/Recent">http://www.scotland.gov.uk/Publications/Recent</a></p> <p>2. <a href="http://www.gov.uk">Tribunal Statistics Quarterly: April to June 2021 - GOV.UK (www.gov.uk)</a></p> <p>3. Trans Mental Health and Emotional Wellbeing Study 2012, Jay McNeil, Louis</p>	<p>The following evidence gaps have been identified:</p> <ul style="list-style-type: none"> <li>• Whilst the Tribunals and Gender Recognition statistics show the number of GRCs issued disaggregated by year of birth, there are no available age-disaggregated published figures for Scotland only.</li> <li>• More up-to-date research on the mental health and wellbeing of younger trans people would be beneficial.</li> <li>• Whilst the in-depth research carried by Siverskog in Sweden adds to understanding of older people's experiences of transitioning, this is a small-scale study and it is</li> </ul>

<sup>10</sup> At [Tribunal Statistics Quarterly: April to June 2019 - GOV.UK \(www.gov.uk\)](http://www.gov.uk)- see Main Tables at Table GRP 4. Note that data is disaggregated by year of birth meaning that a direct comparison by age over time is not possible.

Characteristic	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and steps taken
	<p>living part-time in their felt gender was 23 (based on 487 who answered the question). Of those who had lived permanently or occasionally as a gender different to the sex assigned at birth, the average age at which they began living part-time in their gender was 23 and the average age they began living full-time was 31 (based on 545 people answering the question).<sup>11</sup> This was a self-selecting sample, with the survey distributed primarily through word-of-mouth and through a number of trans groups over a three month period between mid-April 2012 and mid-July 2012.</p> <p>4. A report published by the Scottish Public Health Network in 2017 reported that the average age of referral to Scottish Gender Identity Clinics was 26 years in adults and 14 years for young people.</p> <p>5. A small-scale qualitative study (life-story interviews) with 6 older trans people in Sweden (aged 62-78) highlighted some additional age-related difficulties that older trans people might experience with</p>	<p>Bailey, Sonja Ellis, James Morton &amp; Maeve Regan.</p> <p>4. The Scottish Public Health Network Report on the Health Care Needs Assessment of Gender Identity Services</p> <p>5. A. Siverskog, 2015. Ageing Bodies that Matter: Age, Gender and Embodiment in Older Transgender People's Life</p>	<p>unclear the extent to which the findings are representative of experiences in Scotland.</p> <p>Scotland's Census 2022 will include a voluntary question asking whether individuals consider themselves to be trans or have a trans history. This data will allow for up-to-date estimation of the proportion of the Scottish population who identify as trans.<sup>12</sup> Date of birth will also be gathered in the Census 2022, which could allow for disaggregation of trans status by age (subject to sufficient sample sizes to enable robust analysis).</p>

<sup>11</sup> At [trans\\_mh\\_study.pdf \(scottishtrans.org\)](https://scottishtrans.org/trans_mh_study.pdf)

<sup>12</sup> [Scotland's Census 2022 question set | Scotland's Census \(scotlandscensus.gov.uk\)](https://scotlandscensus.gov.uk/question-set)



Characteristic	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and steps taken
	<p>sentencing young people should take into account that the brain does not mature until 25.</p> <p>7. Some respondents to the 2019 consultation who were broadly in support identified potential benefits for older people who have been living in their acquired gender for a longer period and may not have access to the evidence required to apply to the GRP, and those who are nearly the end of their life who would be able to ensure that their gender is correctly recorded on their death certificate.</p>		
<b>Disability</b>	<p>1. In a self-selecting survey of 889 trans people carried out in 2012, over half (58%) (of the self-selecting sample) indicated that they had a disability or chronic health condition and 10% reported that their current work situation was 'permanently/long-term sick or disabled'.<sup>13</sup> Having a long-term disability was identified as an indirect reason for self-harming among some respondents. Note that respondents were not asked whether their condition limited their day-to-day activities so it is not possible to determine what proportion of respondents</p>	<p>1 and 3. Trans Mental Health and Emotional Wellbeing Study 2012, Jay McNeil, Louis Bailey, Sonja Ellis, James Morton &amp; Maeve Regan.</p>	<p>In order to safeguard against the possibility of discrimination against disabled people, the Scottish Government has considered how notaries public and justices of the peace can check whether a person making a statutory declaration knows and understands what they are doing. The consultation outlines guidance available to notaries public and justices of the peace on this type of issue.</p>

<sup>13</sup> At [trans\\_mh\\_study.pdf \(scottishtrans.org\)](https://www.scottishtrans.org/trans_mh_study.pdf) Page 12

Characteristic	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and steps taken
	<p>were disabled under the Equality Act 2010 definition.</p> <p>2. In the UK Government LGBT Survey carried out in 2017, a third (33%) of the 108,100 respondents indicated that they had a disability, whereas 14% of non-trans respondents said they did.<sup>14</sup> This is a large-scale online survey of people aged 16 and above living in the UK who self-identified as having a minority sexual orientation or gender identity. The sample was self-selected, and participants had to be willing to self-identity. This may mean that the findings are not representative of the trans population as whole. It also means that it is not possible to make direct comparisons with the general population.</p> <p>3. In the survey mentioned at 1 above, 36% identified that they had a mental health issue. 88% (of 549 who answered the question) had been diagnosed with depression or considered they were or had been depressed and 48% (of 483) had attempted suicide at least once. The</p>	<p>2. UK Government LGBT Survey Research Report July 2018</p>	<p>Scotland's Census 2022 will include a voluntary question asking whether individuals consider themselves to be trans or have a trans history.<sup>23</sup> This data will allow for up-to-date estimation of the proportion of the Scottish population who identify as trans. Data on disability will also gathered in the Census 2022, which could allow for disaggregation of trans status by disability (subject to sufficient sample sizes to enable robust analysis).</p> <p>Whilst there is some evidence to suggest that there may be a link between gender dysphoria and autism, there is an absence of evidence on co-morbidities and on the reasons for this link.</p> <p>Studies to date have focused on prevalence rates and primarily with those who have been referred to a gender identity</p>

<sup>14</sup> At [National LGBT Survey Research Report \(www.gov.uk\)](http://www.gov.uk) at page 23

<sup>23</sup> [Scotland's Census 2022 question set | Scotland's Census \(scotlandscensus.gov.uk\)](https://scotlandscensus.gov.uk)

Characteristic	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and steps taken
	<p>research did not gather data from non-trans people for comparison.</p> <p>4. Evidence carried out in Mexico City with 250 trans adults indicates that the mental health issues experienced by trans people are related to the prejudice and discrimination they experience. More than three-quarters of the participants reported experiencing social rejection related to their gender, most commonly from family members (84% of those who experienced rejection), followed by schoolmates or coworkers (55%) and friends (28%). The most common forms of rejection were discrimination (32%) and verbal or physical aggression (17%).<sup>15</sup></p> <p>5. Evidence indicates that transitioning to the gender with which the person identifies helps resolve distress and mental health issues.<sup>16</sup></p>	<p>4. <a href="#">Removing transgender identity from the classification of mental disorders: a Mexican field study for ICD-11 - The Lancet Psychiatry</a></p> <p>5. Dhejne C, et al “Mental Health and gender dysphoria: A review of the literature” (2016) International Review of Psychiatry 28(1)</p>	<p>clinic. We are not aware of any studies discussing the influence of ASD diagnoses on treatment outcomes for gender dysphoria.<sup>24</sup></p>

<sup>15</sup> 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 - The Lancet Psychiatry](#).

<sup>16</sup> Dhejne C, et al “Mental Health and gender dysphoria: A review of the literature” (2016) International Review of Psychiatry 28(1), 44-57. Abstract is at [Mental health and gender dysphoria: a review of the literature \(ugent.be\)](#)

<sup>24</sup> Glidden et al. 2016

Characteristic	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and steps taken
	<p>6. The Gender Identity Development Service (GIDS), commissioned by NHS England, has some information on its evidence base of a higher prevalence of autistic spectrum conditions in clinically referred gender dysphoric (GD) adolescents than in the general adolescent population.<sup>17</sup> This clinical observation is also reiterated in the wider international literature.</p> <p>7. A 2016 peer-reviewed literature review carried out by academics at the Nottingham Centre for Gender Dyphoria concluded that ‘Although the research is limited, especially for adults, there is an increasing amount of evidence that suggests a co-occurrence between gender dysphoria and ASD [Autism Spectrum Disorder]’ and that there is ‘a high prevalence of ASD in people with gender dysphoria attending clinical services’.<sup>18</sup></p> <p>8. A subsequently published study found that ‘autistic traits appear to be more prevalent in transgender people assigned female at birth, but not in those assigned</p>	<p>6. Information collated by the Gender Identity Development Service England.</p> <p>7. Glidden, D., Bouman, W., Jones, B. &amp; Arcelus, J., 2016. Gender dysphoria and autism spectrum disorder: A systematic review of the literature. <i>Sexual Medicine Reviews</i>, 4(1), 3-14.</p> <p>8. Nobili, A., Glazebrook, C., Bouman, W., Glidden, D., Baron-Cohen, S., Allison, C., Smith, P. &amp;</p>	

<sup>17</sup> [Evidence base \(gids.nhs.uk\)](http://evidencebase.gids.nhs.uk)

<sup>18</sup> Glidden et al. 2016.

Characteristic	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and steps taken
	<p>male at birth'.<sup>19</sup> No significant difference in autistic spectrum quotient (AQ) scores was found overall between the non-trans and trans groups, nor between groups for those assigned male at birth (non-trans men and trans women).</p> <p>9. Some respondents to the 2019 consultation who were broadly opposed to a statutory declaration-based system raised concerns regarding the impact on provision for disabled people in an increased user base of unisex disabled facilities (e.g. changing rooms and public toilets).<sup>20</sup></p> <p>10. Among respondents to the 2019 consultation who were broadly in support of a statutory declaration-based system, some suggested that: “while the mental health inequalities faced by the trans population are not solely related to legal gender recognition, being able to access this without being subject to a distressing, humiliating process should boost wellbeing.”<sup>21</sup></p>	<p>Arcelus, J., 2018. Autistic Traits in Treatment-Seeking Transgender Adults. <i>Journal of Autism and Developmental Disorders</i>, 48: 3984-3994</p> <p>9., 10., 11. &amp; 12. <a href="https://www.gov.scot/topics/gender-recognition-reform/consultation-analysis">Gender Recognition Reform (Scotland) Bill: consultation analysis - gov.scot (www.gov.scot)</a></p>	

<sup>19</sup> Nobili et al. 2018.

<sup>20</sup> [Gender Recognition Reform \(Scotland\) Bill: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/topics/gender-recognition-reform/consultation-analysis) Paragraph 7.47.

<sup>21</sup> [Gender Recognition Reform \(Scotland\) Bill: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/topics/gender-recognition-reform/consultation-analysis) Paragraph 7.48.

Characteristic	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and steps taken
	<p>11. Among the respondents to the 2020 who were broadly opposed to a statutory declaration-based system, some raised concerns about trans people regretting transitioning and the social changes they had made, and noted that this could contribute to an elevated suicide risk.<sup>22</sup></p> <p>12. Some respondents to the 2019 consultation questioned the relevance of the data the prevalence of autistic spectrum conditions within the trans population, with weak conclusions being drawn from a lack of evidence.</p>		
<b>Gender Reassignment</b>	<p>1. Information held by NRS shows that around 30 people a year from Scotland obtain full GRCs.</p> <p>2. The average number of full GRCs issued annually across the UK since the 2004 Act was implemented is 376, with a peak of 1,179 issued in 2005/06.<sup>25</sup> Up to the end of 2020/21, the Gender Recognition Panel had issued 6,010 full GRCs.</p>	<p>1. National Records of Scotland</p> <p>2. Tribunals and Gender Recognition Statistics (Ministry of Justice)</p>	<p>Countries that have adopted systems for legal gender recognition based on an applicant's declaration have done so from 2012 onwards. The Scottish Government is not aware of substantive evidence that obtaining legal gender recognition overseas through such a process leads to adverse consequences generally for society.</p>

<sup>22</sup> [Gender Recognition Reform \(Scotland\) Bill: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultation-analysis-2020-01/pages/7-57.aspx) Paragraph 7.57.

<sup>25</sup> [Tribunal Statistics Quarterly: July to September 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-july-to-september-2021) . See Main Tables at Table GRP 4.

Characteristic	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and steps taken
	<p>3. As of May 2018, around 0.5% of the Scottish population (24,000 people) were estimated to be trans. The Scottish Public Health Network Report on the Health Care Needs Assessment of Gender Identity Services suggests that 0.5% is the most often quoted likely prevalence of trans people.<sup>26</sup> Further data would be required to confirm whether this figure is still accurate in 2022.</p> <p>4. Of the 1,160 self-selected trans people from Scotland who responded to the UK National LGBT Survey in 2017, 3.7% said that they had a GRC.<sup>27</sup> However this proportion also includes non-binary respondents who may be less likely to apply for a GRC. The methodology used means respondents are drawn from non-representative sample of LGBT people across the UK, and therefore it is not possible to generalise these findings to the Scottish trans population as a whole.</p>	<p>3. The Scottish Public Health Network Report on the Health Care Needs Assessment of Gender Identity Services</p> <p>4. Government Equalities Office, National LGBT Survey (2017)</p>	<p>Scotland's Census 2022 will include a voluntary question asking whether individuals consider themselves to be trans or have a trans history.<sup>33</sup> This data will allow for up-to-date estimation of the proportion of the Scottish population who identify as trans. In addition, the Scottish Government published guidance on the collection and publication of data on sex, gender identity and trans status in September 2021.<sup>34</sup> Going forward, use of the trans status question could provide valuable sources of evidence on the trans population.</p> <p>Some respondents to the 2019 consultation raised concerns that the proposed changes could lead to regret, especially among younger and vulnerable adults. Some anecdotal evidence of detransitioning were cited. We are not aware of any robust</p>

<sup>26</sup> [Health Care Needs Assessment of Gender Identity Services \(scotphn.net\)](https://scotphn.net)

<sup>27</sup> [LGBT Survey 2017 Beta \(shinyapps.io\)](https://shinyapps.io)

<sup>33</sup> [Scotland's Census 2022 question set | Scotland's Census \(scotlandscensus.gov.uk\)](https://scotlandscensus.gov.uk)

<sup>34</sup> [Sex, gender identity, trans status - data collection and publication: guidance - gov.scot \(www.gov.scot\)](https://www.gov.scot)

Characteristic	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and steps taken
	<p>5. The UK LGBT Survey also asked trans people who had not applied for a GRC why they had not done so. The most common reasons that trans women in Scotland gave for having not applied for a GRC were the process being too bureaucratic (48%), not meeting the requirements (35%) and the cost of the application (33%). 10% said that they didn't have the time, 11% said that they didn't want to share their medical information, and 5% said that it was difficult to access their medical records.</p> <p>For trans men, not meeting the requirements was the most common reason for not applying for a GRC (51%), followed by the application cost (37%) and the process being too bureaucratic (33%). 12% said that they didn't have the time, 7% said that they didn't want to share their medical information, and 6% said that it was difficult to access their medical records.</p> <p>The differences between men and women may partly be explained by the different age profiles of the respondents, with trans men respondents being younger and fewer having completed transitioning.</p>	<p>5. Government Equalities Office, National LGBT Survey (2017)</p>	<p>research that has considered the likelihood of detransitioning or regret in Scotland.</p>

Characteristic	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and steps taken
	<p>6. A small-scale qualitative study which conducted in-depth interviews with 28 trans individuals living in Scotland in 2012-2014 found that the complex bureaucratic nature of the current GRC application process meant that most of the research participants ‘who intended to permanently transition, whether through medical procedures or not, chose to rather change their name officially by deed poll or statutory declaration, legally allowed for anyone in the UK.’</p> <p>7. In Ireland, 3 people out of the 579<sup>28</sup> who have obtained a GRC asked for it to be revoked (because they no longer wished to be recognised in an acquired gender). This is 0.5%.</p> <p>8. In a survey of 889 trans people in 2011, in discussing the physical changes which they had undergone in relation to being trans or transitioning, 86% had no regrets, with 10% having minor regrets and 2% having major regrets. In terms of social changes that they had made in relation to being trans or transitioning, 53% (of 523)</p>	<p>6. S. Morgan, 2017. <i>Constructing Identities, Reclaiming Subjectivities, Reconstructing Selves: An Interpretative Study of Transgender Practices in Scotland</i>. PhD thesis, University of Glasgow.</p> <p>7. Information provided by the Government of Ireland.</p> <p>8. Trans Mental Health and Emotional Wellbeing Study 2012, Jay McNeil, Louis Bailey, Sonja Ellis, James Morton &amp; Maeve Regan</p>	

<sup>28</sup> This is the position as at the end of 2019, see [gov.ie - Gender Recognition - Annual Reports \(www.gov.ie\)](http://www.gov.ie).

Characteristic	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and steps taken
	<p>had no regrets. 34% had minimal regrets, and 9% had significant regrets.<sup>29</sup></p> <p>9. A Swedish study published in 2014 examined the outcomes of applications in Sweden for legal and surgical sex reassignment<sup>30</sup> between 1960 and 2010. This indicated that out of the 681 people who changed their sex legally and surgically, 2.2% of them later regretted this and sought to reverse their decision. The study reported a significant decline in regrets over the time period.</p> <p>10. A web-based survey conducted in Sweden in 2014 using an anonymous, self-selected sample of 796 trans individuals aged 15-94 found a correlation between trans people not having gender recognition and poorer reported quality of life.</p> <p>Both wanting to change legal gender and having changed legal gender were also correlated with poor self-rated health, although the association was smaller among those who had changed legal gender. The authors conclude that: ‘These</p>	<p>9. Dhejne, Cecilia et al (2014). “An Analysis of All Applications for Sex Reassignment Surgery in Sweden, 1960-2010: Prevalence, Incidence, and Regrets”, Archives of sexual behavior. 43</p> <p>10. Zeluf G. et al., 2016. Health, disability and quality of life among trans people in Sweden: A web-based survey. <i>BMC Public Health</i>, 16(1): 1-15.</p>	

<sup>29</sup> At [trans\\_mh\\_study.pdf \(scottishtrans.org\)](#)

<sup>30</sup> At [\(PDF\) An Analysis of All Applications for Sex Reassignment Surgery in Sweden, 1960-2010: Prevalence, Incidence, and Regrets \(researchgate.net\)](#)

Characteristic	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and steps taken
	<p>results suggest that ... increased access to legal gender recognition could improve the overall health and quality of life of trans people in Sweden.'</p> <p>11. There is some evidence regarding numbers of applicants for legal gender recognition from countries which have adopted self-declaration systems. In Denmark (pop. 5.8 million),<sup>31</sup> on average 220 people per year obtained legal gender recognition. In Norway (pop. 5.3 million),<sup>32</sup> where a self-declaration system for legal gender recognition was adopted in 2016, 1560 applications were received up to the end of the first quartile of 2019, at an average of around 550 applications a year.</p>	<p>11. Source is Danish Ministry of Social Security and the Interior, and Norwegian Ministry of Health and Care.</p>	
<p><b>Marriage and Civil Partnership</b> (the Scottish Government does not require assessment against this</p>	<p>1. In 2020/21, the GRP granted 33 full GRCs to married applicants (7%) across the UK. This compares to 394 among single people.<sup>35</sup></p> <p>2. Between 2010/11 and 2017/18, there were nine divorces in Scotland and two</p>	<p>1. Tribunals and Gender Recognition Statistics (Ministry of Justice).</p> <p>2. Scottish Government Civil Justice Statistics.</p>	<p>Scotland's Census 2022 will include a voluntary question asking whether individuals consider themselves to be trans or have a trans history. This data will allow for up-to-date estimation of the proportion of the</p>

<sup>31</sup> [Population figures - Statistics Denmark \(dst.dk\)](https://www.dst.dk)

<sup>32</sup> [Population \(www.ssb.no\)](https://www.ssb.no)

<sup>35</sup> [Tribunal Statistics Quarterly: July to September 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk). See Main Tables at Table GRP 4. The Civil Partnership (Scotland) Act 2020 introduced mixed sex civil partnership and made provision so that civil partners obtaining gender recognition can stay in their civil partnership.

Characteristic	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and steps taken
protected characteristic unless the policy or practice relates to work, for example HR policies and practices)	dissolutions of civil partnerships on the ground that an interim GRC had been issued to one of the parties to the marriage.		Scottish population who identify as trans. Data on marriage and civil partnership will also gathered in the Census 2022, which could allow for disaggregation of trans status by marriage and civil partnership (subject to sufficient sample sizes to enable robust analysis).
<b>Pregnancy and Maternity</b>	<p>1. Some respondents to the 2019 consultation who were broadly opposed to the statutory declaration-based system expressed concerns about trans people keeping their wombs and declaring themselves to be ‘pregnant men’. They suggested that this could lead to discrimination against pregnant women and mothers, and expressed concern that this may contribute to public sector bodies in Scotland changing their language to refer to ‘pregnant people’.<sup>36</sup></p> <p>2. Some respondents to the 2019 consultation also drew attention to the recent research carried out into trans healthcare and reproductive health.</p>	1 & 2. <a href="http://www.gov.scot">Gender Recognition Reform (Scotland) Bill: consultation analysis - gov.scot (www.gov.scot)</a>	-

<sup>36</sup> [Gender Recognition Reform \(Scotland\) Bill: consultation analysis - gov.scot \(www.gov.scot\)](http://www.gov.scot) Paragraph 7.64.

Characteristic	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and steps taken
Race	<p>1. Of the 1,160 self-selected trans people from Scotland who responded to the UK LGBT Survey in 2017, 93.8% said that they were White.<sup>37</sup> 1.1% preferred not to say, and the remaining 5.1% identified as belonging to a minority ethnicity.</p> <p>The methodology used means respondents are drawn from non-representative sample of LGBT people across the UK, and therefore it is not possible to generalise these findings to the Scottish trans population as a whole.</p> <p>In particular, respondents were typically younger than the general population and may not have been sampled proportionately across local authorities. Within the Scottish general population younger age groups are more ethnically diverse, and the proportion of minority ethnic people differs between local authorities.</p> <p>2. There were limited comments in relation to race in the 2019 consultation. Some respondents highlighted that a requirement</p>	<p>1. Government Equalities Office, National LGBT Survey (2017)</p> <p>2. <a href="#">Gender Recognition Reform (Scotland) Bill:</a></p>	<p>There is no statistical evidence published about the ethnicity of people who are issued with a full GRC under the GRA.</p> <p>We are not aware of any evidence that specifically explores the lived experiences of minority ethnic trans people in Scotland.</p> <p>Scotland's Census 2022 will include a voluntary question asking whether individuals consider themselves to be trans or have a trans history.<sup>38</sup> This data will allow for up-to-date estimation of the proportion of the Scottish population who identify as trans. Data on ethnicity will also be gathered in the Census 2022, which could allow for disaggregation of trans status by ethnicity (subject to sufficient sample sizes to enable robust analysis).</p>

<sup>37</sup> [LGBT Survey 2017 Beta \(shinyapps.io\)](https://shinyapps.io/lgbt-survey-2017-beta/)

<sup>38</sup> [Scotland's Census 2022 question set | Scotland's Census \(scotlandscensus.gov.uk\)](https://scotlandscensus.gov.uk/question-set/)

Characteristic	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and steps taken
	to be 'ordinarily resident' in order to apply for legal gender recognition and the potential impact in the context of race.	<a href="http://www.gov.scot">consultation analysis - gov.scot (www.gov.scot)</a>	
<b>Religion or Belief</b>	<p>1. Of the 1,160 self-selected trans people from Scotland who responded to the UK National LGBT Survey in 2017, two thirds (70%) said that they had no religion or belief.<sup>39</sup> 11% identified as Christian. 9% preferred not to say.</p> <p>The methodology used means respondents are drawn from non-representative sample of LGBT people across the UK, and therefore it is not possible to generalise these findings to the Scottish trans population as a whole.</p> <p>In particular, respondents were typically younger than the general population and may not have been sampled proportionately across local authorities. Within the Scottish general population a higher proportion within younger age groups belong to no religion, and the</p>	1. Government Equalities Office, National LGBT Survey (2017)	Scotland's Census 2022 will include a voluntary question asking whether individuals consider themselves to be trans or have a trans history. <sup>42</sup> This data will allow for up-to-date estimation of the proportion of the Scottish population who are trans. Data on religion will also be gathered in the Census 2022, which could allow for disaggregation of trans status by religion (subject to sufficient sample sizes to enable robust analysis).

<sup>39</sup> [LGBT Survey 2017 Beta \(shinyapps.io\)](http://shinyapps.io)

<sup>42</sup> [Scotland's Census 2022 question set | Scotland's Census \(scotlandscensus.gov.uk\)](http://scotlandscensus.gov.uk)

Characteristic	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and steps taken
	<p>proportion of the population belonging to different religions varies between local authorities.</p> <p>2. A number of respondents to the 2017 consultation noted that the proposed changes to the system for obtaining legal gender recognition could impact on women whose religion or belief prevented them from sharing spaces with men. Use of public toilets, changing rooms and refuges and participation in sport were given as examples.<sup>40</sup></p> <p>On this point, and as outlined in more detail in Chapter 5 of the consultation and later on in this EQIA, there are a number of exceptions in the Equality Act 2010 which allow trans people to be excluded in specified circumstances when this is proportionate and to achieve a legitimate aim.</p> <p>3. Some respondents to the 2017 consultation noted that gender reassignment may be contrary to religious beliefs held by some. This view was also given by some respondents to the 2019</p>	<p>2 <a href="http://www.gov.scot/consultation/analysis/gov.scot">Review of the Gender Recognition Act 2004: consultation analysis - gov.scot (www.gov.scot)</a></p> <p>3. <a href="http://www.gov.scot/consultation/analysis/gov.scot">Review of the Gender Recognition Act 2004: consultation analysis - gov.scot (www.gov.scot)</a> and</p>	

<sup>40</sup> See the analysis of responses [Review of the Gender Recognition Act 2004: consultation analysis - gov.scot \(www.gov.scot\)](http://www.gov.scot/consultation/analysis/gov.scot) Para 7.17 refers.

Characteristic	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and steps taken
	<p>consultation who were broadly opposed to a statutory declaration-based system, who highlighted potential impacts on:</p> <ul style="list-style-type: none"> <li>• Religious gatherings, meetings, trips and holidays that currently segregate on the basis of sex.</li> <li>• Ministers of religion and administration of religious services and/or rites.</li> <li>• The efficacy of existing religious exemptions.</li> </ul> <p>The Scottish Government appreciates that some religious bodies may be opposed to the concept of legal gender recognition.</p> <p>However, as outlined in the consultations, the Scottish Government considers that a gender recognition system is required in Scotland for both policy reasons and to comply with the European Convention on Human Rights.</p> <p>Other religious or belief bodies may, of course, support the concept of legal gender recognition. For example, Humanist Society Scotland reports that a self-</p>	<p><a href="http://www.gov.scot/consultations/scot20160001/analysis">Gender Recognition Reform (Scotland) Bill: consultation analysis - gov.scot (www.gov.scot)</a></p>	

Characteristic	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and steps taken
	<p>declaration process is in line with Humanist principles.<sup>41</sup></p> <p>As outlined in Chapter 5 of the consultation, and later on in this EQIA, there are exceptions in the Equality Act 2010 which allow trans people to be excluded from certain forms of religious employment and also allow an approved celebrant to refuse to solemnise the marriage, or register the civil partnership, of a person that the celebrant reasonably believes acquired their gender under the GRA.</p>		
<b>Sex</b>	<ol style="list-style-type: none"> <li>1. A higher proportion of people legally recognised in the UK in their acquired gender under the 2004 Act are trans women (man to woman) than trans men.</li> <li>2. The proportion of trans men (woman to man) being legally recognised under the GRA has increased over time.</li> <li>3. In 2005/06, 1,181 full GRCs were granted (there was pent up demand for legal gender recognition in the early period after the GRP was established). Of these,</li> </ol>	<ol style="list-style-type: none"> <li>1. to 5. Tribunals and Gender Recognition Statistics (Ministry of Justice).</li> </ol>	<p>The Scottish Government has not identified any evidence supporting a link between women-only spaces being inclusive of transgender women, and non-trans men falsely claiming a trans identity to access these spaces and committing sexual violence. Other sources identified reiterated that there is a lack of any evidence to support this claim.</p>

<sup>41</sup> Humanist Society Scotland's consultation response is published at [Humanist+Society+Scotland.pdf \(www.gov.scot\)](http://www.gov.scot/consultations/humanist-society-scotland)

Characteristic	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and steps taken
	<p>911 (77%) were granted to trans women and 268 (23%) to trans men.</p> <p>4. The numbers of GRCs granted began to plateau in 2007/08, during which there were 391 full GRCs granted. Of these, 299 (76%) were granted to trans women and 92 (24%) to trans men.</p> <p>5. The latest available data shows that, in 2020/21, 427 full GRCs were granted. Of these, 256 (60%) were to trans women and 171 (40%) to trans men.<sup>43</sup></p> <p>6. The position in the UK similarly reflects the apparent position in other countries that there are more trans women than trans men.<sup>44</sup></p>	<p>6. See the evidence from 19 countries set out in <a href="#">Meier S.C., Labuski C.M. (2013) The Demographics of the Transgender Population. In: Baumle A. (eds) International Handbook on the Demography of Sexuality. International</a></p>	<p>Scotland's Census 2022 will include a voluntary question asking whether individuals consider themselves to be trans or have a trans history.<sup>46</sup> This data will allow for up-to-date estimation of the proportion of the Scottish population who identify as trans. Data on sex will also be gathered in the Census 2022, which could allow for disaggregation of trans status by sex (subject to sufficient sample sizes to enable robust analysis).</p> <p>The Scottish Government established the Sex and Gender in Data Working Group which met between 2019 and 2021.<sup>47</sup> The working group published its guidance for public bodies on the collection of data on sex, gender identity and trans status in September 2021.<sup>48</sup></p>

<sup>43</sup> For all of these figures on GRCs, please see [Tribunal Statistics Quarterly: July to September 2021 - GOV.UK \(www.gov.uk\)](#). See Main Tables at Table GRP 4.

<sup>44</sup> See the evidence from 19 countries set out in [\(PDF\) The Demographics of the Transgender Population | Christine Labuski - Academia.edu](#)

<sup>46</sup> [Scotland's Census 2022 question set | Scotland's Census \(scotlandscensus.gov.uk\)](#)

<sup>47</sup> [Sex and Gender in Data Working Group - gov.scot \(www.gov.scot\)](#)

<sup>48</sup> [Sex, gender identity, trans status - data collection and publication: guidance - gov.scot \(www.gov.scot\)](#)

Characteristic	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and steps taken
	<p>7. In Ireland, of the 517 people who have been recognised between September 2015 and August 2019, 233 (41%) were trans men (recorded as female at birth).</p> <p>8. A number of respondents to the 2017 and 2019 consultations raised concerns about the implications of legal gender recognition on the safety and wellbeing of women and girls. Some responses referred to their own experiences or media reports.</p> <p>Concerns included:</p> <ul style="list-style-type: none"> <li>• access to women’s safe spaces;</li> <li>• risk of abuse;</li> <li>• a perceived erosion of the rights of women;</li> <li>• women’s sports,</li> <li>• intimate medical care;</li> <li>• the accuracy of statistical information in areas such as crime recording or equality monitoring;</li> <li>• freedom of speech.</li> </ul> <p>On these points, Chapter 5 of the consultation, and this EQIA (later on) outline exceptions in the Equality Act 2010</p>	<p><a href="#">Handbooks of Population, vol 5. Springer, Dordrecht.</a></p> <p>7. Information provided by the Government of Ireland.</p> <p>8. <a href="#">Review of the Gender Recognition Act 2004: consultation analysis - gov.scot (www.gov.scot)</a> And <a href="#">Gender Recognition Reform (Scotland) Bill: consultation analysis - gov.scot (www.gov.scot)</a></p>	<p>In line with good practice the Scottish Government will keep this EQIA under review, and will consider any emerging evidence, both positive and negative in relation to this characteristic.</p>

Characteristic	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and steps taken
	<p>which can be used in specified circumstances, when it is proportionate and to achieve a legitimate aim, to exclude trans people from single sex services and to exclude trans women from sporting competitions for women. There are also exceptions which can be used in relation to occupational requirements.</p> <p>These exceptions will remain in place after reform of the Gender Recognition Act 2004.</p> <p>On freedom of speech, the Scottish Government is fully committed to this and there are provisions in the European Convention on Human Rights to protect freedom of speech.</p> <p>9. There is a lack of any evidence around the actual experienced impacts of trans inclusion in services.</p> <p>Much of the literature identified does not justify a blanket exclusion of trans women from services or spaces (they themselves are a vulnerable group), but rather highlights the need for individual assessments and tailoring the service for each individual's needs, where they are</p>	<p>9. Gottschalk, L., 2009. Transgendering women's space: A feminist analysis of perspectives from Australian women's services. <i>Women's Studies International Forum</i>, 32(3): 167-178.</p>	

Characteristic	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and steps taken
	<p>also likely to encompass a wide variety of things unrelated to an individual's sex or gender identity.</p> <p>Some respondents to the 2019 consultation disputed the Scottish Government's findings in relation to the available evidence, and the conclusions drawn.</p> <p>10. The Scottish Government has not identified any evidence at this time supporting the claim that trans women are more likely than non-trans women to sexually assault other women in women-only spaces. Much of the literature reiterates this lack of any evidence, legal, medical or otherwise, to support this characterisation of trans women as 'deviant' or predatory.<sup>45</sup></p> <p>In addition to concerns about the inclusion of trans women in women-only spaces and services, some respondents expressed concerns that predatory men posing as trans women would seek to gain access to women only spaces and services for malicious reasons.</p>	<p>10. Dunne, P., 2017. (Trans)forming single gender services and communal accommodations. <a href="#">Social and Legal Studies, 26(5)</a>.</p> <p>Eckes, S., 2017. The restroom and locker room wars: Where to pee or not to pee. <i>Journal of LGBT Youth</i>, 14(3): 247-265.</p>	

<sup>45</sup> [\(Trans\)Forming Single-Gender Services and Communal Accommodations \(bris.ac.uk\)](#)

Characteristic	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and steps taken
<b>Sexual Orientation</b>	<p>1. Of the 1,160 self-selected trans people from Scotland who responded to the UK LGBT Survey in 2017, around a third (32.1%) identified as bisexual.<sup>49</sup> A fifth (22%) said that they were gay or lesbian, 13.6% identified as pansexual, and 4.9% as queer. 10.4% said that they were heterosexual. 5.5% said that they did not know, or preferred not to say. The methodology used means respondents are drawn from non-representative sample of LGBT people across the UK, and therefore it is not possible to generalise these findings to the Scottish trans population as a whole.</p> <p>2. Of the 530 self-selected respondents to the 2012 Scottish Transgender Alliance survey who answered the question about sexual orientation, around a quarter identified as bisexual (27%) and another quarter identified as queer (24%). A fifth (20%) identified as straight or heterosexual.<sup>50</sup> Again, this was not a random sample and so findings cannot be</p>	<p>1. Government Equalities Office, National LGBT Survey (2017)</p> <p>2. Scottish Transgender Alliance, <i>Trans Mental Health Study 2012</i>.</p>	<p>Scotland's Census 2022 will include a voluntary question asking whether individuals consider themselves to be trans or have a trans history.<sup>53</sup> This data will allow for up-to-date estimation of the proportion of the Scottish population who identify as trans. Data on sexual orientation will also gathered in the Census 2022, which could allow for disaggregation of trans status by sexual orientation (subject to sufficient sample sizes to enable robust analysis).</p> <p>As noted above, in line with good practice the Scottish Government will keep this EQIA under review, and will consider any emerging evidence, both positive and negative in relation to this characteristic.</p>

<sup>49</sup> [LGBT Survey 2017 Beta \(shinyapps.io\)](https://shinyapps.io/LGBT-Survey-2017-Beta/)

<sup>50</sup> [trans\\_mh\\_study.pdf \(scottishtrans.org\)](https://scottishtrans.org/trans_mh_study.pdf)

<sup>53</sup> [Scotland's Census 2022 question set | Scotland's Census \(scotlandscensus.gov.uk\)](https://scotlandscensus.gov.uk/question-set/)

Characteristic	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and steps taken
	<p>assumed to be representative of the trans population as a whole.</p> <p>3. Respondents to both the 2017 and 2019 consultations made a number of comments in this area, including suggestions that:</p> <ul style="list-style-type: none"> <li>• gender non-conforming children are being encouraged to transition when they would otherwise grow up to be lesbian or gay;</li> <li>• gay and lesbian people are coming under increasing social pressure to change their gender rather than to live as gay or lesbian;</li> <li>• lesbians may be accused of transphobia if they refuse to enter sexual relationships with trans women;</li> <li>• when lesbian organisations or advocacy groups are joined by trans women, trans issues often take priority.</li> </ul> <p>On children, the Scottish Government has concluded that legal gender recognition should not be available to those under 16.</p>	<p>3. <a href="http://www.gov.scot">Review of the Gender Recognition Act 2004: consultation analysis - gov.scot (www.gov.scot)</a></p>	

Characteristic	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and steps taken
	<p>On lesbian and gay people, the Scottish Government considers that people should be able to live as lesbian and gay. This Government promoted the Marriage and Civil Partnership (Scotland) Act 2014 through Parliament. A key reason for promoting that legislation was to make it clear that same sex relationships have the same standing in society as mixed sex relationships.</p> <p>On relationships, Government does not lay down who a person should enter into a relationship with. That is a personal matter for the individuals concerned.</p> <p>On organisations, the rules in the Equality Act 2010 on membership and access to a benefit, facility or service, do not apply to associations with under 25 members.<sup>51</sup> In addition, there is an exception which allows an association to restrict its membership to persons who share a single protected characteristic.<sup>52</sup></p>		

<sup>51</sup> [Does equality law apply to the organisation I belong to or want to join or be a guest of? | Equality and Human Rights Commission \(equalityhumanrights.com\)](http://equalityhumanrights.com) and [Equality Act 2010 \(legislation.gov.uk\)](http://legislation.gov.uk)

<sup>52</sup> [Equality Act 2010 \(legislation.gov.uk\)](http://legislation.gov.uk)

### Stage 3: Assessing the impacts and identifying opportunities to promote equality

Having considered the data and evidence you have gathered, this section requires you to consider the potential impacts – negative and positive – that your policy might have on each of the protected characteristics. It is important to remember the duty is also a positive one – that we must explore whether the policy offers the opportunity to promote equality and/or foster good relations.

#### Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			√	The policy has been designed to ensure that it does not create unlawful discrimination related to age.
Advancing equality of opportunity	√			Older people particularly those who are longer term transitioned may be able to apply without having to gather documentary evidence of their transition that they may no longer have to hand.  People aged 16 and 17 would be able to apply.
Promoting good relations among and between different age groups			√	The policy has the potential to raise awareness among different age groups of the barriers faced by trans people.

**Do you think that the policy impacts on disabled people?**

<b>Disability</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination, harassment and victimisation			√	The need to eliminate discrimination on the basis of disability does not apply to this policy.
Advancing equality of opportunity	√			Living openly in an acquired gender with documents which are consistent may improve a transgender person's mental health. The Scottish Government and the Registrar General will consider further the need for clear and straightforward guidance for people with learning disabilities in relation to any new system for obtaining legal gender recognition.
Promoting good relations among and between disabled and non-disabled people			√	The policy has the potential to raise awareness, challenge stigma and increase transgender inclusion for both disabled and non-disabled trans people, thus promoting better relations between disabled and non-disabled people in general.

**Do you think the policy impacts on people because of their marriage or civil partnership?**

<b>Marriage and Civil Partnership<sup>54</sup></b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			√	The need to eliminate discrimination based on a person's marriage or civil-partnership status does not apply to this policy following the introduction of the Civil Partnerships (Scotland) Act 2020.

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<sup>54</sup> In respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes Scottish Government) only needs to comply with the first need of the duty (to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010) and only in relation to work. This is because the parts of the Act covering services and public functions, premises, education etc. do not apply to that protected characteristic. Equality impact assessment within the Scottish Government does not require assessment against the protected characteristic of Marriage and Civil Partnership unless the policy or practice relates to work, for example HR policies and practices.

**Do you think that the policy impacts on women because of pregnancy and maternity?**

<b>Pregnancy and Maternity</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			√	The need to eliminate discrimination based on a person's pregnancy or maternity status does not apply to this policy
Advancing equality of opportunity			√	The need to advance equal opportunity on the basis of a person's pregnancy or maternity status does not apply to this policy.
Promoting good relations			√	The need to promote good relations on the basis of a person's pregnancy or maternity status does not apply to this policy.

**Do you think the policy impacts on people on the grounds of their race?**

<b>Race</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			√	The need to eliminate discrimination based on a person's race does not apply to this policy.
Advancing equality of opportunity			√	Whilst there is no statistical evidence presently available about the ethnic origin of people who are issued with a full GRC under the GRA, it is possible that this policy could benefit trans people of different races equally.
Promoting good race relations			√	Whilst there is no statistical evidence presently available about the ethnic origin of people who are issued with a full GRC under the GRA, it is possible that this policy could promote better understanding by raising awareness, challenging stigma and increasing transgender inclusion.

**Do you think the policy impacts on people because of their religion or belief?**

<b>Religion or belief</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			√	The policy has been designed to ensure that it does not create unlawful discrimination related to religion or belief.
Advancing equality of opportunity			√	The need to advance equal opportunity on the basis of a person's religion or belief does not apply to this policy.
Promoting good relations			√	<p>Some religious bodies may have concerns on societal or doctrinal grounds to introducing a new system for obtaining legal gender recognition.</p> <p>The Scottish Government appreciates that some religious bodies may be opposed to the concept of legal gender recognition. There are protections in the Equality Act 2010 outlined below for the interests of religious bodies.</p> <p>However, as outlined in the consultation, the Scottish Government considers that a gender recognition system is required in Scotland for both policy reasons and to comply with the European Convention on Human Rights.</p> <p>Other religious or belief bodies may, of course, support the concept of legal gender recognition.</p> <p>There are exceptions in the Equality Act 2010 which relate to occupational requirements and religious requirements.</p>

Religion or belief	Positive	Negative	None	Reasons for your decision
				<p>Paragraph 2 of schedule 9 of the 2010 Act relates to religious requirements, and covers a range of employment and office holders in organised religion, such as ministers of religion and some lay posts that promote and represent religion. If the criteria are met, it is possible to refuse to employ a trans person in these posts.</p> <p>Paragraph 3 of schedule 9 relates to other requirements relating to religion or belief, where, if the criteria are met, it is possible to refuse to employ a trans person for the work.</p> <p>Given the provisions of the 2010 Act, we have ticked the “none” box.</p>

**Sex. Do you think that the policy impacts on men and women in different ways?**

Sex	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			√	<p>A number of respondents to the consultations raised concerns about the implications of legal gender recognition for women.</p> <p>Concerns included:</p> <ul style="list-style-type: none"> <li>• access to women’s safe spaces;</li> <li>• risk of abuse;</li> <li>• women’s sports;</li> <li>• intimate medical care;</li> </ul>

Sex	Positive	Negative	None	Reasons for your decision
				<ul style="list-style-type: none"> <li>• the accuracy of statistical information in areas such as crime recording or equality monitoring;</li> <li>• freedom of speech.</li> </ul> <p>The Scottish Government is of the view that there is lack of evidence that including trans women in women-only services and spaces has negative impacts. In line with good practice the Scottish Government will keep this EQIA under review, and will consider any emerging evidence, both positive and negative in relation to this characteristic.</p> <p>The 2010 Act has a number of specified exceptions to the general provisions on non-discrimination. Some of these exceptions are directly relevant when considering the position of women in relation to gender recognition. Organisations and service providers can, when appropriate, make use of the exceptions in the 2010 Act to exclude trans people. However, the exceptions have to be used in a proportionate way, and to achieve a legitimate aim.</p> <p>On sport, section 195 of the 2010 Act contains provision allowing, in certain specified circumstances, restrictions on trans people participating in sport to be imposed if necessary to uphold fair competition or the safety of competitors.</p> <p>On single sex services, the 2010 Act allows women-only services and allows services to exclude trans</p>

Sex	Positive	Negative	None	Reasons for your decision
				<p>women in certain specified circumstances when it is proportionate and in pursuit of a legitimate aim. Paragraph 28 of schedule 3 the 2010 Act sets out the exception which relates to trans persons, and provides:</p> <p>(1) A person does not contravene section 29, so far as relating to gender reassignment discrimination, only because of anything done in relation to a matter within sub-paragraph (2) if the conduct in question is a proportionate means of achieving a legitimate aim.</p> <p>(2) The matters are—  (a) the provision of separate services for persons of each sex;  (b) the provision of separate services differently for persons of each sex;  (c) the provision of a service only to persons of one sex.</p> <p>This provision would, for example, allow the operator of a domestic abuse refuge designed for women only to exclude a trans woman from the service if the operator judges that this is a proportionate means of achieving a legitimate aim. This is likely to involve carrying out a risk assessment to balance the needs of all parties: the trans person; other users of the service and staff.</p>

Sex	Positive	Negative	None	Reasons for your decision
				<p>On data, the Scottish Government has established a working group on sex and gender in data.<sup>55</sup></p> <p>On freedom of speech, the Scottish Government is fully committed to this and there are provisions in the European Convention on Human Rights to protect freedom of speech.</p> <p>Given the various provisions in this area, we have ticked the “none” box.</p>
Advancing equality of opportunity			√	The policy has the potential to raise awareness, challenge stigma and increase transgender inclusion.
Promoting good relations between men and women			√	The policy has the potential to raise awareness, challenge stigma and increase transgender inclusion.

<sup>55</sup> [Sex and Gender in Data Working Group \(www.gov.scot\)](http://www.gov.scot)

**Do you think that the policy impacts on people because of their sexual orientation?**

<b>Sexual orientation</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			√	The need to eliminate unlawful discrimination on the basis of sexual orientation does not apply to this policy.
Advancing equality of opportunity			√	<p>Respondents to the first consultation made a number of comments in this area, including suggestions that:</p> <ul style="list-style-type: none"> <li>• gender non-conforming children are being encouraged to transition when they would otherwise grow up to be lesbian or gay;</li> <li>• gay and lesbian people are coming under increasing social pressure to change their gender rather than to live as gay or lesbian;</li> <li>• lesbians may be accused of transphobia if they refuse to enter sexual relationships with trans women;</li> <li>• when lesbian organisations or advocacy groups are joined by trans women, trans issues often take priority.<sup>56</sup></li> </ul> <p>On children, the Scottish Government has concluded that legal gender recognition should not be available to those under 16.</p> <p>On lesbian and gay people, the Scottish Government considers that people should be able to live as</p>

<sup>56</sup> Please see paragraphs 7.13 to 7.16 of the summary of consultation responses: [Review of the Gender Recognition Act 2004: consultation analysis \(www.gov.scot\)](http://www.gov.scot)

				<p>lesbian and gay. This Government promoted the Marriage and Civil Partnership (Scotland) Act 2014 through Parliament. A key reason for promoting that legislation was to make it clear that same sex relationships have the same standing in society as mixed sex relationships.</p> <p>On relationships, Government does not lay down who a person should enter into a relationship with. That is a personal matter for the couple.</p> <p>On organisations, the rules in the Equality Act 2010 on membership and access to a benefit, facility or service, do not apply to associations with under 25 members<sup>57</sup>. In addition, there is an exception which allows an association to restrict its membership to persons who share a single protected characteristic.<sup>58</sup></p>
Promoting good relations			√	The policy has the potential to raise awareness, challenge stigma and increase transgender inclusion.

<sup>57</sup> [Does equality law apply to the organisation I belong to or want to join or be a guest of? \(www.equalityhumanrights.com\)](http://www.equalityhumanrights.com) and [Equality Act 2010 \(www.legislation.gov.uk\)](http://www.legislation.gov.uk)

<sup>58</sup> [Equality Act 2010 \(www.legislation.gov.uk\)](http://www.legislation.gov.uk)

**Do you think your policy impacts on trans people?**

<b>Gender reassignment</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			√	There are benefits for transgender people through having a revised system for gender recognition but this is best recognised in the next category of “advancing equality of opportunity”.
Advancing equality of opportunity	√			Introducing a revised system for obtaining legal gender recognition will enable trans people to obtain legal rights without having to go through an overly intrusive system established by the current GRA.
Promoting good relations	√			The policy has the potential to raise awareness, challenge stigma and increase transgender inclusion by improving their ability to legally transition which evidence shows improves their quality of life, and thus promote better relations between trans and cis individuals.

**Stage 4: Decision making and monitoring**

**Identifying and establishing any required mitigating action**

<p>Have positive or negative impacts been identified for any of the equality groups?</p>	<p>There are positive impacts for the protected characteristics of age, disabled people and transgender people.</p> <p>For older people, particularly those who are longer term transitioned may be able to apply without having to gather documentary evidence of their transition that they may no longer have to hand. For younger people, applications for a GRC can be made by those aged 16 and 17.</p> <p>For disabled people, living openly in an acquired gender with documents which are consistent may improve a transgender person's mental health.</p> <p>For transgender people, introducing a revised system for obtaining legal gender recognition will enable trans people to obtain legal rights without having to go through an overly intrusive system established by the current GRA. Furthermore, the policy has the potential to raise awareness, challenge stigma and increase transgender inclusion by improving their ability to legally transition which evidence shows improves their quality of life.</p>
<p>Is the policy directly or indirectly discriminatory under the Equality Act 2010?</p>	<p>No</p>
<p>If the policy is indirectly discriminatory, how is it justified under the relevant legislation?</p>	<p>-</p>
<p>If not justified, what mitigating action will be undertaken?</p>	<p>-</p>

## **Describing how Equality Impact analysis has shaped the policy making process**

The 2017 and 2019 consultations sought views on the EQIA prepared then. A number of consultees offered comments, in particular in relation to the protected characteristic of “sex”. As outlined in the consultation and in this draft EQIA, there are a number of existing measures (e.g. exceptions in the Equality Act 2010) which can address the concerns raised.

## **Monitoring and Review**

National Records of Scotland will publish statistics on the number of applications received, and the number of GRCs granted, under the new system. Scotland’s Census 2022 will include a voluntary question asking whether individuals consider themselves to be trans or have a trans history. This data will allow for up-to-date estimation of the proportion of the Scottish population who identify as trans.

## **Stage 5 - Authorisation of EQIA**

Please confirm that:

- ◆ This Equality Impact Assessment has informed the development of this policy:

Yes  No

- ◆ Opportunities to promote equality in respect of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation have been considered, i.e.:
  - Eliminating unlawful discrimination, harassment, victimisation;
  - Removing or minimising any barriers and/or disadvantages;
  - Taking steps which assist with promoting equality and meeting people’s different needs;

- Encouraging participation (e.g. in public life);
- Fostering good relations, tackling prejudice and promoting understanding.

Yes  No

- ◆ If the Marriage and Civil Partnership protected characteristic applies to this policy, the Equality Impact Assessment has also assessed against the duty to eliminate unlawful discrimination, harassment and victimisation in respect of this protected characteristic:

Yes  No  Not applicable

### **Declaration**

I am satisfied with the equality impact assessment that has been undertaken for the review of the Gender Recognition Act 2004 and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

Name: Denise Swanson

Position: Deputy Director, Civil Law and Legal System Division

Authorisation date: 28/02/2022



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