

Review of the Gender Recognition Act 2004

**Analysis of responses to the public
consultation exercise**

Report

November 2018

Contents

Executive Summary	3
1. Introduction	20
Background	20
Profile of respondents.....	20
Analysis and reporting	22
2. Reforming the legal gender recognition system in Scotland	23
Statutory declaration.....	31
Number of times a person can seek legal recognition	37
Requirements in relation to an applicant's place of birth or residence	42
3. Age of applicants	47
16 and 17-year olds.....	47
People aged under 16	53
4. Scottish marriage	62
Scottish civil partnership.....	66
Grounds of divorce	69
5. Other aspects of the 2004 Act	72
Privacy issues.....	72
Recognition in Scotland of a person whose acquired gender has been recognised under foreign law	77
6. Non-binary people	81
7. Conclusion	95
Impact Assessments	95
Annex 1 – Organisations responding to the consultation	107
Annex 2 – Responses to closed questions.....	115

Executive Summary

1. This summary presents the key findings from the analysis of responses to the Scottish Government's consultation on the review of the Gender Recognition Act 2004 (the 2004 Act).
2. The language used in the analysis reflects that used by respondents.

Profile of respondents

3. In total, 15,697 responses were available for analysis, of which 15,532 were from individual members of the public and 165 were from groups or organisations. Overall, 49% of respondents to the consultation are resident in Scotland, with 38% resident in the rest of the UK and the remaining 13% resident elsewhere in the world.

Reforming the legal gender recognition system in Scotland

4. The majority of respondents, 60% of those answering the question, agreed with the proposal to introduce a self-declaratory system for legal gender recognition.

Comments by those who agreed with the proposal

5. Of the three most frequently made points, the first was that gender identity is a personal matter, with gender recognition sought by individuals who know their own mind and do not make such a choice without thought and commitment. Secondly, it was suggested that the existing gender recognition process takes too long, is too difficult or too expensive and needs to present less of a barrier. The third issue raised was that the existing process is demeaning, intrusive, distressing or stressful for applicants.
6. Respondents sometimes related personal experiences of the difficulties they had encountered when applying for a Gender Recognition Certificate (GRC) or suggested that, although they had lived in their acquired gender for many years, they had not applied for a certificate because of the costs, the intrusive nature of the process, or the difficulties in providing the evidence required.
7. Other issues raised included that the existing gender recognition process may contribute to ill health, and to mental ill health in particular. It was argued that there should be no requirement to provide medical evidence or evidence of living in the acquired gender prior to application for a GRC and it was suggested that the introduction of a self-declaration system would bring Scotland in line with international best practice.

Comments by those who did not agree with the proposal

8. The most frequently raised issue was that self-declaration may pose a risk to women's safety in spaces including toilets, changing rooms, hospital wards and refuges. Often associated with this concern was that the proposed self-declaration system may be open to abuse, exploitation or false declarations. Where respondents explained their concerns, it was often to suggest that the proposal would allow 'any man', 'predatory men' or 'biological men' to gain access to women's spaces where they could pose a potential threat to women's safety. Particular concerns were raised for the victims of rape or domestic abuse and also with respect to the safety of women in the prison system.
9. There was also a concern that the proposals represent a general erosion of the identity or the rights of natal women. More specific concerns were raised that trans women would be eligible to take natal women's places on all-women short lists, on the boards of public bodies, or for other employment, quotas or awards. Potential problems for the future of women's sport were noted, including at both a professional and amateur level.
10. Other issues raised included that the consultation paper fails to distinguish between sex and gender. It was argued that, determined by an individual's sex chromosomes, biological sex cannot be changed, irrespective of surgery or other medical treatments. In contrast, gender was suggested to be a social construct – comprising a set of characteristics or behaviours that society has come to view as masculine or feminine. Some respondents thought that, rather than reinforcing these concepts, effort should instead be put into eradicating gender stereotypes altogether.

Statutory declaration

11. Half (50%) of all respondents who answered the question thought that applicants to the proposed gender recognition system in Scotland should have to provide a statutory declaration confirming they know what they are doing and intend to live in their acquired gender until death.

Those who agreed applicants should have to provide a statutory declaration

12. Amongst those who indicated agreement with the proposal for statutory declaration, respondents frequently reiterated concerns already discussed at Question 1, for example regarding their fears for the safety or rights of natal women, or that sex and gender are being conflated. While some noted their view that any safeguards are better than none, others expressed a view that a statutory declaration is insufficient or should be *additional* to other requirements.
13. The second most frequently made point was that a change of legal gender is a very serious issue, and that a statutory declaration would ensure it is treated as such. It was also suggested that such a declaration is important in documenting informed consent. The importance of deterring frivolous applications or guarding against other abuse of the system was raised and a specific suggestion was that consideration should be given to creating a criminal offence of making a false statement.¹

Those who disagreed that applicants should have to provide a statutory declaration

14. The most frequently made comment was that the declaration proposed would not accommodate those people who understand their gender identity to be fluid. Almost all respondents making this point had agreed with the proposal for self-declaration at Question 1. It was also argued that people may change their minds, the understanding being that the declaration as proposed would prevent this, with further points including that an individual's understanding of their gender may change over time or that a person has a right to identify as they choose.
15. Respondents commented on the phrase 'until death', arguing that nobody can know what they will do or feel for the rest of their lives or that expecting anyone to declare that they will adopt one gender on this basis is unreasonable. Respondents sometimes also drew a parallel with marriage.
16. Other issues raised included that a declaration is not needed, including because there is no evidence of misuse of the process where self-declaration is in use elsewhere and there is no reason to expect there to be a problem in Scotland.

¹ The consultation noted that, under the Criminal Law (Consolidation) (Scotland) Act 1995, section 44(2) it is an offence to knowingly and willfully make a statement which is false in a material particular in a statutory declaration. See <http://www.legislation.gov.uk/ukpga/1995/39/section/44>.

Number of times a person can seek legal recognition

17. The largest proportion of respondents, 48% of those answering the question, thought there should not be a limit on the number of times a person can get legal gender recognition. However, 42% thought there should and 9% did not know.

Those who thought there should not be a limit

18. The most frequently raised points were that people and their circumstances change and that for some people, gender is fluid, can evolve over time, is on a spectrum or is non-binary. In these cases it was suggested any limit set might be exceeded by a small number of people, leaving such individuals with the prospect of being 'stuck' in the wrong gender.
19. It was also argued that concerns about frivolous behaviour or fraudulent abuse of the proposed self-recognition system are ill founded, or that there is no evidence of such problems elsewhere, and that imposing a limit on such grounds would be unjustified. Respondents who opposed a numerical limit on the number of times gender can be legally recognised sometimes suggested alternative restrictions that they would or might approve. The most common proposal was there could be a minimum time between applications.

Those who thought there should be a limit

20. Reasons given for a view that there should be a limit included that this is necessary to ensure the process is a serious one, to discourage frivolous or ill-considered changes, or to reduce the risk of changes made for fraudulent or abusive purposes. In addition, small numbers of respondents suggested that to allow multiple changes risks undermining the credibility of the process, that anyone requesting multiple changes may have underlying issues that are not being addressed or would benefit from other support or counselling rather than further changes of gender.
21. Respondents sometimes suggested the number of changes that they considered to be appropriate. By far the most frequently suggested limit, was that a maximum of two changes should be allowed. It was noted that this would allow an individual to change their mind and to return to their birth sex.

Requirements in relation to an applicant's place of birth or residence

22. A majority of respondents, 55% of those answering the question, thought that any self-declaration system for legal gender recognition should be open to everyone. Of the remaining respondents, 33% thought it should only be available to people whose birth or adoption was registered in Scotland or who are resident in Scotland and 12% did not know.

Open to everyone

23. The most frequently made point was that trans people should have equal rights to have their gender recognised irrespective of their nationality, or that to do otherwise would be discriminatory or potentially divisive. It was also suggested that granting the right to self-declaration to everyone is the right thing to do or that, by so doing, Scotland can demonstrate liberal and inclusive values. The value of extending self-declaration to people from countries where recognition of their gender identity is not available or where individuals may be persecuted for being trans was referenced.
24. The opportunity for residents of other parts of the UK to have their gender legally recognised in Scotland was seen as beneficial and some expressed a hope that introduction of self-declaration in Scotland would encourage other jurisdictions to move forward with their own gender recognition procedures. Attention was also drawn to particular groups of people who might or would be excluded if gender recognition was not made open to everyone, with asylum seekers and refugees mentioned most frequently.

Only to people whose birth or adoption was registered in Scotland, or who are resident in Scotland

25. The most frequently made point was general disagreement with the proposal to allow self-declaration of gender at all. Otherwise, respondents argued that Scotland cannot, or should not try to, make laws that extend beyond its borders or that affect the lives of people who are not its own nationals. In an associated point, a smaller number of respondents argued that the proposed legislation should not be extended to other parts of the UK 'by the back door', without the opportunity for separate consultation or approval.
26. The risk of encouraging gender reassignment tourism was suggested as a reason for restricting access to self-declaration. A related point concerning potential costs (most frequently to the NHS) was also made.

16 and 17-year olds

27. A majority of respondents, 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. Of the remaining respondents, 37% disagreed and 2% did not know.

Those who agreed with 16 and 17-year olds being able to obtain legal recognition

28. The most frequently made comment was that the proposal is in line with other age-related rights and legal provisions in Scotland. Some noted that, to all intents and purposes, 16 and 17-year olds are now recognised as having full adult rights and responsibilities in Scotland.
29. On a similar theme, 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. Connected to this, respondents commented that children can be aware from an early age that they are trans. A smaller number of respondents noted that they themselves had been clear that they were trans by the age of 16.
30. Respondents also highlighted ways in which being able to obtain a GRC could help young people in moving into adulthood and the positive impact it could have on 16 and 17-year old's health and wellbeing. Also connected with helping trans young people in their transition into adulthood, a smaller number of respondents suggested that having their gender recognised will make it easier for young people to thrive in education or employment.

Those who disagreed with 16 and 17-year olds being able to obtain legal recognition

31. The most frequently made comment was that 16 years old is too young to be able to apply for and obtain legal recognition of their acquired gender. It was 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. Further points included that gay or lesbian young people may see themselves as trans rather than recognising and accepting their sexuality. It was suggested that gay or lesbian young people may face bullying or discrimination because of their sexuality and that they may decide, or be encouraged to decide, they are trans instead.
32. There were also concerns that young people may be coming under undue pressure or influence from social media. It was suggested that they are being exposed to messages hailing transition as the answer to the normal emotional confusion of going through the teenage years and that young girls may be especially vulnerable to these types of messages.

33. Respondents also commented on the nature of the decision that young people would be making and it was suggested that making irrevocable decisions at a young age could lead to life-long problems. There was specific reference to the long-term effects treatment may have on a young person's fertility and the irrevocability of any physical changes that take place. There was also a concern that, particularly if someone comes to feel that they have made the wrong decision, there could be a very serious impact on a young person's mental health.

People aged under 16

34. The most frequently chosen option, selected by 31% of those answering the question, was Option 1 – do nothing for children under 16. Otherwise, both Option 3 (parental application) and Option 5 (applications by capable children) were selected by 23% of those answering the question. Options 2 (court process), 4 (minimum age of 12) and the 'none of these' option were selected by smaller numbers of respondents (6%, 7% and 8% respectively).
35. Option 1 – do nothing for children under 16: reasons given very much reflected those raised by respondents who disagreed with 16 and 17-year olds being able to obtain legal recognition of their acquired gender. They included that being aged 15 or under is simply too young to make such a fundamental decision about how to live your life. It was suggested that children do not have the necessary life experience or reasoning skills to come to such a profound decision.
36. Option 2: court process: the most frequently given reason for selecting Option 2 was that the court process is a child-centred one which also allows all views to be considered. It was also suggested the court process would offer very necessary protections for children whose parents do not support their wish to transition.
37. Option 3: parental application: the most frequently made point was to note that, in addition to parental application there needs to be a mechanism for children with parents who do not support their child's transition. Some respondents also noted that children who are cared for by statutory services will also need a route to having their gender recognised. A number of respondents suggested that Option 5 – application by a capable child, should run in parallel with Option 3 and could be accessed by children whose decision was not supported by their parents.
38. Option 4: minimum age of 12: In terms of Option 4 itself, the most frequent comment was that trans children may well be aware they are trans by the age of 12. In their further comments a small number of respondents spoke of their own experience and of being aware that they were trans at an early age. It was suggested that this can be a watershed moment for a trans child and that allowing children to know that their body can match their mind would help with trans children's survival rates.

39. Option 5: application by a capable child: Most frequently, respondents commented that not all children can rely upon having supportive parents and that those who do not must have a mechanism for transitioning into the right gender. Further comments included that this would allow children, including those whose parents are not supportive, to exercise self-determination and develop a sense of their own legitimate identity as a trans child.
40. None of these: Respondents most frequently noted the importance of ensuring that children are fully supported in coming to any decision, be that to transition or not. In terms of how children and young people should be supported, counselling was sometimes suggested, as was therapeutic support and occasionally mental health related treatment. On a similar theme, it was suggested that children would be best supported by society placing less or no emphasis on gender, and in particular the associated stereotyping of both children and adults.

Spousal consent

41. A majority of respondents, 70% of those answering the question, thought that it should be possible to apply for and obtain legal gender recognition without any need for spousal consent. A further 24% of those answering did not think it should be possible and 6% did not know.

It should be possible

42. The majority of respondents who thought it should be possible and commented, believed that people have personal autonomy and a right to self-determination, including regarding their gender identity. Respondents commented on people being able to make their own choices, particularly about an issue that is so fundamental to wellbeing and happiness.
43. Respondents also commented on the potential for spousal consent to cause serious problems, most frequently in relation to abuse or manipulation. On a similar theme, a small number of respondents raised concerns that spousal consent could be used as a bargaining tool in any divorce, particularly in relation to child residence and contact arrangements and any financial settlement.

It should not be possible

44. The most frequently raised point was that when people enter a marriage they are entering a legal arrangement or contract and that it is not reasonable to change the terms of that contract without the agreement of both parties. Further comments included that it is also not reasonable to change the nature of the contract – for example into a same sex marriage when it had been a mixed sex marriage or vice versa – without both parties agreeing.
45. Other points made included that removing spousal consent would be an attack on the sanctity of marriage and would undermine the role of the family.

Civil partnership

46. A majority of respondents, 73% of those answering the question, thought people should be able to remain in a civil partnership if one of them obtained a full GRC.

Those who favoured being able to remain in a civil partnership

47. By a very substantial margin the most frequently made point was that civil partnership should in any case be extended to mixed sex couples and this would remove any problems created by one partner obtaining a full GRC.
48. The only other frequently made point was that people should be able to remain in a civil partnership because to expect otherwise would be variously unnecessary, unreasonable, unfair and could be distressing. In line with comments made on opening up civil partnerships to mixed sex couples, it was noted that some people may not wish to be married, including because they see it as a misogynistic institution or as having religious overtones.

Those who did not favour being able to remain in a civil partnership

49. Respondents most frequently suggested that civil partnerships were always designed for same sex couples and should remain so. Further points raised included that, since the legislation does not allow opposite sex civil partnership, the law would need to be changed and this would open the door to opposite sex civil partnership for all.

Grounds of divorce

50. Half of respondents, 50% of those answering the question, thought that legal gender recognition should not stop being a ground of divorce or dissolution. Of the remaining respondents, 34% thought it should and 16% did not know.

Gender recognition should not stop being a ground

51. The most frequently made point was that if someone transitions while in a marriage or civil partnership they are effectively a different person to the one their spouse married and this, in turn, means the marriage contract has been broken.
52. Further comments included that to change the nature of someone's marriage, from either a mixed sex marriage to a same sex marriage or *vice versa*, means that the original marriage, in whichever form, no longer exists in any real sense. It was also suggested that gender transition, and in particular obtaining a full Gender Recognition Certificate (GRC), must remain a specific ground of divorce or dissolution.

Gender recognition should stop being a ground

53. Respondents most frequently suggested that the current ground of divorce, where the 'marriage has broken down irretrievably' is sufficient. Specifically, that this definition is sufficiently broad that there is no need for a specific ground of gender recognition.
54. It was suggested that the ground discriminates against trans people for their gender identity and to have legal gender recognition as a standalone ground of divorce would be discriminatory. It was also suggested that it may contravene an individual's right to privacy if they are required to disclose their gender status, or their gender status is disclosed, when divorcing.

Other aspects of the 2004 Act – Privacy issues

55. The consultation paper explains that Section 22 of the 2004 Act makes it an offence for a person who has acquired ‘protected information’ in an official capacity to disclose that information. A majority of respondents, 52% of those answering the question, did not know whether any changes to Section 22 are necessary. Of the remaining respondents, 33% thought no changes are necessary changes and 15% thought that they are.

Those who did not know

56. The most frequently made point was that they did not have sufficient knowledge or information to have a view on this question, or that they did not understand the question.

No changes are necessary

57. The most frequently made comment was that the individual’s right to privacy should be paramount and that it is for the individual to disclose their trans status or to consent to disclosure. It was also suggested that the existing exemptions are adequate.
58. Other frequently raised issues were that adding additional exemptions may undermine the current protections and that the provisions with respect to crime prevention, detection or recording are important and should remain.

There should be changes

59. The most frequent suggestion was that there should be an additional requirement for disclosure with respect to access to women only spaces, sports, shortlists or employment quotas, with a number of respondents specifically referencing existing sex-based protections under the Equality Act 2010.
60. Alternatively, it was suggested that one or more of the exemptions listed in the consultation paper should be removed. Most frequently suggested for removal was the exemption relating to appointment of a minister of religion. Amongst arguments made for such a course of action was that it is an offence under the Equality Act to discriminate against trans people in employment, and this exemption could facilitate such discrimination.

Recognition in Scotland of a person whose acquired gender has been recognised under foreign law

61. A majority of respondents, 67% of those answering the question, thought that a person who has been recognised in their acquired gender under the law of another jurisdiction should be automatically recognised in Scotland without having to make an application. Of the remaining respondents, 26% thought they should not be recognised automatically and 7% did not know.

Recognition should be automatic

62. The most frequently made comment was that individuals should not need to reapply when their gender has already been recognised elsewhere, or that requiring a further application would be unnecessarily bureaucratic. It was also suggested that this would be a fair or common sense approach, or to reduce the administrative burden.
63. The potentially harmful effects on an individual if required to reapply for legal recognition already obtained elsewhere were also highlighted. It was suggested that the process of gender recognition may be both stressful and expensive, and that it would be unwelcoming, distressing or contrary to an individual's human rights to require a second process to be completed.

Recognition should not be automatic

64. Respondents noted that other countries may have legal systems or gender recognition systems that are either of unknown rigour or are less robust than those in place in Scotland. They saw this as being a reason for not granting automatic recognition. In connected points, respondents argued that other jurisdictions must have comparable or more robust criteria for gender recognition to those in place in Scotland for automatic recognition to be granted.
65. It was also suggested that the laws of other countries cannot be allowed to determine decisions made in Scotland, that anyone living in Scotland must be subject to Scottish law or that it would be inconsistent to recognise one law made in another country but not others.

Non-binary people

66. A majority of respondents, 62% of those answering the question, thought that Scotland should take action to recognise non-binary people. Of the remaining respondents, 33% did not think Scotland should take action and 4% did not know.

Those who agreed

67. The most frequently made comment was that the non-binary gender exists and that being non-binary is just as valid as being one of the binary genders or being a trans woman or man. Those raising this issue sometimes noted that they themselves are non-binary. Others noted that they have non-binary partners, family members or friends. Respondents commented on difficulties they themselves or those known to them experience in their day-to-day lives. Respondents also noted the negative impact this can have on their feeling of self-worth and their mental health.
68. Respondents felt that it was important for Scotland to take an inclusive approach in which non-binary people had the same rights as everyone else. Further comments included that non-binary people deserve respect and recognition and that enshrining this approach in law could help wider society take a more accepting and inclusive approach. Many also highlighted the importance of allowing people self-determination and to make their own choice as to their gender identity.

Those who disagreed

69. The most frequently made comment was that humans are sexually dimorphic and that, apart from a small number of people who are intersex, everyone is born male (with XY sex chromosomes) or female (with XX sex chromosomes). Some went on to comment that, irrespective of how someone identifies or any other action they take, people will always remain male or female because of their chromosomal makeup.
70. Commenting on gender rather than sex, it was suggested that most, if not all, people are non-binary in that they do not conform fully to gender-based stereotypes. It was also suggested that gender is a social construct.
71. Other comments focused on the practical implications of recognising non-binary people. The most frequently made of these points centred around the use of sex-specific services – and there were queries as to whether a third set of non-binary services would be required, or whether a non-binary person would be able to choose which sex-specific service they wished to use.

Options for giving recognition to non-binary people

72. The consultation paper set out a range of options, with respondents able to select as many as they wished. The most frequently chosen option, selected by 75% of those answering the question, was Option 4 – full recognition using the proposed self-declaration system. Options 1 (changes to administrative forms) and 6 (amendment of the Equality Act 2010) also received a high level of support, being chosen by 68% and 62% respectively. Option 3 (limited document changes) was selected by 40% of those answering the question, while the least frequently chosen options were Option 2 (book of non-binary identity), Option 5 (incremental approach) or None of the above (17%, 14% and 13% respectively).
73. The three most frequently selected combinations of options were:
- Options 1, 3, 4 and 6. This combination of options was preferred by around 1 in 4 of those answering Question 13.
 - Options 1, 4 and 6. This combination of options was preferred by around 1 in 8.
 - Option 4 only. This option was preferred by around 1 in 10.
74. Option 1: Changes to administrative forms: comments tended to centre around the importance of non-binary people not having to misgender themselves on forms. It was suggested that without Option 1, there would be little to gain from someone being recognised as non-binary if they were still constantly misgendered in documents.
75. Respondents sometimes noted that they saw Option 1 as being part of the package of options that would provide the necessary legal protections and recognition for non-binary people. This was sometimes linked to being equivalent to the protections proposed for trans people.
76. Option 2: Book of Non-Binary Identity: the vast majority who commented explained why they had not selected this option. It was suggested that a Book of Non-Binary Identity would be an expensive waste of time which would only be symbolic, and which would bring no real benefit to non-binary people. Others had concerns that any record could be misused, particularly if made publicly available.
77. Option 3: Limited document changes: a frequently made comment was that it will be important that non-binary people are able to obtain documents in line with their legal gender. This was frequently connected with the changes to administrative forms as at Option 1. Some respondents went on to suggest that the changes should not be limited and that all identity documents with a gender marker should carry an option to recognise non-binary identities.

78. Option 4: Full recognition using proposed self-declaration system: respondents sometimes suggested this was the most important of the options. The reasons respondents gave for seeing Option 4 as the most important included that non-binary people should have access to the same legal gender recognition process as trans people and that it is the option which would do most to advance recognition of non-binary people in Scotland. It was also suggested that having different arrangements for trans and non-binary people would be confusing.
79. Option 5: Incremental approach: some of those who had chosen Option 5 and commented felt that the scale of the possible changes meant that an incremental approach was probably the only viable option, particularly given the need to determine the legal implications of full recognition. Others who had selected Option 5 raised similar concerns to those who had not. These concerns centred around an incremental approach leading to unnecessary and unreasonable delays, to the detriment of non-binary people.
80. Option 6: Amendment of the Equality Act 2010: respondents sometimes suggested that updating the Equality Act 2010 will be an important, if not vital, legislative step for non-binary people. However, it was noted that while the Gender Recognition Act 2004 has been devolved to the Scottish Parliament, the Equality Act 2010 has not. It was suggested that the Scottish Government will need to lobby actively for amendment of the 2010 Act to include non-binary people.
81. None of the above options: comments tended to reflect those made by respondents who had disagreed with non-binary people being recognised. These included that non-binary does not exist, that sex is binary and that any information gathered should record sex not gender.

Legal impacts

82. The majority of respondents, 53% of those answering the question, were not aware of any additional impacts that the Scottish Government had not identified. Of the remaining respondents, 40% did not know and only 7% said they were aware of additional impacts.
83. Equality Act 2010, single sex spaces and women's rights: respondents sometimes referenced the impact the proposals could have on the sex-based protections provided by the Equality Act 2010. It was suggested that it will be vital to consider the legal and other impacts of the proposals on single sex spaces and the women and girls using them.
84. Data collection, including crime statistics: respondents raised concerns about the impact on the collection of sex-based data, including that introducing a non-binary option would mean that important sex-based data is no longer accurate. The use of this data to plan key services including health-related services was also highlighted.
85. Other areas with possible legal implications: relatively few respondents suggested additional areas in which there may be legal implications which need to be considered. Those areas of law which were suggested included pensions, asylum and immigration, and the law covering the armed forces or the Police.

Impact Assessments

86. **Partial Business and Regulatory Impact Assessment:** the predominant view was that the potential number of those self-declaring and the potential costs involved have been under estimated. However, others considered the estimates appropriate. A small number of respondents commented on the absence of estimated costs for the different options for recognising non-binary people.
87. **Partial Equalities Impact Assessment:** The most frequently made point was that, contrary to the partial EQIA, the proposals for self-declaration will have a profound impact on women. It was argued that there needs to be a specific assessment of the impact on women and girls.
88. The majority of those who commented on religion or belief argued that the proposed changes will impact women whose religion or beliefs prevent them from sharing spaces with men. Respondents who commented on sexual orientation most frequently referred to a negative effect of gender reassignment for the lesbian community. Issues raised by those respondents who commented on disability included querying assumptions made with respect to mental health. On gender reassignment, the most frequent comment was that trans rights should be protected. However, a substantial majority of those making this point added that this should not be at the expense of women's rights.
89. **Partial Child Rights and Wellbeing Impact Assessment:** Respondents most frequently raised concerns that the proposals would not be in the best interests of children, with particular concerns that children who do not conform to gender stereotypes are being pushed towards gender transition. General comments on the partial CRWIA itself included that it is based on the assumption that this law only impacts the transgender community and has virtually no adverse impact on others.

Further comments about the review of the Gender Recognition Act 2004.

90. Further comments not covered elsewhere in the report tended to focus on how the proposals had been developed and the consultation paper itself. It was claimed that the Scottish Government had sought the views of trans organisations but not those of women's groups. It was also suggested that the questions were asked in such a way as to affirm the Scottish Government's position.
91. A range of points was made about the consultation process and the analysis of responses including that the consultation was not adequately advertised, many people are still not aware of the changes that are being proposed and that the consultation should have been restricted to those who live in Scotland.

1. Introduction

Background

- 1.1. This report presents analysis of responses to the Scottish Government's consultation on the review of the Gender Recognition Act 2014.
- 1.2. The consultation ran from 9 Nov 2017 to 1 Mar 2018. There were 16 consultation questions, each with a closed and an open element. The consultation paper is available from the Scottish Government's website at: <https://consult.gov.scot/family-law/review-of-the-gender-recognition-act-2004/>.

Profile of respondents

- 1.3. In total, 15,697² responses were available for analysis, of which 15,532 were from individual members of the public and 165 were from groups or organisations. The majority of responses were received through the Scottish Government's Citizen Space consultation hub.
- 1.4. Respondents were asked to identify whether they were responding as an individual or on behalf of a group or organisation. Organisational respondents were then allocated to one of nine categories by the analysis team. A full list of organisational respondents can be found in Annex 1.
- 1.5. Respondents were also asked to identify whether they were resident in Scotland, the rest of the UK or elsewhere in the world. The 125 individual respondents who did not identify an area have been placed in the rest of the world group.
- 1.6. A breakdown of the number of responses received by respondent type and by area is set out in Table 1 below. Overall, 49% of respondents to the consultation are resident in Scotland, with 38% resident in the rest of the UK and the remaining 13% resident elsewhere in the world. The majority of organisational respondents, 63%, were based in Scotland. Amongst the organisational respondents, the Trans Group was the only one in which the majority of respondents were not based in Scotland.

² Seventy duplicate responses were removed before analysis. A response was counted as a duplicate when both the name and email address matched. If the content of the duplicate responses were not identical, the response submitted last was used in the analysis.

Table 1: Respondents by type

	Scotland	Rest of the UK	Rest of the world	ALL
Children or Young People's Group	6	1		7
LGBT Group	14	10	2	26
Local Authority, H&SCP* or NHS	11			11
Other	19	11	2	32
Religious or Belief Body	20	3		23
Third sector support organisation	5	2		7
Trans Group	7	10	11	28
Union or Political Party	10	1		11
Women's Group	12	5	3	20
Total Organisations	104	43	18	165
<i>% Organisations</i>	63%	26%	11%	100%
Individuals	7533	5982	2017	15532
<i>% Individuals</i>	48%	39%	13%	100%
Grand Total	7637	6025	2035	15697
<i>% All</i>	49%	38%	13%	100%

* Health and Social Care Partnership

Analysis and reporting

- 1.7. The remainder of this report presents a question-by-question analysis of the comments made. A small number of respondents did not make their submission on the consultation questionnaire but submitted their comments in a statement-style format. This content was analysed qualitatively under the most directly relevant consultation question.
- 1.8. The further comments made have generally been presented according to the balance of opinion at the closed question. For example, if the majority of respondents to a question were in agreement, the views of those who agreed and went on to comment are presented first. It should be noted that across the questions respondents who disagreed or said no at a question were more likely to make a comment and their comments tended to be longer than those made by respondents who had agreed or said yes. This means the analysis tends not to run in order of number of comments made.
- 1.9. The analysis gives a sense of scale for the more frequently made points. In each case, the proportion of respondents making a comment is calculated against the answer at the closed question and then the number of those respondents commenting. For example, if 1,000 respondents who had answered yes at Question X went on to comment, and 200 or 20% of respondents made Point A, this would be presented as 1 in 5 respondents. The smallest proportion given is 1 in 10 respondents.
- 1.10. The analysis of further comments has also highlighted any significant difference in the issues raised by those resident in Scotland and those living elsewhere.
- 1.11. The language used in the analysis reflects that used by respondents. The analysis team appreciates that the language used can be of particular importance and significance to respondents and no offence is ever intended.
- 1.12. Finally, please note that the percentages set out in the charts contained within the report and the tables at Annex 2 may not always sum to 100% due to rounding.

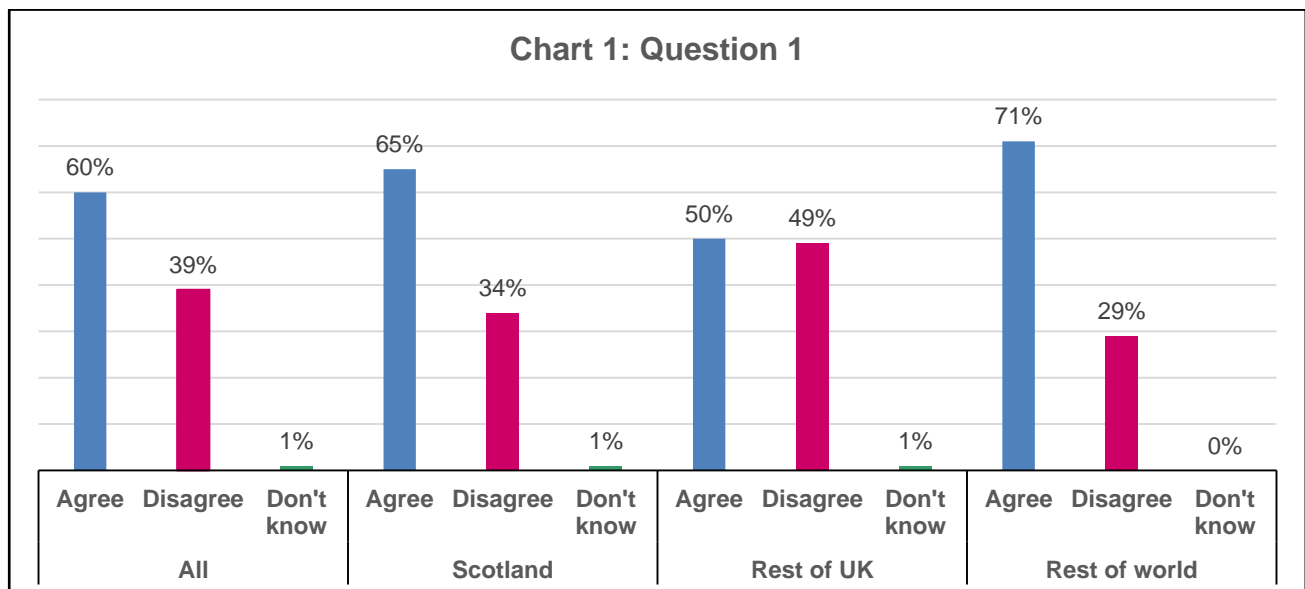
2. Reforming the legal gender recognition system in Scotland

Initial view of the Scottish Government

2.1. The consultation paper explains that, subject to views expressed during this consultation, the Scottish Government proposes that Scotland should adopt a self-declaration system for legal gender recognition. This would mean that applicants under a Scottish system would not have to demonstrate a diagnosis of gender dysphoria or that they had lived for a period in their acquired gender. This would align Scotland with the best international practice demonstrated in countries who have already successfully adopted self-declaration systems and would ensure compliance with the Parliamentary Assembly of the Council of Europe Resolution 2048. The arrangements would be less intrusive and onerous from the perspective of applicants.

Question 1 - The initial view of Scottish Government is that applicants for legal gender recognition should no longer need to produce medical evidence or evidence that they have lived in their acquired gender for a defined period. The Scottish Government proposes to bring forward legislation to introduce a self-declaratory system for legal gender recognition instead.

Do you agree or disagree with this proposal?



2.2. A majority of respondents, 60% of those answering the question, agreed with the proposal to introduce a self-declaratory system for legal gender recognition. The majority of respondents resident in Scotland and the rest of the world agreed (65% and 71% respectively). However, respondents from the rest of the UK were more evenly divided on this issue, with 50% agreeing and 49% disagreeing.

2.3. Around 5,370 respondents made a comment at Question 1.

Comments by those who agreed with the proposal

2.4. Around 1,950 respondents who agreed went on to make a further comment. The three most frequently made points were that:

- Gender identity is a personal matter, with gender recognition sought by individuals who know their own mind and do not make such a choice without thought and commitment. Around 1 in 4 respondents made a comment of this kind while, on a connected point, around 1 in 10 respondents argued there should be no requirement to prove one's gender or to provide any evidence in order to have that gender recognised
- The existing gender recognition process takes too long, is too difficult or too expensive and needs to be made easier so that it presents less of a barrier. Around 1 in 4 respondents made this sort of point
- The existing process is demeaning, intrusive, distressing or stressful for applicants. This was raised by around 1 in 5 respondents. A smaller number of respondents made particular reference to the submission of evidence to the Gender Recognition Panel (GRP). It was suggested that the GRP is made up of people who are not trans and who may not be well informed on the issues involved. In terms of its operation, respondents sometimes noted that the GRP members do not know the individuals whose applications they are evaluating, that submitting evidence in the manner required can be intimidating or humiliating, that decisions can appear arbitrary and there is no right of appeal³, and that the criteria on which judgements are made are not readily accessible.

2.5. Respondents sometimes related personal experiences of the difficulties they had encountered when applying for a GRC or suggested that, although they had lived in their acquired gender for many years, they had not applied for a certificate because of the costs, the intrusive nature of the process, or the difficulties in providing the evidence required.

³An applicant may appeal a GRP decision to reject their application where they consider that the decision was wrong in how the GRP applied the law to the facts of their application: section 8(1) of the 2004 Act.

- 2.6. A small number of respondents argued that the existing gender recognition process either contributes to ill health or leads to the stigmatising of trans people. With respect to health and well-being it was suggested that the delays and difficulties that individuals may experience can lead to mental ill health, including both depression and suicidal feelings. Conversely it was argued that simplification of the process may alleviate such symptoms. Similarly, while some respondents suggested that the existing process is stigmatising, discriminatory and can contribute to the harassment and abuse experienced by trans individuals, it was also argued that the reforms proposed could signal society's acceptance of trans people and thus have a very positive effect.
- 2.7. Around 1 in 6 respondents argued that gender recognition is a matter of human rights or an equality issue. It was suggested that rights to privacy or autonomy may be compromised by existing procedures, and that other members of society are not required to prove their gender in any way.

Medical reports detailing a diagnosis of dysphoria

- 2.8. With reference to the requirements of the current application process, around 1 in 7 respondents argued that there should be no requirement to provide medical evidence, including because this contributes to medicalisation of something that is not an illness, or may put pressure on people to undergo medical procedures that they would not otherwise want at that time. A smaller number of respondents argued that being trans is not a mental illness and should not require a psychiatric assessment or diagnosis of gender dysphoria.
- 2.9. Practical problems in acquiring medical evidence were described, including very long waiting times for appointments at Gender Identity Clinics and some GPs who, respondents feel, do not understand, or are not sympathetic to, the issues involved.
- 2.10. A smaller number of respondents suggested that the reasons why individuals do or do not want to undergo medical transition should not be relevant to the recognition of their correct gender.

Living in the acquired gender for two years

- 2.11. The current requirement to provide evidence of living in the acquired gender prior to application for a GRC was seen as very difficult for some or as risking trans people being exposed to prejudice or verbal or physical abuse. Around 1 in 10 respondents raised this issue, with illustrations including problems created when an individual's personal documents are inconsistent, or do not match the gender presented, meaning that they are forced to reveal their status when they would not otherwise choose to do so. Further, it was argued that the concept of 'living in' a gender is requiring someone to perform or conform to a cultural stereotype.

Existing use of self-declaration

- 2.12. A small number of respondents suggested that the introduction of a self-declaration system would bring Scotland in line with international best practice or that, in countries where already introduced, self-declaration has worked well and with minimal evidence of abuse.
- 2.13. It was also suggested that self-declaration of gender is already the working practice within many organisations. A Women's Group and a Third Sector Support Organisation respondent that provide support services for women who have been victims of rape, sexual abuse or domestic abuse noted that they operate on a self-identification basis and that this will not change, irrespective of the Scottish Government's decision. Another Women's Group respondent stated that they were not aware of any women's organisation within their network which required to see a birth certificate in order to access services or membership.
- 2.14. It was also noted that self-declaration of gender is already permitted when amending other documents such as a driving licence.

Comments by those who did not agree with the proposal

- 2.15. Around 3,340 respondents who did not agree went on to make a further comment. The two most frequently raised issues were closely associated and concerned:
- The potential impact on women's safety if their safe spaces are compromised
 - The risk of abuse of the proposed system, particularly in relation to safe spaces.

Women's safe spaces and the risk of abuse

- 2.16. The most frequently raised issue was that self-declaration may pose a risk to women's safety in spaces including single sex spaces such as toilets, changing rooms, hospital wards and refuges. In total, around 1 in 2 respondents who did not agree with the proposal and made a comment raised this issue, sometimes adding related concerns for the welfare of young girls. Respondents from Scotland were less likely to raise this issue than those from elsewhere.
- 2.17. The second most frequently made suggestion, often associated with the previous point, was that the proposed self-declaration system may be open to abuse, exploitation or false declarations. Around 4 in 10 respondents made a suggestion of this nature, with respondents from outside Scotland again more likely to raise the issue.

- 2.18. Where respondents explained their concerns, it was often to suggest that the proposal would allow 'any man', 'predatory men' or 'biological men' to gain access to women's spaces where they could pose a potential threat to women's safety. It was suggested both that this access could be achieved by fraudulent declarations by individuals with malicious intent but also that, since it would not be permissible to challenge anyone over their gender status, there would be nothing stopping men accessing women's spaces without the need to make any declaration at all. Some respondents suggested that they, personally, are happy to share such spaces with trans women who have transitioned fully but not with those who have simply declared themselves to be women.
- 2.19. Particular concerns were also raised for the victims of rape or domestic abuse who might not feel safe when close to anyone biologically male, whether they present an actual threat or not. A small number of respondents who related a personal history of abuse described their own need for access to female-only spaces in which to feel safe.
- 2.20. Specific concerns with respect to the safety of women in the prison system were raised by around 1 in 6 respondents, who sometimes suggested that self-declaration could be misused by sex offenders as a means of gaining access to women's prisons. Some respondents also gave examples of specific incidences to illustrate their point or stated a view that the existing system is already being abused and argued that this is a matter of record. A small number of respondents referred particularly to the situation of women prison officers who may be required to carry out full body searches on prisoners who abuse the system and self-declare as female.
- 2.21. Contrary to the proposals for self-declaration, around 1 in 6 respondents suggested that there should continue to be a requirement to present medical evidence before receiving legal gender recognition or cited the need for medical support or counselling. A small number of respondents argued that the current requirement to live in the acquired gender for a period should remain, sometimes suggesting this would prove commitment or that an individual cannot know that they wish to live permanently in a different gender without experiencing it first.

Women's rights, services and sports

- 2.22. Around 1 in 5 respondents argued that the proposals represent a general erosion of the identity or rights of natal women. More specific concerns were raised that trans women would be eligible to take natal women's places on all-women short lists, on the boards of public bodies, or for other employment, quotas or awards. Respondents from outside Scotland were again more likely to raise this issue.

- 2.23. Although a small number of respondents acknowledged that there would be a corresponding issue in terms of spaces or provisions currently regarded as being 'men only', most respondents making these points described the threat as being to the safety and rights of women and girls. It was also suggested that the proposals are misogynistic, that women have not been adequately consulted and that, far from being progressive legislation, the revised Gender Recognition Act would in fact be regressive.
- 2.24. Around 1 in 10 respondents drew attention to potential problems for the future of women's sport, noting issues both at professional level (where examples of trans women having a competitive advantage were cited) and at amateur levels where, it was suggested, girls could be deterred from participating if they felt themselves to be at a disadvantage when competing against those with male bodies. It was also suggested that women from some religious or culturally conservative backgrounds might effectively be prevented from participating in sport if 'women only' sessions or events can be attended by trans women who remain biologically male.
- 2.25. A small number of respondents referenced the right of women to choose the sex of those providing their healthcare or personal care services. It was argued, for example, that some women might not attend cervical screening if someone they considered to be biologically male was performing the test and that, for some elderly women, receiving personal care from a person they considered to be male could be distressing or an invasion of privacy. It was suggested that individuals must retain the right to choose to have someone of the same sex to provide such services.

Differentiating sex and gender

- 2.26. Further to objections on the grounds noted above, around 1 in 6 respondents suggested that the consultation paper fails to distinguish between sex and gender, or that the two words are used interchangeably throughout when they are not the same thing. It was argued that, determined by an individual's sex chromosomes, biological sex cannot be changed, irrespective of surgery or other medical treatments. In contrast, gender was suggested to be a social construct – comprising a set of characteristics or behaviours that society has come to view as masculine or feminine. Around 1 in 10 respondents made this point, sometimes suggesting that rather than reinforcing these concepts, effort should instead be put into eradicating gender stereotypes altogether. Respondents making these comments often argued that maintaining a clear distinction between sex and gender is extremely important, and that the sex-based protections defined in the Equality Act 2010 must remain.

- 2.27. The need to balance the competing rights of all groups was raised by a smaller number of respondents who often argued that, while they supported the rights of trans people to be treated with dignity and respect, these rights should not take precedence over the rights of women. A small number suggested that trans people should instead be given their own safe spaces.
- 2.28. Irrespective of terminology used, it was argued that a person cannot change sex/gender simply because of the way they feel. It was also observed, by a small number of respondents, that self-declaration is not considered acceptable in other areas with disability being the most frequently given example. Rather, it was noted, evidence is required.

Wellbeing of trans people

- 2.29. A small number of respondents argued that removal of a requirement for assessment prior to gender reassignment may not be in the best interest of the individual, including because other conditions which show co-morbidity with gender dysphoria may not be diagnosed. An Other Group respondent argued that the requirement to submit evidence to the GRP ensures informed consent, which they argued to be important particularly in the light of evidence concerning people who regret a biological transition. A Religious or Belief Body respondent suggested that by making it easier to change legal gender, self-declaration may encourage earlier medical transition, again with the possibility that this may be regretted.
- 2.30. There were also concerns that a change to self-declaration with the removal of the requirement for medical evidence might lead to reduced funding for medical treatment, or that trans people may not be called for appropriate health monitoring appointments if there is no record of their birth sex.

Impact on other sections of society

- 2.31. A small number of respondents commented on the proposed extension of self-declaration to young people between the ages of 16 and 17, or to children. These topics are discussed in detail at Questions 5 and 6.
- 2.32. A small number of respondents objected to the proposal on the basis of their religious beliefs, often stating a view based on biblical teaching that God created man and woman, and that gender identity is not something that an individual can choose. Rather, it was suggested, the differences between the sexes underpin traditional marriage and family life, and these may be undermined by gender reassignment, with potentially negative impacts for society as a whole. The risk that women from religious or culturally conservative backgrounds could exclude themselves from some aspects of society was also noted.

2.33. The potential effects on other parts of the LGBT community were also referenced, again by small numbers of respondents who typically raised concerns that lesbians may find themselves accused of transphobia because they are not attracted to trans women. Several respondents who identified themselves as being gay suggested that, under the proposed system, they might have changed their gender and then regretted this later on.

Other issues raised

2.34. A small number of respondents, particularly Religious or Belief Body respondents, argued that the Scottish Government should not use the Yogyakarta Principles as a basis for adopting self-declaration. It was argued that these Principles have no legal basis.

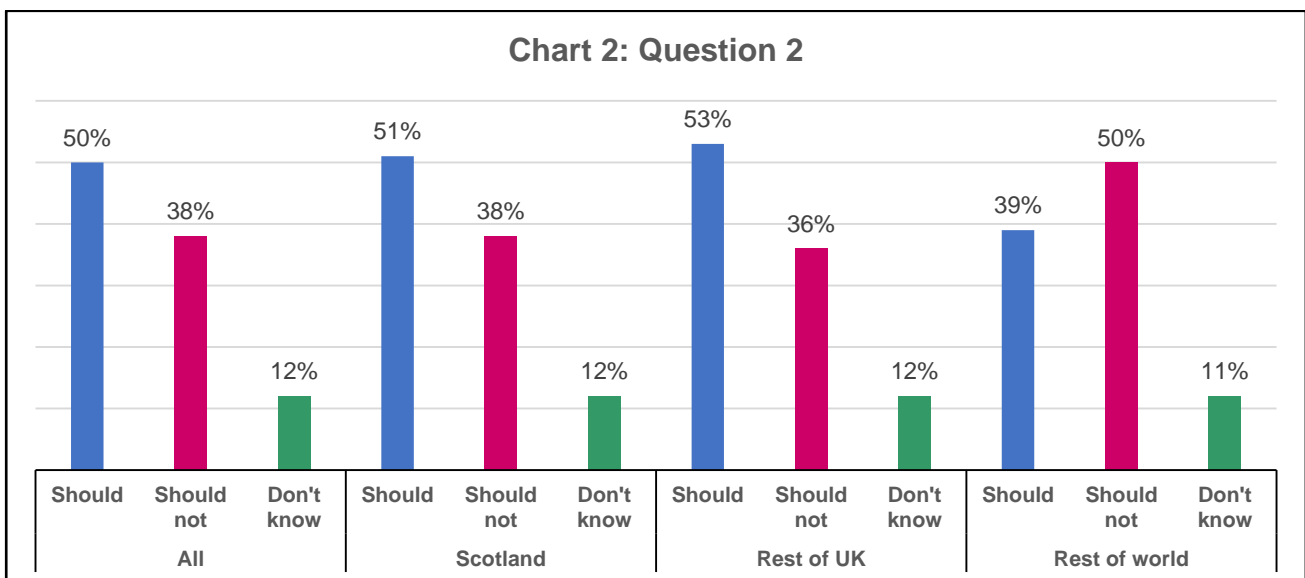
2.35. Respondents also raised concerns that self-declaration will skew statistics. The implications for the monitoring of sex discrimination, for reporting of crime and for correct provision of health services if an individual's birth sex is no longer recorded were all noted.

2.36. Finally, a small number of respondents commented on the tone of the debate around self-declaration including suggestions that people who disagree with the proposals have been threatened or have been accused of bigotry or transphobia. Others cited what they saw as lack of proper consultation with women's groups or commented on the absence of adequate impact assessments. These subjects are discussed further at Questions 15 and 16.

Statutory declaration

2.37. A requirement to submit a statutory declaration would demonstrate that applicants intend to permanently live in their acquired gender. Therefore, the Scottish Government considers that applicants under the proposed system of legal gender recognition should have to provide a statutory declaration stating that they: are applying of their own free will; understand the consequences of obtaining legal gender recognition; and intend to live in their acquired gender until death. If an applicant were to make a statement in a statutory declaration that is false in a material particular, this would be an offence.

Question 2 - Should applicants to the proposed gender recognition system in Scotland have to provide a statutory declaration confirming they know what they are doing and intend to live in their acquired gender until death?



2.38. Half of all respondents who answered Question 2 (50%) thought that applicants to the proposed gender recognition system in Scotland should have to provide a statutory declaration confirming they know what they are doing and intend to live in their acquired gender until death. Respondents in Scotland and the rest of the UK were more likely to agree with this proposal (51% and 53% respectively) than those from the rest of the world (39%). Between 11% and 12% answered that they did not know.

2.39. Around 4,300 respondents made a further comment at Question 2.

Comments by those who agreed applicants should have to provide a statutory declaration

2.40. Around 1,770 respondents who agreed went on to make a further comment.

Disagreement with self-declaration

2.41. Respondents frequently reiterated concerns already discussed at Question 1, for example regarding their fears for the safety or rights of natal women, or that sex and gender are being conflated. While some noted their view that any safeguards are better than none, others expressed a view that a statutory declaration is insufficient or should be additional to other requirements. Respondents sometimes went on to describe criteria, such as providing medical evidence, that are not proposed as part of a Scottish self-declaration system. Around 1 in 3 respondents made points of this kind, with respondents from outside Scotland most likely to raise such issues.

2.42. Associated points, in each case made by smaller numbers of respondents, included:

- That the commitment required in the declaration should be permanent, with a view to making applicants think carefully about what they are doing or to deter those who are not completely sure
- The need to ensure that young people do not make choices they will come to regret was highlighted, sometimes associated with an argument that there must be provision for young people in particular to undo a legal change of gender without penalty. People with mental health disorders were also identified as requiring particular consideration.

Seriousness of the process

2.43. The second most frequently made point was that a change of legal gender is a very serious issue, and that a statutory declaration would ensure it is treated as such. It was also suggested that such a declaration is important in documenting informed consent. Around 3 in 10 respondents made this type of point, with residents in Scotland more likely to raise such matters. An Other Group respondent suggested that in addition to a written declaration there should be a requirement for a face-to-face meeting between the applicant and a suitably qualified person, such as a registrar.

2.44. The importance of deterring frivolous applications or guarding against other abuse of the system was raised by around 1 in 5 respondents. A specific suggestion that consideration should be given to creating a criminal offence of making a false statement was made by an Other Group respondent.⁴

⁴ The consultation noted that, under the Criminal Law (Consolidation) (Scotland) Act 1995, section 44(2) it is an offence to knowingly and wilfully make a statement which is false in a material particular in a statutory declaration. See <http://www.legislation.gov.uk/ukpga/1995/39/section/44>.

2.45. Commenting on the value of a statutory declaration, some respondents argued that this would have little meaning or value, while others questioned how it could be enforced or what any penalty might be. These issues were sometimes associated with points concerning use of the term 'acquired gender' including querying how the Scottish Government intends to define what living in an acquired gender means in practice, with some respondents seeing this as effectively being a requirement to conform to a stereotype. Others commenting on use of 'acquired gender' suggested that different language should be used, with a Trans Group respondent proposing 'declared gender' as an alternative that suggests affirmation of an already-defined gender identity.

Period of reflection

2.46. Although not suggesting that the Scottish Government is minded to introduce a period of reflection, the consultation paper does outline similar arrangements that are in place elsewhere, and a number of respondents made comments in support of a reflection period. It was generally suggested that this should be in addition to a statutory declaration, and those who specified what they considered a suitable length of time usually suggested this should be a matter of months. An Other Group respondent suggested any reflection period could fall between an interim certificate being provided and the finalisation of the process.

2.47. A small number of respondents specifically argued that a reflection period would not be appropriate, often suggesting that trans people will have thought long and hard about legally changing their gender, and that there is no need to delay the process further. For example, a Trans Group respondent argued that such periods suggest lack of trust in the capacity of trans people to make their own decisions.

2.48. The fact that some people will change their mind was acknowledged by a number of respondents. Respondents who had previously indicated opposition to self-declaration often stated their support for allowing people to return to their birth sex. Others argued that, while the intention would be to stay in the same sex until death, this should not mean there cannot be further changes. Potential difficulties for those who are non-binary or gender fluid were also acknowledged.

2.49. A small number of respondents argued that, while considering a statutory declaration to be a good idea in principle, they had reservations about the language used, particularly with respect to reference to living in the acquired gender 'until death' as being too severe. However, a Children's or Young People's Group respondent suggested that they would prefer 'permanently' since being misgendered or having their former name used after death is a fear for some trans people. A small number of respondents noted that they considered the use of 'until death' in the wording of the declaration to be appropriate given the seriousness of the action, but also that they did not expect this to preclude making a further change in the future.

2.50. Among the small number of respondents who commented specifically on whether it should be an offence to make a false declaration, opinion was divided. While some suggested that it should be a criminal offence to deliberately make a false application, others were more cautious about the implications or suggested clarification to be necessary. For example, a Trans Group respondent suggested it should be made clear that applicants are making a declaration of their current situation and future intentions, and not necessarily that these are permanent, to avoid concern that a person may be criminalised if they apply to have their gender legally recognised again in the future.

Comments by those who disagreed that applicants should have to provide a statutory declaration

2.51. Around 1,750 respondents who disagreed went on to make a further comment. Around 1 in 3 argued that the declaration proposed would not accommodate those people who understand their gender identity to be fluid. Almost all respondents making this point had agreed with the proposal for self-declaration at Question 1. A smaller number, around 1 in 10 respondents, specifically referenced difficulties for people who are non-binary.

2.52. Around 3 in 10 argued that people may change their minds, understanding that the declaration as proposed would prevent this. These respondents included both those who had agreed at Question 1 and those who opposed self-declaration. Further points made included:

- Arguing that an individual's understanding of their gender may change over time or that a person has a right to identify as they choose
- Highlighting factors that might cause a change of mind, possibly on several occasions
- Referencing the importance of allowing people, especially young people, who realise they have made a mistake to de-transition.

2.53. Around 3 in 10 respondents commented specifically on the phrase 'until death' or argued that nobody can know what they will do or feel for the rest of their lives. It was suggested that expecting anyone to declare that they will adopt one gender on this basis is unreasonable. Around 1 in 7 respondents agreed that people should confirm they know what they are doing when applying to have a change of gender recognised but disagreed with a statutory declaration requiring a commitment until death. Respondents sometimes also drew a parallel with marriage.

2.54. That a declaration is not needed was argued by around 1 in 7 respondents. Those making this point sometimes also suggested that applicants know their own minds or should not be required to make a legal declaration to this effect for something that is a matter of personal choice. In connected points, smaller numbers of respondents argued that:

- There is no evidence of misuse of the process where self-declaration is in use elsewhere and there is no reason to expect there to be a problem in Scotland
- This is an equality issue as non-trans people are not required to declare their gender
- A statutory declaration in the proposed wording could cause anxiety, put people off declaring their gender altogether, or is contrary to the spirit of self-declaration
- Any process recording a legal change of gender should more closely resemble that required to record a change of name.

2.55. Around 1 in 7 respondents noted that they disagreed with self-declaration in principle, sometimes also expressing concern that a statutory declaration in the proposed wording might prevent someone from returning to their birth sex. The importance of being able to reverse a mistake, especially for young people, was often referenced. In a connected point a small number of respondents argued that the statutory declaration proposed would be meaningless or of no value.

2.56. In addition to the more frequently noted points above, small numbers of respondents queried how living in an acquired gender would be defined, how compliance could be checked, or what sanctions would be applied in the event of someone failing to do so.

Comments by those who did not know or did not answer

2.57. Around 780 respondents who did not know or did not answer Question 2 went on to make a further comment. Around 4 in 10 made statements disagreeing with aspects of the proposal for self-declaration, with respondents from outside Scotland more likely to make this type of point. Around 1 in 10 argued that a statutory declaration would have no value, while a smaller number raised questions around how compliance could be assessed or enforced.

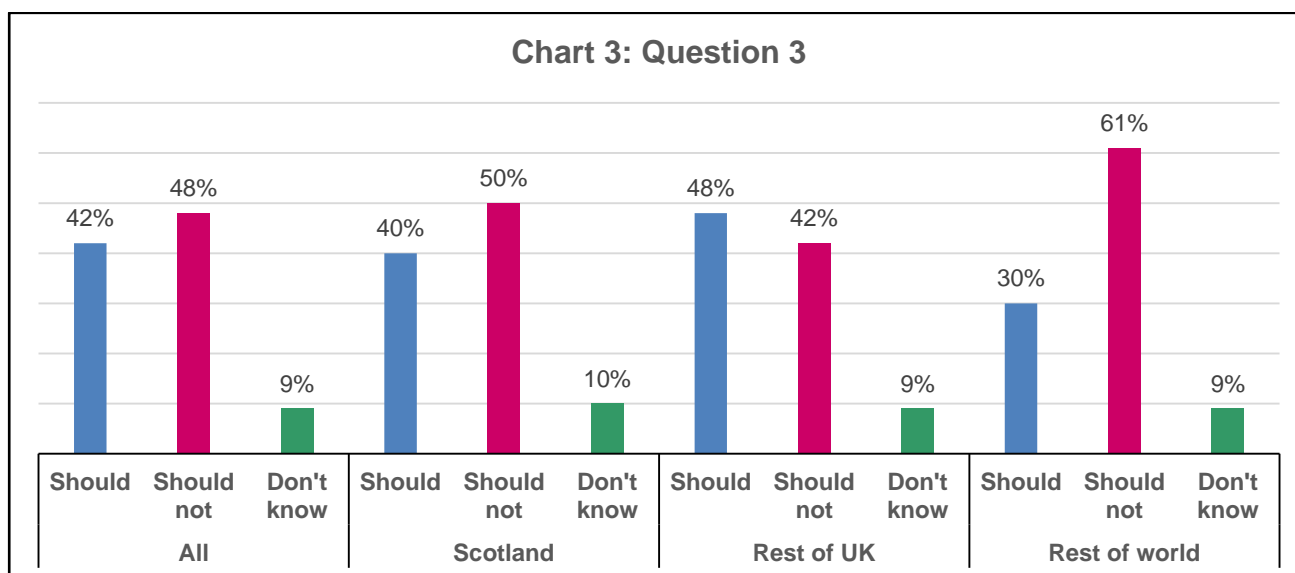
2.58. Other frequently made points were that:

- People may change their mind and may need to make more than one declaration. Around 1 in 5 respondents made comments of this type. Retaining the ability to detransition was often suggested to be important, with some respondents particularly highlighting issues with respect to young people
- Use of the phrase 'until death' is not appropriate. Around 1 in 5 respondents made this point, while around 1 in 7 noted that they would otherwise agree with a declaration in principle
- The fluid or non-binary nature of gender for some people makes a declaration as worded difficult. Such issues were raised by around 1 in 7 respondents.

Number of times a person can seek legal recognition

- 2.59. The consultation paper explains that, while the 2004 Act does not restrict the number of times that a person can apply for legal recognition of their acquired gender, other countries with self-declaration systems for legal gender recognition have different approaches to limiting the number of times that a person can seek to change their legal sex. It also sets out current restrictions on the number of times a birth certificate can be altered to reflect a name change.
- 2.60. It notes that, notwithstanding the proposed requirement for applicants to submit a statutory declaration, there may be concerns that applications might be submitted frivolously and that limiting the number of times that a person may apply for recognition of their acquired gender may reduce that risk.

Question 3 - Should there be a limit on the number of times a person can get legal gender recognition?



- 2.61. The largest proportion of respondents, 48% of those answering the question, thought there should not be a limit on the number of times a person can get legal gender recognition. However, 42% thought there should and 9% did not know. Respondents resident in Scotland and the rest of the world were more likely to think there should not be a limit. Respondents resident in the rest of the UK were the only group in which the number of respondents who supported the idea of a limit exceeded the number who did not.
- 2.62. Around 3,960 respondents made a further comment at Question 3.

Comments by those who thought there should not be a limit

2.63. Around 1,360 respondents who thought there should not be a limit went on to make a further comment. The most frequently raised points, both made by around 1 in 4 respondents, were that:

- People and their circumstances change
- For some people, gender is fluid, can evolve over time, is on a spectrum or is non-binary.

2.64. In both cases it was suggested any limit set might be exceeded by a small number of people, leaving such individuals with the prospect of being 'stuck' in the wrong gender. Small numbers of respondents also suggested, or gave examples of, external pressures that might cause a person to stop or reverse their transition, perhaps before deciding to try again at a later date. It was argued that having a limited number of changes available could put increased pressure on a trans individual, potentially to the detriment of their mental health.

2.65. It was also argued that concerns about frivolous behaviour or fraudulent abuse of the proposed self-recognition system are ill founded. It was suggested that there is no evidence of such problems elsewhere, and that imposing a limit on such grounds would be unjustified. Around 1 in 7 respondents raised these issues, sometimes adding that setting a limit might give the impression that concerns regarding frivolity or abuse are more significant than they really are. As an alternative, a small number of respondents proposed that any suspected instances of frivolous or fraudulent behaviour should be investigated individually or argued that the Statutory Declaration should be sufficient to mitigate against these behaviours.

2.66. Respondents who opposed a numerical limit on the number of times gender can be legally recognised sometimes suggested alternative restrictions of which they would or might approve. Collectively, these suggestions were made by around 1 in 10 respondents with the most common proposal being that there could be a minimum time between applications. However, where specific time frames were proposed these varied widely, from as little as a few months up to 10 years. Other ideas included that repeated requests for legal gender recognition could:

- Trigger some sort of review, a more detailed application process, greater scrutiny, or a higher level of support
- Have a cost implication for the applicant.

2.67. Other issues raised by smaller numbers of respondents who did not support a limit to the number of times a person can get legal gender recognition included suggestions that:

- Legal gender is a personal matter, that it affects nobody else, and that people should be trusted to decide their own gender identity. Some respondents argued that the state has no reason to regulate gender, or that it would not matter if individuals wished to change their legal gender many times
- Any limit chosen would be arbitrary, and sometimes that this would be contrary to the spirit of self-declaration
- There are parallels with marriage which, although intended to be permanent when entered into, can be ended without legal sanction and repeated on an unlimited number of occasions
- The process for changing legal gender recognition should be analogous to that for a name change. A Local Authority, H&SCP or NHS and a Trans Group respondent were amongst those who highlighted the current restriction on changing a forename only once on a birth certificate as having the potential effect of limiting the number of times a person can have their gender recognised.

2.68. It was also noted that there is no limit to the number of times gender can be legally recognised under the 2004 Act and suggested that there is no reason to do so now. Organisational respondents were particularly likely to make this point.

2.69. Finally, respondents who disagreed with self-declaration at all often made points emphasising their view of the difference between sex and gender or suggested that unlimited changes should only be allowed subject to measures (such as medical supervision) not required under the proposed new self-declaration system. Respondents who opposed self-declaration were among those who argued that individuals should always be able to return to their birth sex.

Comments by those who thought there should be a limit

2.70. Around 2,160 respondents who thought there should be a limit went on to make a further comment. Around 1 in 4 expressed a view that there should be no self-declaration process, that the consultation conflates sex and gender, that it is not possible to change sex, or that the number of changes permitted should be zero.

2.71. Other reasons given for believing that there should be a limit included that it would ensure the process is a serious one, discourage frivolous or ill-considered changes, and reduce the risk of changes being made for fraudulent or abusive purposes. Around 3 in 10 respondents raised one or more of these issues. In addition, smaller numbers of respondents suggested that to allow multiple changes risks undermining the credibility of the process

or that anyone requesting multiple changes may have underlying issues that are not being addressed and would benefit from other support or counselling rather than further changes of gender.

- 2.72. Respondents sometimes suggested the number of changes that they considered to be appropriate. Around 1 in 8 respondents advocated only one change, although sometimes qualified this with an additional requirement (such as for a medical diagnosis) that is not proposed under the self-declaration system. Others suggesting only one change argued that this is necessary to ensure the person involved is genuinely committed to their choice and to avoid potential abuses of the system.
- 2.73. By far the most frequently suggested limit, proposed by around 1 in 3 respondents, was that a maximum of two changes should be allowed, with around 1 in 4 noting that this would allow an individual to change their mind and to return to their birth sex. Both points were more likely to be made by respondents from Scotland. A small number of respondents raised specific concerns regarding the welfare of children and young people, both that they may lack sufficient maturity to make such a serious decision or that, if allowed to make such a choice, it is essential that there is provision for people who have changed gender at an early age to be able to return to their birth gender.
- 2.74. Amongst respondents advocating two changes, an Other Group respondent argued that this would strike a balance between the rights of applicants and potential concerns that the system could be misused, while a Local Authority, H&SCP or NHS respondent suggested that two changes would be consistent with the essence of the Statutory Declaration that the applicant intends the change to be for life, while allowing some flexibility.
- 2.75. Only a very small number of respondents suggested other numerical limits – ranging from 3 legal changes of gender upwards, while others specified only that the limit should be more than one.
- 2.76. Small numbers of respondents also:
- Proposed a restriction on the time between applications
 - Suggested additional requirements that could be implemented in the event of repeated requests for legal changes of gender. Examples included requirement for a medical assessment or the possibility of a court process
 - Highlighted difficulties for people who are non-binary or gender fluid if a limit is imposed, or suggested consideration should be given to the effect on those who do not identify with either gender
 - Suggested that resource issues, for administration costs as well as demand on NHS services – need to be considered.

Comments by those who did not know or did not answer

- 2.77. Around 440 respondents who did not know or did not answer Question 3 went on to make a further comment. Around 4 in 10 indicated disagreement with the proposal for self-declaration, sometimes noting that they could not answer the question as a result.
- 2.78. Other issues, in each case raised by smaller numbers of respondents, were that:
- It must be possible for people to return to their birth sex
 - The issue must be taken seriously and that there needs to be some safeguards in place
 - A limit is important to deter potential abuses
 - Fears of abuse are ill founded
 - Gender can be fluid or non-binary.
- 2.79. An Other Group respondent suggested that a limit to the number of times a person can get legal gender recognition may be needed for practical reasons, in order to ensure timeous administration of the system.

Requirements in relation to an applicant’s place of birth or residence

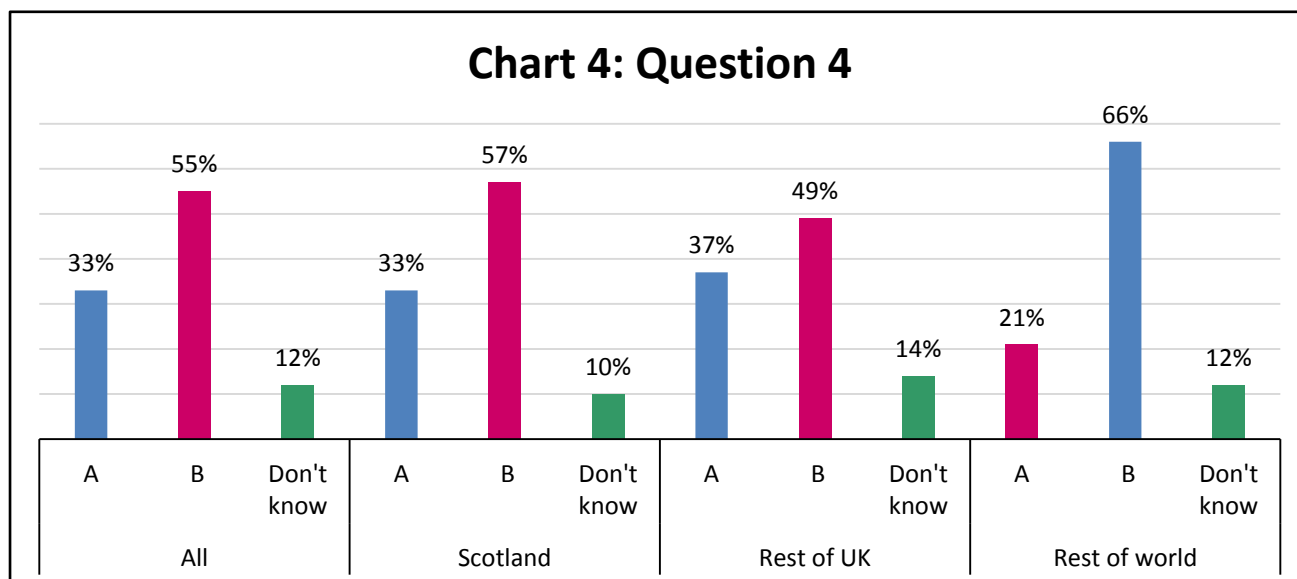
2.80. The Scottish Government’s intention is that under the proposed new self-declaration system, there would just be one way of applying for legal registration of gender. The Scottish Government also intends that automatic recognition should be granted in Scotland where a person has been recognised in their acquired gender in another country or elsewhere in the UK. On that basis, the Scottish Government’s initial view is that, subject to the views expressed during this consultation, applications to the Scottish self-declaration system should be restricted to those whose birth or adoption was registered in Scotland and to people who are resident here.

Question 4 - If the Scottish Government takes forward legislation to adopt a self-declaration system for legal gender recognition, should this arrangement be open:

A) only to people whose birth or adoption was registered in Scotland, or who are resident in Scotland?

or

B) to everyone?



2.81. A majority of respondents, 55% of those answering the question, thought that any self-declaration arrangement should be open to everyone (Option B). Of the remaining respondents, 33% thought it should only be available to people whose birth or adoption was registered in Scotland, or who are resident in Scotland (Option A). The remaining 12% did not know. The pattern was broadly similar for those resident in Scotland. Those resident in the rest of the UK were less likely to prefer the arrangement to be open to everyone, while those in the rest of the world were more likely.

2.82. Around 2,910 respondents made a further comment at Question 4.

Comments by respondents preferring Option B

- 2.83. Around 1,060 respondents chose Option B and went on to make a further comment. The most frequently made point, raised by around 1 in 5 respondents, was that trans people should have equal rights to have their gender recognised irrespective of their nationality. It was also suggested that to do otherwise would be discriminatory and potentially divisive. Smaller numbers of respondents noted that they saw no reason not to make self-recognition open to everyone, while others stated that, while they were opposed to any self-declaration, if granted to anyone it should be available to everyone.
- 2.84. Around 1 in 7 respondents suggested that granting the right to self-declaration to everyone is the right thing to do or that, by so doing, Scotland can demonstrate liberal and inclusive values. The value of extending self-declaration to people from countries where recognition of their gender identity is not available, or where individuals may be persecuted for being trans, was referenced by around 1 in 8 respondents. A smaller number argued that, although the recognition granted in Scotland may not be acknowledged elsewhere, for some trans people just being able to have their gender legally recognised in Scotland would be of value nonetheless. A small number of others expressed a view that Scotland should be a 'beacon' or 'haven' for trans people.
- 2.85. The opportunity for residents of other parts of the UK to have their gender legally recognised in Scotland was seen as beneficial by around 1 in 10 respondents, while a small number of others expressed a hope that introduction of self-declaration in Scotland would encourage other jurisdictions to move forward with their own gender recognition procedures. An Other Group respondent suggested that the Scottish Government should seek to ensure that a legal recognition certificate issued in Scotland is recognised elsewhere in the UK and in other jurisdictions.
- 2.86. Attention was also drawn to particular groups of people who might or would be excluded under Option A. Asylum seekers and refugees were mentioned most frequently, by around 1 in 6 respondents. They sometimes also noted that trans asylum seekers may be fleeing persecution because of their gender identity. A Trans Group and an LGBT Group respondent noted that asylum seekers may not be considered legally resident in Scotland when awaiting a decision on their application for refugee status and, being unlikely to have documentation that reflects their gender identity, will not be housed in an environment appropriate to that gender identity. Yogyakarta Principle 31, stating that the immigration status of an applicant should not prevent them from applying for or obtaining legal gender recognition, was also noted.

2.87. Smaller numbers of respondents argued for inclusion of:

- Anyone living or working in Scotland
- Visitors
- Migrants
- Overseas students
- Anyone planning to move to Scotland.

2.88. A small number of respondents also expressed a view that self-declaration should be open to all who are resident in Scotland, in some cases perhaps interpreting Option A as requiring an individual to be both resident and also to have been born or adopted in Scotland in order to be eligible.

Comments by respondents preferring Option A

- 2.89. Around 1,160 chose Option A and went on to make a further comment. The most frequently made point was general disagreement with the proposal to allow self-declaration of gender at all. This was raised by around 1 in 3 respondents but was more likely to be raised by respondents from outside Scotland. As a related point, around 1 in 8 respondents explained their choice as the most limited implementation on offer for a policy with which they disagreed. This point was also more likely to be made by respondents from outside Scotland.
- 2.90. Around 1 in 4 respondents argued that Scotland cannot, or should not try to, make laws that extend beyond its borders or that affect the lives of people who are not its own nationals. In an associated point, a smaller number of respondents argued that the proposed legislation should not be extended to other parts of the UK 'by the back door', without the opportunity for separate consultation or approval. The latter point was again more likely to be made by respondents from outside Scotland.
- 2.91. The risk of encouraging gender reassignment tourism was suggested as a reason for restricting access to self-declaration by around 1 in 4 respondents, with this point more likely to be made by respondents from Scotland. A related point concerning potential costs (most frequently to the NHS) was made by around 1 in 10 respondents who were again more likely to come from Scotland.
- 2.92. Smaller numbers of respondents suggested that:
- Self-declaration of gender should be limited to residents, with varying proposals for the length of time that someone might be expected to live in Scotland before being eligible. A small number of respondents specifically suggested that the residency requirement should not be too onerous, or that there should be scope for special cases to be made, for example for asylum seekers or international students
 - Self-declaration of gender in Scotland is unlikely to be, or will not be, recognised internationally but could still potentially be dangerous for the individual concerned if under the jurisdiction of a much less liberal government
 - Unrestricted self-declaration could attract those intent on abusing the system to come to Scotland, potentially to commit crime and to put women and children at risk.

Comments by those who did not know or did not answer

- 2.93. Around 690 respondents selected 'Don't know' or did not answer the closed question but went on to make a further comment. Around 7 in 10 noted their disagreement with the proposal for self-declaration. Several of these respondents suggested that there should have been an additional choice available at Question 4 since they felt that selecting either Option A or B might be interpreted as support for a policy that they opposed.

2.94. Much smaller numbers of respondents:

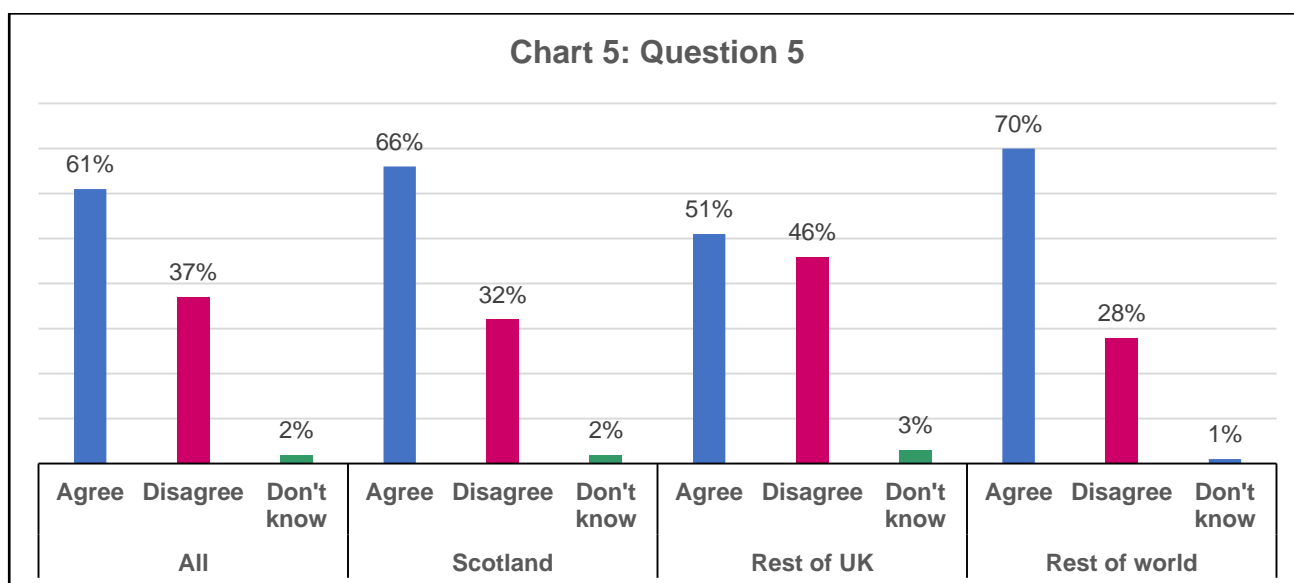
- Questioned whether other countries are likely to acknowledge a legal gender recognised in Scotland or suggested that they are unlikely to do so
- Suggested a risk that people would be attracted to come to Scotland in order to have their gender legally recognised
- Argued that the rest of the UK should make its own decisions on gender recognition
- Noted that they did not have sufficient knowledge or information to answer the question
- Indicated their disagreement with some element of the proposition outlined as Option A, or made a statement noting those they felt should be included.

3. Age of applicants

16 and 17-year olds

- 3.1. The minimum age at which a person may make an application under the 2004 Act is currently 18. The consultation paper notes that the Scottish Government considers that people aged 16 or older should be able to apply for legal recognition of their acquired gender using the proposed self-declaration process.
- 3.2. The consultation paper goes on to note that the proposed change would also be consistent with the age at which young people can exercise other rights under the law in Scotland. 16 and 17-year olds are able to make a number of important life decisions without parental involvement or consent. These include: getting married or entering a civil partnership; recording a change of name; and voting in Scottish elections.

Question 5 - The Scottish Government proposes that people aged 16 and 17 should be able to apply for and obtain legal recognition of their acquired gender. Do you agree or disagree?



- 3.3. A majority of respondents, 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. Of the remaining respondents, 37% disagreed and 2% did not know. Those resident in Scotland were more likely to agree than all respondents, as were those from the rest of the world.
- 3.4. Around 4,010 respondents went on to make a further comment at Question 5.

Comments made by those who agreed

- 3.5. Around 1,360 respondents who had agreed at Question 5 went on to make a comment.
- 3.6. The most frequently made of these by some margin, raised by around 4 in 10 respondents, was that the proposal is in line with other age-related rights and legal provisions in Scotland. This issue was more likely to have been highlighted by those resident in Scotland than those living elsewhere.
- 3.7. Some noted that, to all intents and purposes, 16 and 17-year olds are now recognised as having full adult rights and responsibilities in Scotland. In addition to the rights referenced in the consultation paper, respondents also referred to other ways in which 16 and 17-year olds can exercise their autonomy, for example by: leaving home; entering further or higher education; being in employment and paying taxes; joining the armed forces⁵, or consenting to medical treatment.
- 3.8. More generally, it was suggested that 16 years old is a recognised minimum age for other areas of registration law. However, a Children and Young People's respondent noted that while the proposal increases the opportunity for trans children to realise their rights, it is out of step with existing Scots law with regard to the recognition of capacity in children and young people. They noted that this more commonly presumes capacity from the age of 12 and provides children below that age the ability to exercise rights where they have capacity.
- 3.9. On a similar theme, around 1 in 5 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. It was also noted that the United Nations Convention on the Rights of the Child (UNCRC) requires that minors are not discriminated against, neither on grounds of age nor on grounds of their gender identity or sexuality, and that they are heard according to their maturity and evolving capacity in all matters that concern them.

⁵ Parental permission is required to join the armed forces if aged 16 or 17.

- 3.10. Connected to this, around 1 in 8 respondents commented that children can be aware from an early age that they are trans. A smaller number of respondents noted that they themselves had been clear that they were trans by the age of 16. Others noted that they had worked with, or had friends or family members, who had also come to this realisation by age 16. A small number of Local Authority, H&SCP and NHS respondents noted that they are seeing younger and younger people declaring they wish to transition and that by lowering the age to 16 we empower young people into taking control and make decisions without the need for parental consent. They went on to note that this age is particularly relevant as it allows exam certificates to be issued in the correct name reducing anguish and preventing the administrative burden of having them reissued later.
- 3.11. Respondents also highlighted ways in which being able to obtain a GRC could help young people in moving into adulthood. Around 1 in 6 respondents 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. For example, a small number of respondents spoke of their own experiences and the negative impact not having their gender recognised had on them. A Union or Political Party respondent noted their belief that there will be serious mental health implications for young trans people if they are denied this right. They went on to say that young people will still identify as trans whether or not they can have their gender legally recognised, and that it is not ideal to leave recognition at the discretion of others, such as headteachers.
- 3.12. Also connected with helping trans young people in their transition into adulthood, a smaller number of respondents suggested that having their gender recognised will make it easier for young people to thrive in education or employment. It was suggested that the reduction in age would remove some of the barriers that trans, including non-binary, young people face as a result of inconsistent documentation when entering into employment or further education. The LGBT Group respondent highlighting this issue reported that trans, including non-binary, young people sometimes avoid applying for opportunities because they do not want to be outed by showing a birth certificate that does not reflect their identity. They also noted that applying for opportunities can have a negative impact on young people's self-esteem and mental health when their documentation is questioned.
- 3.13. A small number of respondents commented more generally on documentation, including the importance for a trans young person of having their gender recognised across a full range of documents. Examples given included birth certificates, passports, school records and bank accounts. Respondents also noted the difficulties young people may face if their key documents do not all record a 'matching' gender and it was suggested that being denied the right to have their gender reflected in legal documents places them at risk of significant discrimination and violations of their privacy in education and employment.

3.14. Finally, smaller numbers of respondents suggested either that any age limit is arbitrary and that children should be able to receive legal recognition at any age. Options for under 16s are covered at the next question.

Comments made by those who disagreed

3.15. Around 2,540 respondents who disagreed went on to make a comment, with 7 in 10 commenting that 16 years old is too young to be able to apply for and obtain legal recognition of their acquired gender. A wide range of further issues were raised in support of this view, with many of them centring around 16 being too young to make a life-changing decision. For example, it was suggested that 16 and 17-year olds are often still going through puberty and, as discussed further below, they may not yet be clear about their gender identity or sexuality. It was also suggested that the brain does not mature fully until people are in their mid-twenties. Respondents also commented on life experience and suggested that a 16 or 17-year-old simply does not know what it would be like to live as an adult in the gender that is the same as their birth sex.

3.16. It was also noted that there are key services, supported by the legislative framework, 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 can access Paediatric and Child and Adolescent Mental Health Services
- When young people of 16 or 17 are held in custody they are considered to need enhanced levels of protection compared with adults.

3.17. Around 1 in 5 commented on the potential confusion, particularly around their gender identity and sexuality, that young people may experience. Further points included that gay or lesbian young people may see themselves as trans rather than recognising and accepting their sexuality. It was suggested that gay or lesbian young people may face bullying or discrimination because of their sexuality and that they may decide, or be encouraged to decide, they are trans instead. There were also concerns that young people may be coming under undue pressure or influence from social media. It was suggested that they are being exposed to messages hailing transition as the answer to the normal emotional confusion of going through the teenage years and that young girls may be especially vulnerable to these types of messages.

3.18. One perspective was that children and young people should be supported in exploring how they wish to express their gender identity without judgement and with appropriate access to mental health care and counselling services, but that legal recognition of gender should be something that they decide on as adults rather than when younger and easily swayed by the expectations and beliefs of their peers.

- 3.19. With specific reference to young women, there were concerns that the sexualised culture and the objectification of women could lead girls hitting puberty to want to opt out of being a woman. In particular, it was suggested that non-conforming teenage lesbians may be told or come to believe they must be male. There were also concerns that a high proportion of trans teens are autistic and that these young people may be particularly vulnerable to making changes to try to feel that they fit in. More generally, a Religious Body or Group respondent suggested that society places considerable pressure on young people and that being trans is far too often presented as an attractive alternative to the reality of their lives.
- 3.20. A smaller number of respondents suggested that children or young people who consider themselves to be trans may come to a different view as they mature. For example, a Women's Group respondent summed up the views of others when referencing research which says that over 80% of children who think they are the opposite sex will come to terms with their natal sex by the end of adolescence and that a significant proportion of these children will be gay or lesbian.
- 3.21. Respondents also commented on the nature of the decision that young people would be making and it was suggested that making irrevocable decisions at a young age could lead to life-long problems. Around 1 in 9 respondents raised this issue, with further comments suggesting that there are many adults who come to regret their decision to change gender. In particular, it was suggested that 16 or 17-year olds may not yet be able to fully think through the longer-term implications of what they are doing, particularly in terms of the health impacts that any medical intervention may have.
- 3.22. There was specific reference to the long-term effects treatment may have on a young person's fertility and the irrevocability of any physical changes that take place. There was also a concern that, particularly if someone comes to feel that they have made the wrong decision, there could be a very serious impact on a young person's mental health. Given these perceived risks, it was suggested that young people should not be able to make any fundamental decisions, especially around undergoing trans-related medical treatment, until they are older.
- 3.23. In terms of when a young person may be equipped to make a decision to transition, and in particular a decision to undergo medical treatment, around 1 in 8 felt that 18 years is an appropriate age, while a smaller number felt that people should not be able to make such a profound and life-changing decision until their early to mid-20s.

- 3.24. Further comments included that the UNCRC defines children as those under the age of 18 years and accords them special protections. As above, it was also noted that legislation does not consider someone to be an adult with full legal responsibilities until they reach 18 and some suggested that allowing a young person to transition before age 18 would be to not exercise an appropriate duty of care, particularly where a young person may be considered to be vulnerable. On a similar theme, respondents noted a range of other areas in which we do consider 16 and 17-year olds need to be protected; examples given include purchasing alcohol or cigarettes or getting a tattoo.
- 3.25. Finally, smaller numbers of respondents commented on conditions which should be put in place if 16 or 17-year olds were to transition. Suggestions included that:
- A medical diagnosis should be required
 - Parental consent should be required, or parents should be consulted at least.

Comments by those who did not know or did not answer

- 3.26. Around 120 respondents who did not know or did not answer the question went on to make a further comment. Themes largely reflected those raised by respondents who did not agree with the proposal that people aged 16 and 17 should be able to apply for and obtain legal recognition of their acquired gender.

People aged under 16

Question 6 - Which of the identified options for children under 16 do you most favour? Please select only one answer.

Option 1 – do nothing for children under 16

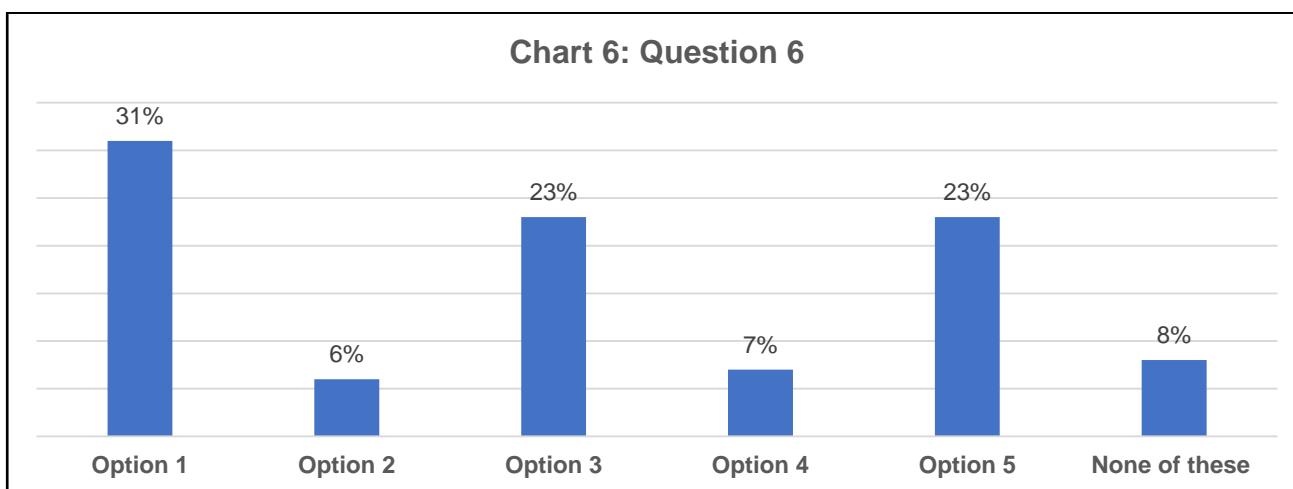
Option 2 – court process

Option 3 – parental application

Option 4 – minimum age of 12

Option 5 – applications by capable children

None of these options



3.27. The most frequently chosen option, selected by 31% of those answering the question, was Option 1 – do nothing for children under 16. As set out with Table 6 at Annex 2, respondents from Scotland and the rest of the world were less likely to select Option 1 (28% and 24% respectively), while respondents from the rest of the UK were more likely to select it (39%).

3.28. Otherwise, both Option 3 and Option 5 were selected by 23% of those answering the question. Those resident in Scotland or the rest of the world were more likely to select Option 3 (27% and 29% respectively). Options 2, 4 and None of these were selected by smaller numbers of respondents (6%, 7% and 8% respectively).

3.29. Around 3,720 respondents went on to make a comment at Question 6. Based on their comments, a small number of these respondents may have interpreted the question as asking about options for 16 and 17-year olds.

- 3.30. Otherwise, in addition to explaining why they had selected their preferred option, some respondents set out their reasons for believing that under 16s should be able to take action about their gender. For example, a small group of Local Authority, H&SCP and NHS respondents commented that a small but increasing number of trans young people under 16 in Scotland are able to be open about their gender identity and live happy, healthy lives with the support of their parents, families and peers. They noted, however, that even those young people who have been living for many years as themselves, who are accepted by their families, and who go to school as the gender they identify, are unable to have their gender identity legally recognised.
- 3.31. Other comments included that the denial of a child's identity is in contravention of the UNCRC, which otherwise Scotland proudly seeks to abide by.
- 3.32. Please note that the views of those who disagreed with allowing children under 16 to transition were primarily expressed at Option 1.
- 3.33. Further comments tended to focus on why that option had been selected. The main analysis below presents each option in numerical order rather than based on the proportion of respondents selecting that option.

Option 1 – do nothing for children under 16

- 3.34. Around 770 respondents who selected Option 1 went on to make a comment, with many of these comments reflecting the themes raised by those who had disagreed with people aged 16 and 17 being able to apply for and obtain legal recognition of their acquired gender.
- 3.35. For example, around 1 in 2 respondents suggested being aged 15 or under is simply too young to make such a fundamental decision about how to live your life. It was suggested that children simply do not have the necessary life experience or reasoning skills to come to such a profound decision. For this very reason, respondents sometimes noted that there are very few other areas in which society does not protect children of 15 years or under and does not recognise that they may be vulnerable. Around 1 in 6 thought that to do otherwise, in this case by allowing a decision to transition, was to neglect the duty of care society owes to children and could even be seen as tantamount to child abuse.
- 3.36. As at Question 5, it was suggested that teenagers will still be going through puberty and may not yet be clear about their gender identity or sexuality. For younger children, it was suggested that this is simply too young to be thinking about gender identity, let alone deciding to change gender. Around 1 in 7 suggested that even if a child does think they are trans, they are likely to come to a different conclusion as they mature. Specifically, it was suggested that the overwhelming majority of children who experience gender dysphoria will not carry those feelings into adulthood, and most of those children, if left alone, will turn out to be gay, lesbian or bi-sexual as adults.

- 3.37. In terms of supporting those children or young people who are experiencing gender dysphoria or body dysmorphia, around 1 in 10 respondents commented that it will be important to make sure children experiencing gender dysphoria or children who see themselves as trans receive the necessary support. This support was variously described as including counselling, mental health treatment and psychotherapy. However, some also noted that the pressure on these types of services is already considerable and that additional resources may be required.
- 3.38. On a similar theme, around 1 in 10 respondents stated that any treatment should not include physical interventions, including puberty blockers, hormone therapy or surgery. As at Question 5, respondents raised concerns about the longer-term implications for the child's physical and mental health.
- 3.39. Others suggested that children seeing themselves as trans would be much less of an issue if society was not so clearly structured around the social construct of gender. It was suggested that one way to support children would be to reduce the number of gender markers applied to those under 16, as well as by teaching children that they do not need to conform to gender stereotypes. Around 1 in 10 respondents raised these issues.
- 3.40. Other comments made, in each case by smaller numbers of respondents, included that:
- Parents or guardians have a responsibility to do what is best for their child(ren), including preventing them from transitioning at such a young age
 - Children could choose to live in their preferred gender, for example in terms of their choice of clothing, but should not being allowed to take any legal or medical steps towards transition
 - More research is required, particularly into the longer-term impact medical treatment can have on under 16s
 - The whole agenda to allow under 16s to transition is being driven by those with dubious vested interests and opinions, including because of homophobia, the opportunity to groom children or political correctness gone mad.

Option 2: Court process

- 3.41. Very much reflecting the proportion of respondents who chose Option 2, only around 180 respondents went on to comment. The most frequently given reason for selecting Option 2, given by around 1 in 5 respondents, was that the court process is a child-centred one which also allows all views to be considered. They felt that a court process would ensure that the best interests of the child were considered and that this option gives children a right to determine their gender identity balanced by protections from abuse or coercion offered by the legal system.

- 3.42. Around 1 in 10 respondents suggested the court process would offer very necessary protections for children whose parents do not support their wish to transition. Examples given included where parents do not support transition because of religious beliefs or cultural norms. Around 1 in 10 also suggested that the court process should apply only when Option 3 – parental application – cannot be pursued. Under these types of circumstances, it was suggested that the court is best placed to make a decision as to whether the child has competence to make such a decision.
- 3.43. In terms of the process itself, around 1 in 10 respondents felt that medical or gender specialists should be involved and should support the court in coming to its decision. Another suggestion, made by a Local Authority, H&SCP or NHS respondent was that there should be a specialist Court process similar to the Domestic Abuse Courts and that this would allow for a greater degree of knowledge and understanding of the complex issues involved.

Option 3: parental application

- 3.44. Around 380 respondents chose Option 3 and then went on to comment.
- 3.45. Very much reflecting a comment made at Option 2, the most frequently made point, raised by around 1 in 3, was to note that, in addition to parental application there needs to be a mechanism for children with parents who do not support their child's transition. Some respondents also noted that children who are cared for by statutory services will also need a route to having their gender recognised.
- 3.46. A range of suggestions were made including allowing application by another responsible adult or the court process route as at Option 2. However, a Trans Group respondent suggested that such processes are necessarily adversarial, and that it would be unlikely that many young people would feel able to access this process. They preferred an approach whereby a designated person in a young person's life would be able to confirm their capacity to make the decision. Similarly, around 1 in 5 respondents suggested that Option 5 – application by a capable child, should run in parallel with Option 3 and could be accessed by children whose decision was not supported by their parents.
- 3.47. The advantages of the parental application approach as being consistent with other arrangements was highlighted by around 1 in 5 respondents. Further comments included that requiring applicants under 16 to have parental consent would bring the process in line with many of the other administrative changes that trans young people can make at that age, such as changing their passport, medical records, and name. In this context, a small number of respondents highlighted the importance of being able to change a birth or death certificate.

- 3.48. It was also suggested that it would mean that the process for under 16s would mirror the process for adults if the Scottish Government's proposals for moving to a self-declaratory system are adopted. Other comments about the advantages of the parental application route included that, particularly compared to some of the other options, it is relatively simple, straightforward and likely to be accessible and well understood.
- 3.49. Finally, a range of other issues were highlighted by smaller numbers of respondents. These included:
- Parents are likely to understand and act in their child's best interest. It was also noted that they otherwise have legal responsibility for their child's welfare
 - It will be important to ensure that the child's voice is heard and in particular to ensure that parents do not apply without their child's consent
 - Option 3 allows flexibility for younger children who might not be considered capable (as would be required under Option 5) and could help promote the confidence and empowerment of younger trans children.

Option 4: minimum age of 12

- 3.50. Reflecting the relatively small proportion of respondents who preferred this option, only around 150 respondents chose Option 4 and went on to comment.
- 3.51. In terms of Option 4 itself, the most frequent comment was that trans children may well be aware they are trans by the age of 12. Around 1 in 5 respondents raised this issue. In their further comments a small number of respondents spoke of their own experience and of being aware that they were trans at an early age. An individual respondent also referred to their dread of the onset of puberty and others also noted that age 12 would be around the age at which puberty starts.
- 3.52. It was suggested that this can be a watershed moment for a trans child and that allowing children to know that their body can match their mind would help with trans children's survival rates. More general points made, in each case by smaller numbers of respondents, were that allowing transition at this age would help improve the wellbeing and mental health of the children and young people affected and that the age 12 minimum would allow these children to access puberty blockers when they were most needed.

- 3.53. Other comments about Option 4, also made by smaller numbers of respondents, included that:
- This option gives the greatest degree of autonomy and right to self-determination to trans people in Scotland
 - The age limit should be reduced to 10 or 11 years to acknowledge the point at which a child may start puberty. An alternative view was that there should be no age limit for application.
- 3.54. Around 1 in 4 respondents commented on other options, either suggesting a combination of options they favoured or explaining why they disagreed with certain of the other options. Comments included that:
- There should also be a mechanism to allow trans children aged under 12 to change gender. Suggestions included parental application as at Option 3, or a court process as at Option 2
 - More generally, Option 3 should run in parallel with Option 4, offering an alternative choice for those with parents who support their child's decision
 - Option 3 should run in parallel with Option 5 – application by a capable child.
- 3.55. A Children's or Young People's Group respondent commented that although Option 4 is their preferred option, a combination of the available options may offer the optimum safeguard for children and young people who would wish to apply for gender self-recognition, but who would require support in order to do so. They supported a process of self-recognition which is not based in the Court, or based on invasive medical assessment, but which provides some appropriate scrutiny and safeguards to the decision being made by the young person.
- 3.56. Finally, respondents sometimes commented on why they disagreed with the other options given at Question 6. Reasons given included that Option 1 neglects to acknowledge the distress having to live in the wrong gender may cause, particularly if a child is forced into the wrong group when school or other services are divided based on gender. Option 2, a court process, was seen as potentially very stressful and inappropriate for young people under the age of 16. As at the analysis on Option 3 - parental application, respondents expressed concerns about the parental application route for children or young people whose parents did not support their wish to transition.

Option 5: application by a capable child

- 3.57. Around 590 respondents chose Option 5 and went on to comment.
- 3.58. Most frequently, respondents commented that not all children can rely upon having supportive parents and that those who do not must have a mechanism for transitioning into the right gender. Around 1 in 6 raised this issue. Further comments included that this would allow children, including those whose parents are not supportive, to exercise self-determination and develop a sense of their own legitimate identity as a trans child. It was also suggested, by a smaller number of respondents, that irrespective of whether parents are supportive, Option 5 will help a trans young person develop a clear sense of identity which would help a trans young person going forward, particularly in terms of their wellbeing and mental health.
- 3.59. Others commented specially on the negative effect that withheld parental support can have on a trans child. It was suggested that trans children whose parents are unsupportive have extremely poor mental health compared to other children, including compared to trans children with supportive parents, and that this can lead to increased risk of suicide. It was also suggested that taking the pressure off parents also reduces the risk of relationship breakdown and custody disputes where there is a difference of opinion and that this in turn could help protect already vulnerable children from having to deal with additional stress factors.
- 3.60. Very much in line with a point raised by those who chose Option 3, around 1 in 10 of those choosing Option 5 thought it should be combined with parental application, thus allowing children with supportive parents to have the option of going down the parental application route. These respondents sometimes went on to suggest that for those for whom it is an option, parental application may be the most straightforward of the choices available.
- 3.61. A smaller number of respondents commented on what is meant by a capable child and there were concerns about how the assessment of capability would be made. In particular, it was also suggested that any assessment process must be sensitive and inclusive, for example by taking the needs of autistic children into account.

3.62. It was also suggested that ‘capable children’ is a well-established principle in Scotland and that the suggestion (as set out in the consultation paper) that a registered medical practitioner or a practicing solicitor should ‘test’ the child’s capacity is not reasonable. One perspective was that Gillick competence⁶ - which in this case would be that children under the age of 16 can consent to their own treatment if they are believed to have enough intelligence, competence and understanding to fully appreciate what is involved in their treatment – should apply. Others referred to the Fraser Guidelines⁷.

3.63. Other comments, in each case made by smaller numbers of respondents, included that:

- Children will require good quality information, support and advocacy services, which should include giving access to gender specialists.
- Consideration needs to be given to how a child who may not be assessed as being a capable child but who nevertheless has made a clear decision that they wish to change gender can be supported.

⁶ ‘Gillick competence’ refers to the House of Lord’s decision in the case of *Gillick v West Norfolk and Wisbech Area Health Authority* [1985] <http://www.bailii.org/uk/cases/UKHL/1985/7.html>. The case related to the law in England and Wales on the legal capacity of a child to consent to their own medical treatment. In Scotland, the Age of Legal Capacity (Scotland) Act 1991 provides that ‘a person under the age of 16 years shall have legal capacity to consent on his own behalf to any surgical, medical or dental procedure or treatment where, in the opinion of a qualified medical practitioner attending him, he is capable of understanding the nature and possible consequences of the procedure or treatment’.

⁷ The Fraser guidelines refer to the guidelines set out by Lord Fraser in his judgment in the *Gillick* case, which apply specifically to contraceptive advice.

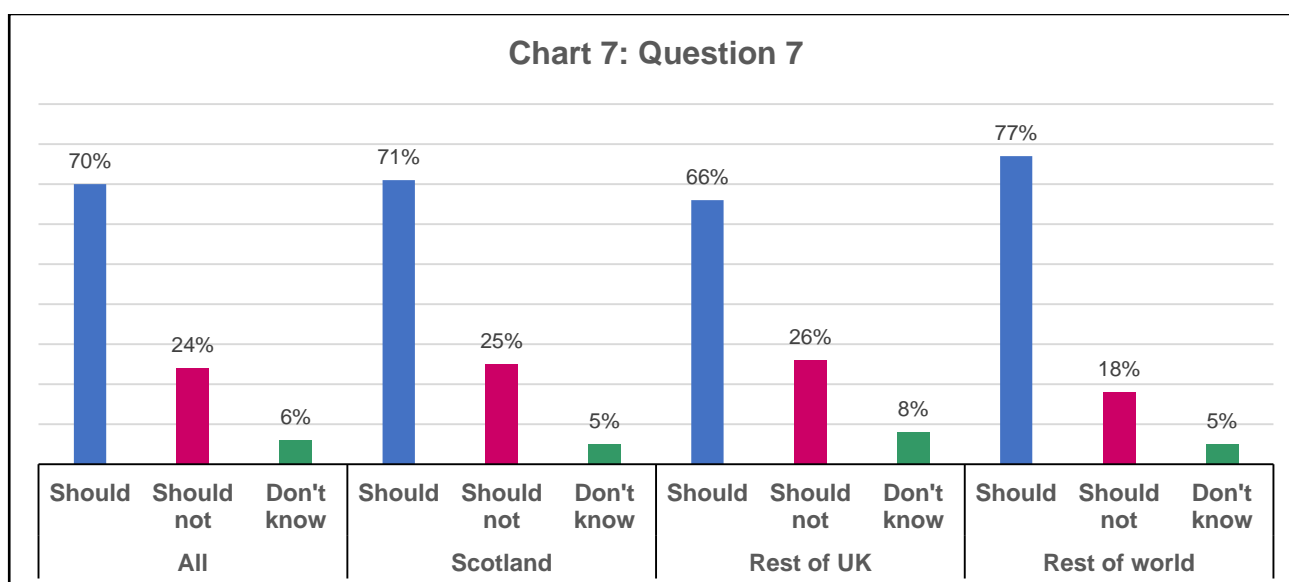
None of these

- 3.64. Around 820 respondents did not choose any of the available options and then went on to comment.
- 3.65. Respondents most frequently noted the importance of ensuring that children are fully supported in coming to any decision, be that to transition or not. Some also noted that this approach should help ensure that every child can have their voice heard. For example, a Children and Young People's Group or Body respondent commented that whatever system is implemented, it should ensure that children and young people's rights are fully embedded and remain at the centre of the process. In particular, they suggested that article 12 (right to be heard) and article 5 (evolving capacities) of the UNCRC should be paramount in considerations regarding children and young people.
- 3.66. In terms of how children and young people should be supported, counselling was sometimes suggested, as was therapeutic support and occasionally mental health-related treatment. Another perspective was that young girls who are considering transitioning should be supported to think their choice through in the context of living in a misogynistic society.
- 3.67. On a similar theme, around 1 in 8 respondents suggested that children would be best supported by society placing less or no emphasis on gender, and in particular the associated stereotyping of both children and adults. Some suggested that no gender markers should be applied to children, leaving them to make any choice, be that male, female or non-binary, at 16.
- 3.68. Other comments made, in each case by smaller numbers of respondents, sometimes reflected themes already covered under options. These included:
- Concerns about how any assessment of capacity would be carried out, including that it could discriminate against children who are less articulate or who have less articulate parents, who have poor mental health or who have special needs
 - That gender specialists need to be included in any process
 - Any approach must ensure that children whose parents do not support their change of gender are able to have their voice heard
 - That some combination of Option 3 – parental application and Option 5 - application by a capable child, may be the best way forward.
- 3.69. Additional points raised, again by smaller numbers of respondents included that there should be no minimum age for changing gender or that a case-by-case approach should be taken as all children will be different.

4. Scottish marriage

- 4.1. The Gender Recognition Panel can only issue a full GRC to a married applicant if their spouse has confirmed that they are content to stay in the marriage. The Scottish Government is aware of concerns about the requirement for the consent of a spouse in relation to an application for legal gender recognition under the 2004 Act.⁸
- 4.2. As the consultation paper notes, the requirement may give a trans person's spouse inappropriate power to determine the trans person's access to their legal rights. However, it can be seen by others as a reasonable balance between the rights of the trans person to seek recognition of their acquired gender and those of their spouse to decide whether they want to stay in the marriage.

Question 7 - Should it be possible to apply for and obtain legal gender recognition without any need for spousal consent?



- 4.3. A majority of respondents, 70% of those answering the question, thought that it should be possible to apply for and obtain legal gender recognition without any need for spousal consent. A further 24% of those answering did not think it should be possible and 6% did not know. The pattern of response for those resident in Scotland was very similar to that for all respondents.

- 4.4. Around 3,495 respondents went on to make a further comment.

⁸ If the Gender Recognition Panel has issued an interim GRC to an applicant who is in a Scottish marriage whose spouse did not consent to their application, the applicant for gender recognition can then ask the sheriff court for a full GRC.

Comments by respondents who thought it should be possible

- 4.5. Around 1,790 respondents who thought it should be possible to apply for and obtain legal gender recognition without any need for spousal consent went on to make a further comment. The majority of these respondents, around 6 in 10, believed that people have personal autonomy and a right to self-determination, including regarding their gender identity. Respondents commented on people being able to make their own choices, particularly about an issue that is so fundamental to wellbeing and happiness. Some went on to suggest that any other approach impinges on the human rights of the individual concerned. Specifically, it was suggested that no person should have this level of control over another individual, especially over their identity and that to do so is a violation of the basic human rights principles in the UN's Universal Declaration of Human Rights.
- 4.6. Respondents also commented on the potential for spousal consent to cause serious problems, most frequently in relation to abuse or manipulation. Around 1 in 7 raised this concern, with further comments including that spousal consent can be very dangerous for trans people in abusive relationships. An LGBT Group respondent commented that the limited research available suggests that trans people are at a high risk of domestic abuse, and that their own work supports this suggestion. They summed up the comments of others in suggesting that the level of power and control spousal consent gives someone over their trans partner is very concerning, particularly if their partner is abusive, when they may use that control to further ridicule, deny, and disempower.
- 4.7. On a similar theme, a small number of respondents raised concerns that spousal consent could up be used as a bargaining tool in any divorce, particularly in relation to child residence or contact arrangements and any financial settlement. Others noted the possibility of spousal consent being withheld when a couple were separated or estranged and noted that this allowed someone to continue to exercise control over their former partner despite the relationship having come to an end. It was also suggested that spouses who did not agree with their partner transitioning could seek to delay the process.
- 4.8. Although not agreeing with spousal consent, around 1 in 5 respondents commented that a spouse transitioning should be valid grounds for divorce or the annulment or dissolution of any marriage. This issue is discussed further at Question 9.
- 4.9. Finally, a smaller number of respondents commented that there are a range of other aspects of transitioning that do not require spousal consent, such as having hormone therapy or surgery, and that there is no reason to introduce what could be seen as a backward step. Some felt that spousal consent is, in any case, an outdated concept that simply has no place in 21st century Scotland.

Comments by respondents who thought it should not be possible

- 4.10. Around 1,240 respondents who thought it should not be possible, went on to make a further comment.
- 4.11. The most frequently raised point, made by around 1 in 2 respondents, was that when people enter a marriage they are entering a legal arrangement or contract and that it is not reasonable to change the terms of that contract without the agreement of both parties. Further comments included that it is also not reasonable to change the nature of the contract – for example into a same sex marriage when it had been a mixed sex marriage or vice versa – without both parties agreeing. It was also suggested that to do so would be a fundamental betrayal of the marriage covenant and makes spousal consent meaningless, including the non-trans spouse's consent to being married in the first place.
- 4.12. Other points made included that removing spousal consent would be an attack on the sanctity of marriage and would undermine the role of the family. Specific points made included that:
- Removing the need for spousal consent would be a violation of the right to family life under Article 8 of the European Convention of Human Rights
 - As sexual orientation is a protected characteristic, and as sexual behaviour is basic to marriage, it is possible that the rights of the non-trans spouse under Sections 11 and 12 of the Equality Act 2010⁹ would be breached.
- 4.13. The nature of marriage as a partnership in which the rights of both parties should be respected was also raised. Further comments made by around 1 in 10 respondents highlighting this issue included that the rights and feelings of both parties need to be acknowledged, with those of the trans partner not being considered more important than those of their spouse. It was suggested that any obtaining of legal gender recognition must be the decision of both spouses while the couple remain married. A smaller number of respondents suggested that there should be a requirement, possibly a legal requirement, for consultation or discussion with the spouse affected by their partner's decision to transition.
- 4.14. In terms of remaining in a marriage, around 1 in 8 respondents commented that one of the spouses transitioning should be automatic grounds for divorce. This issue is discussed further at Question 9.

⁹ The Equality Act 2010 provides legal protections against discrimination. In broad terms, it provides that it is unlawful to discriminate against people because of one or more of their protected characteristics. Sections 11 and 12 define two of the protected characteristics, namely sex and sexual orientation respectively.

4.15. Other issues, in each case raised by smaller numbers of respondents were that:

- Any new legislation must adequately address the needs of both parties in the marriage. This might include being sensitive to situations where divorce may be unacceptable for religious or cultural reasons or where it could affect the residency or employment rights of a spouse who is a foreign national
- A more general review of how divorce law works if a spouse is transitioning is required. Particular issues seen as requiring attention included the timing of any divorce relative to a GRC application, how assets will be divided and who should meet the cost of any divorce.

Comments by respondents who did not know or did not answer

4.16. Around 220 respondents who did not know or who did not answer the question went on to comment. The issues raised tended to reflect those highlighted by respondents who thought it should be possible to apply for and obtain legal gender recognition without any need for spousal consent.

4.17. For example, around 1 in 5 respondents felt that people have a right to self-determination and that obtaining legal gender recognition should be a personal decision. However, around 1 in 5 also commented that one partner transitioning should be valid grounds for divorce.

Scottish civil partnerships

4.18. Where one of the partners in a civil partnership registered in Scotland wants to be issued with a full GRC, the couple have two options. They may either:

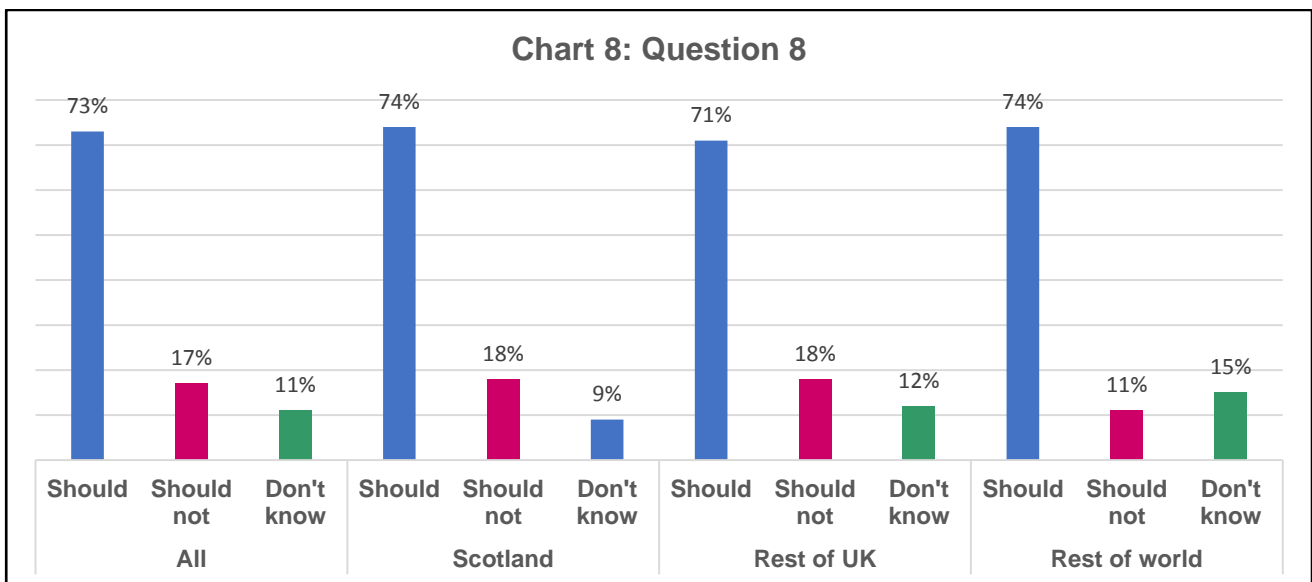
- choose to change their civil partnership to a marriage; or
- end the civil partnership.

4.19. The couple cannot continue as civil partners because Scotland does not recognise mixed sex civil partnerships.

4.20. Civil partners can change their partnership to a marriage as a result of changes made by the Marriage and Civil Partnership (Scotland) Act 2014. If an applicant for legal gender recognition is still in a civil partnership when their application for legal gender recognition is made, the Gender Recognition Panel will issue an interim GRC. Where an interim GRC is issued to one of the parties in a civil partnership, this is a ground for dissolution of the partnership by either of the parties.

Question 8 - Civil partnership is only available to same sex couples. This means that the civil partners cannot remain in their civil partnership if one of them wishes to obtain a full Gender Recognition Certificate.

Should they instead be allowed to remain in their civil partnership? This would mean that a woman and a man would be in the civil partnership.



4.21. A majority of respondents, 73% of those answering the question, thought people should be able to remain in a civil partnership if one of them obtained a full GRC. The balance of opinion across Scotland, the rest of the UK and the rest of the world was similar.

4.22. Around 3,495 respondents went on to make a further comment.

Comments by those who favoured being able to remain in a civil partnership

- 4.23. Around 2,335 respondents who thought people should be able to remain in a civil partnership went on to comment.
- 4.24. By a very substantial margin the most frequently made point was that civil partnership should in any case be extended to mixed sex couples and this would remove any problems created by one partner obtaining a full GRC. Around 6 in 10 respondents raised this issue with further comments including that opening up civil partnership to include mixed-gender couples would not only allow for the choice of how a partnership could be legally recognised but would be yet another step forward in recognising non-binary identities as equal and valid. Others simply commented that people want a choice to the ‘traditional’ marriage with its religious and other connotations.
- 4.25. The only other frequently made point – raised by around 3 in 10 – was that people should be able to remain in a civil partnership because to expect otherwise would be variously unnecessary, unreasonable, unfair and could be distressing. In line with comments made on opening up civil partnerships to mixed sex couples, it was noted that some people may not wish to be married, including because they see it as a misogynistic institution or as having religious overtones. Others noted that there would be costs involved. It was also suggested that couples may be very committed to have worked hard to sustain their civil partnership and it would not be fair to then have it taken away from them simply because one of them transitions.
- 4.26. Other comments, in each case by smaller numbers of respondents included that:
- The gender of those in a civil partnership is not really an issue since, even if one partner transitions, they will remain the same biological sex as they were prior to transitioning
 - Civil partnership should be phased out and replaced with marriage. Alternatively, the two separate institutions should simply be merged into one as any difference is arbitrary and brings no value
 - If a civil partnership is changed into a marriage it should be a very straightforward process with no additional costs involved.

Comments by those who did not favour being able to remain in a civil partnership

- 4.27. Around 680 respondents who did not favour people being able to remain in a civil partnership if one of the partners obtained a full GRC went on to make a further comment.
- 4.28. Most frequently they suggested that civil partnerships were always designed for same sex couples and should remain so. Around 1 in 5 respondents made this comment, with further points raised including that since the legislation does not allow mixed sex civil partnership the law would need to be changed and this would open the door to opposite sex civil partnership for all. A smaller number of respondents went on to note specifically that they did not agree with the introduction of mixed sex civil partnerships, including because it would further undermine the institution of marriage.
- 4.29. An alternative proposition was that people should only be able to remain in a civil partnership if one couple has obtained a full GRC if the opportunity to enter a civil partnership is open to all. Around 1 in 5 respondents made this point, with further comments similar to those who had favoured being able to remain in a civil partnership but suggested the option should be extended to all. A smaller number of respondents suggested that to allow mixed sex civil partnership to some but not others would be discriminatory.
- 4.30. Other comments made, in each case by smaller numbers of respondents included:
- Reflecting a point made by respondents who did support being able to remain in a civil partnership, that the gender of those in a civil partnership is not an issue since they will remain the same biological sex as they were prior to transitioning.
 - That civil partnership is no longer required now Scotland offers same sex marriage and should be phased out.

Comments by those who did not know

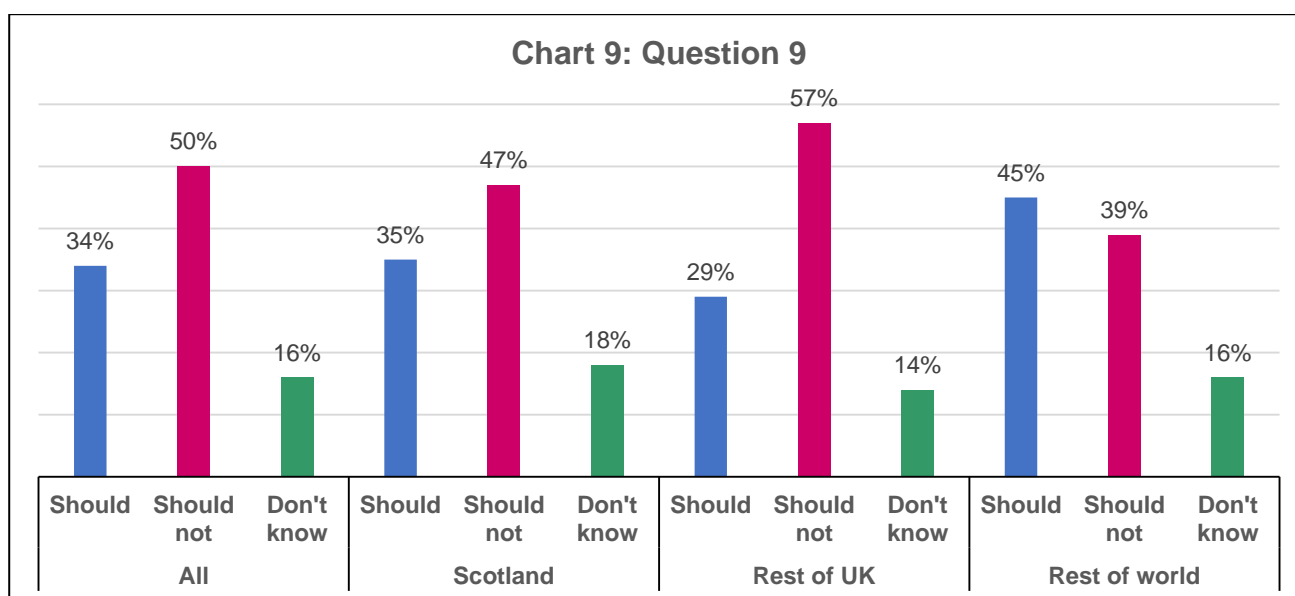
- 4.31. Around 480 respondents who did not know or did not answer the question went on to make a further comment. The issues raised tended to reflect the same themes as raised by those who did and did not favour being able to remain in a civil partnership. For example, around 3 in 10 suggested people should only be able to remain in a civil partnership if civil partnership was an option for all opposite sex couples. Around 1 in 6 said that people remain the same sex irrespective of whether they have changed gender.
- 4.32. Additional issues raised included that it is difficult to see why someone would object to their civil partnership being changed into a marriage, and that the person who has obtained a full GRC should only be able to remain in a civil partnership with their partners consent. These issues were raised by 1 in 10 and 1 in 8 respondents respectively.

Grounds of divorce

4.33. At the moment, it is a ground of divorce of a marriage and dissolution of a civil partnership for either party if an interim GRC has been issued by the Gender Recognition Panel.

4.34. The Scottish Government's initial view is that there is no specific need for gender recognition to be a ground of divorce or dissolution. It appears to the Scottish Government that the ground that the marriage or civil partnership has broken down irretrievably would be sufficient.

Question 9 - Should legal gender recognition stop being a ground of divorce or dissolution?



4.35. Half of respondents, 50% of those answering the question, thought that legal gender recognition should not stop being a ground of divorce or dissolution. Of the remaining respondents, 34% thought it should and 16% did not know. The pattern of response for those resident in Scotland was similar to that for all respondents. The rest of the world group was the only one in which the largest proportion of respondents thought that legal gender recognition should stop being a ground of divorce or dissolution.

4.36. Around 2,835 respondents went on to make a further comment.

Comments by those who did not think gender recognition should stop being a ground

- 4.37. Around 1,880 respondents went on to make a comment, with the most frequently made point being that if someone transitions while in a marriage or civil partnership they are effectively a different person to the one their spouse married and this, in turn, means the marriage contract has been broken. Around 1 in 3 respondents made this point.
- 4.38. Further comments included that to change the nature of someone's marriage, from either an opposite sex marriage to a same sex marriage or vice versa, means that the original marriage, in whichever form, no longer exists in any real sense. Smaller number of respondents also commented that it is not reasonable or fair to expect someone to remain in a marriage if that marriage no longer reflects their own sexuality. Some suggested that to do so would be tantamount to an abuse of someone's human rights. More generally, some suggested that no-one should be forced to remain in a marriage if they do not want to or that they should have a right to a very quick divorce.
- 4.39. Around 1 in 3 respondents commented specifically that gender transition, and in particular obtaining a full GRC, must remain a specific ground of divorce or dissolution. Reasons given included that the non-trans partner should have the right to have the correct reasons for their divorce recorded, particularly if they or their community disapproves of divorce on religious or cultural grounds. It was noted that a no-fault divorce could mean people need to remain married for 1 or 2 years and that this would be very unfair on the non-trans partner and it was suggested that it would be important to acknowledge that the non-transitioning partner is not at fault.
- 4.40. Other comments included that it must be made possible for the partner not undergoing any change to divorce without accusations of transphobia or facing the financial burden of divorce. Around 1 in 10 respondents acknowledged that some people may choose to remain in their marriage after their partner has transitioned but felt that those who did not must have the necessary grounds for divorce available to them. Another point raised, in this case by a smaller number of respondents, was that a more comprehensive review of divorce law is required, and this could include looking at all the grounds.

Comments by those who did think gender recognition should stop being a ground

- 4.41. Around 640 respondents who thought gender recognition should stop being a ground went on to make a further comment. Respondents most frequently suggested that the current grounds for divorce, where the 'marriage has broken down irretrievably' are sufficient. Specifically, that this definition is sufficiently broad that there is no need for a specific clause. Around 4 in 10 respondents made this comment.
- 4.42. Around 3 in 10 felt that the ground discriminates against trans people for their gender identity, and to have legal gender recognition as a standalone ground for divorce would be discriminatory and could lead to stigmatisation. It was also suggested that it may contravene an individual's right to privacy if they are required to disclose their gender status, or their gender status is disclosed, when divorcing.
- 4.43. Other points raised, in each case by smaller numbers of respondents included that:
- Having gender recognition as a ground could lay the trans person open to coercion or abuse from a partner who disagrees with their partner transitioning
 - A 'no fault' divorce or dissolution should be made available.

Comments by those who did not know whether gender recognition should stop being a ground or did not answer the question

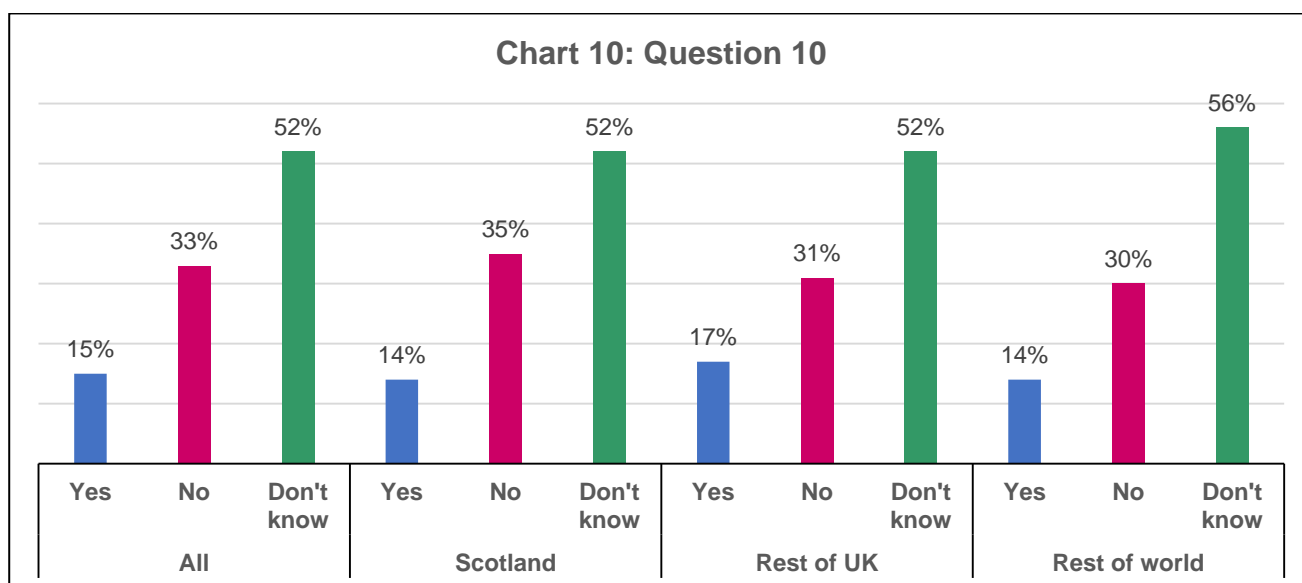
- 4.44. Around 310 respondents either said they did not know at Question 9, or did not answer the closed question, but then went on to make a comment.
- 4.45. The most frequently made comments, with both points raised by around 1 in 5 respondents, were that one of the partners receiving a full GRC should be immediate grounds for divorce or that, as above, there should be a wider reform of divorce law.

5. Other aspects of the 2004 Act

Privacy issues

- 5.1. The consultation paper explains that section 22 of the 2004 Act makes it an offence for a person who has acquired ‘protected information’ in an official capacity to disclose that information. Protected information is information about a person’s application for recognition in their acquired gender under the 2004 Act or about a successful applicant’s gender before it became the acquired gender. Exceptions include where disclosure of protected information is made for the purposes of crime prevention or detection, the social security system or pensions, or for the purpose of instituting court proceedings or otherwise for the purposes of court proceedings.
- 5.2. Scottish Ministers have made an order under section 22 for additional exceptions in relation to devolved matters, and these are listed in section 6.04 of the consultation paper. When the UK Parliament’s Women and Equality Committee took evidence on trans equality, it was argued that the exemption for protected information to be disclosed in court proceedings was being misused and that exemptions in secondary legislation allowing disclosure to certain medical professionals required extension to psychologists.
- 5.3. Since data protection is reserved, changes in the effect of section 22 are matters that the Scottish Government may need to discuss with the UK Government.

Question 10 - Are any changes to section 22 (prohibition on disclosure of information) necessary?



- 5.4. A majority of respondents, 52% of those answering the question, did not know whether any changes to section 22 are necessary. Of the remaining respondents, 33% thought no changes are necessary and 15% thought changes are necessary. The pattern of response was similar for Scotland, the rest of the UK and the rest of the world.
- 5.5. Around 1,910 respondents went on to make a further comment at Question 10.

Comments by those who did not know

- 5.6. Around 290 respondents who did not know made a further comment, albeit these comments tended to be brief.
- 5.7. The most frequently made point was that they did not have sufficient knowledge or information to have a view on this question, or that they did not understand the question. Around 3 in 10 respondents made a comment of this type, while a smaller number restated their opposition to self-declaration.
- 5.8. Otherwise points made, in each case by smaller numbers of respondents, reflected the range of issues set out in the consultation paper and as set out above. Noting that data protection issues are reserved to Westminster, an Other Group respondent suggested that the current Data Protection Bill¹⁰ is likely to be the most appropriate instrument to cover issues addressed at this question.

Comments by those who thought no changes are necessary

- 5.9. Around 250 respondents who did not advocate changes went on to make a further comment. The most frequently made comment was that the individual's right to privacy should be paramount and that it is for the individual to disclose their trans status or consent to disclosure. Around 4 in 10 respondents raised this issue, while around 1 in 3 respondents suggested that the existing exemptions are adequate. Two Union or Political Party respondents noted that section 22 prohibitions can apply to their representatives when supporting trans members, and that this has not caused difficulties.
- 5.10. Other frequently raised issues, each highlighted by around 1 in 7 respondents were that:
 - Adding additional exemptions may undermine the current protections. A Trans Group and an LGBT Group respondent suggested that additional exemptions could contravene Article 8 of the European Convention on Human Rights on the right to a private life
 - Provisions with respect to crime prevention, detection or recording are important and should remain.

¹⁰ The main provisions of the Data Protection Act 2018 commenced in May 2018.

- 5.11. An Other Group respondent highlighted that, although the 2004 Act makes it a criminal offence to disclose a person's gender reassignment history, Companies House record and display information about a director's previous name. This is done to fulfil requirements under the Companies Act 2006 but also reveals the individual's history of transition and is covered by exemption under section 22. They recommended that a new system is created that ensures protection from fraud without outing people.
- 5.12. Other points, in each case made by smaller numbers of respondents, included:
- References to the importance of disclosure on medical grounds
 - Comments on the importance of safeguards to protect vulnerable people. Respondents making this type of point sometimes also indicated their general opposition to self-declaration.
- 5.13. A small number of other respondents identified exemptions they would like to see added or removed, with the most frequent of these being the removal of the exemption 'for the purpose of enabling a person to decide on the admission or appointment of the subject as a minister of religion'. A Religious Body or Group respondent, however, recorded their strong support for this exemption arguing it is essential to the free exercise of religion for many of their members.
- 5.14. There were few additional points made by those who felt no change to be needed, although an LGBT Group respondent did suggest that more extensive guidance on the exemptions should be provided. They noted that questions around disclosing protected information often arise when they provide training or policy support for other organisations. They suggested that professional people may find it difficult to recognise the impact on individuals of having their information shared when it is not required.

Comments by those who thought there should be changes

- 5.15. Around 1,340 respondents who thought changes are required went on to make a further comment.
- 5.16. In some cases, respondents interpreted the exemptions listed in section 6.04 of the consultation paper as proposed additions to section 22 of the Act, noting their agreement with particular clauses. This does mean that support for changes recorded at the Yes/No element of the question may be slightly inflated.
- 5.17. Respondents also suggested both categories that should be removed from the existing list and circumstances for which they felt further exemptions should be added.

Additional exemptions proposed

- 5.18. The most frequent suggestion, made by around 1 in 5 respondents, was that there should be an additional requirement for disclosure with respect to access to women only spaces, sports, shortlists or employment quotas, with some respondents specifically referencing existing sex-based protections under the Equality Act 2010. In some cases, respondents suggested a general exemption should apply to access to protected spaces, in others that it should be more specific to an individual's history: for example, while any access to a refuge was cited by some respondents, others argued that a refuge should be informed if the holder of a GRC had a history of sexual violence. Respondents making these points sometimes also suggested that it should not be an offence to ask for proof of status or to see a GRC.
- 5.19. There were also suggestions, made by smaller numbers of respondents, that there should be much wider disclosure of trans status or that this should not be protected information at all but should be publicly available. Suggestions of particular circumstances where disclosure should be required included: to an employer for specific types of employment (such as undertaking intimate medical procedures); to a spouse or civil partner; for individuals convicted of sexual offences; and for collection of statistical information (particularly with respect to crime and for medical purposes).
- 5.20. With respect to the findings from the UK Parliament's Women and Equalities Committee, smaller numbers of respondents indicated specific agreement that exemptions allowing disclosure to certain medical professionals should be extended to psychologists or that action to avoid disclosure in court proceedings from being misused would be appropriate. Some of those respondents who approved disclosure to psychologists also suggested wider extension to other medical professionals.

Removal of exemptions proposed

- 5.21. Around 1 in 7 respondents suggested that one or more of the exemptions listed in the consultation paper should be removed. Most frequently suggested for removal, by around 1 in 8 respondents, was that relating to appointment of a minister of religion. Amongst arguments made for such a course of action was that it is a breach of the Equality Act 2010 to discriminate against trans people in employment, and this exemption could facilitate such discrimination.
- 5.22. Smaller numbers of respondents argued for removal of disclosure that is:
- Made by or on behalf of a credit reference agency and that discloses information contained in an order of a court or tribunal
 - Made in relation to one of a specified group of bankruptcy or insolvency officeholders in order for them to perform their functions.

- 5.23. In both instances it was argued that an individual's legal gender has no bearing on financial matters and, in the majority of cases, respondents who objected to one exemption objected to both.
- 5.24. Although only small numbers of respondents specifically suggested removal of the other exemptions added to section 22 by the Scottish Government in the Gender Recognition (Disclosure of Information) (Scotland) Order 2005, others suggested: that the 2005 Order should be repealed; that all exemptions should be removed; or that disclosure of trans status should only ever be with the consent of the individual concerned. A small number of respondents argued in favour of disclosure only for medical purposes, only for criminal or legal purposes, or for both of these.
- 5.25. Around 1 in 10 respondents proposed tightening of the criteria surrounding existing exemptions – for example that disclosure should only be acceptable when relevant to a particular medical condition or to a specific court case, while a smaller number argued for stricter enforcement of the rules regarding disclosure, that there should be greater clarity regarding the consequences for those who make illegal disclosures, or that it should be easier for trans people to bring cases against those who disclose their information illegally. A Trans Group respondent noted their understanding that there have been no cases where section 22 has been used, suggesting this to be both because there is no requirement for the person affected to be informed of a breach of their privacy, and because it falls to the trans person to raise legal action.

Other comments

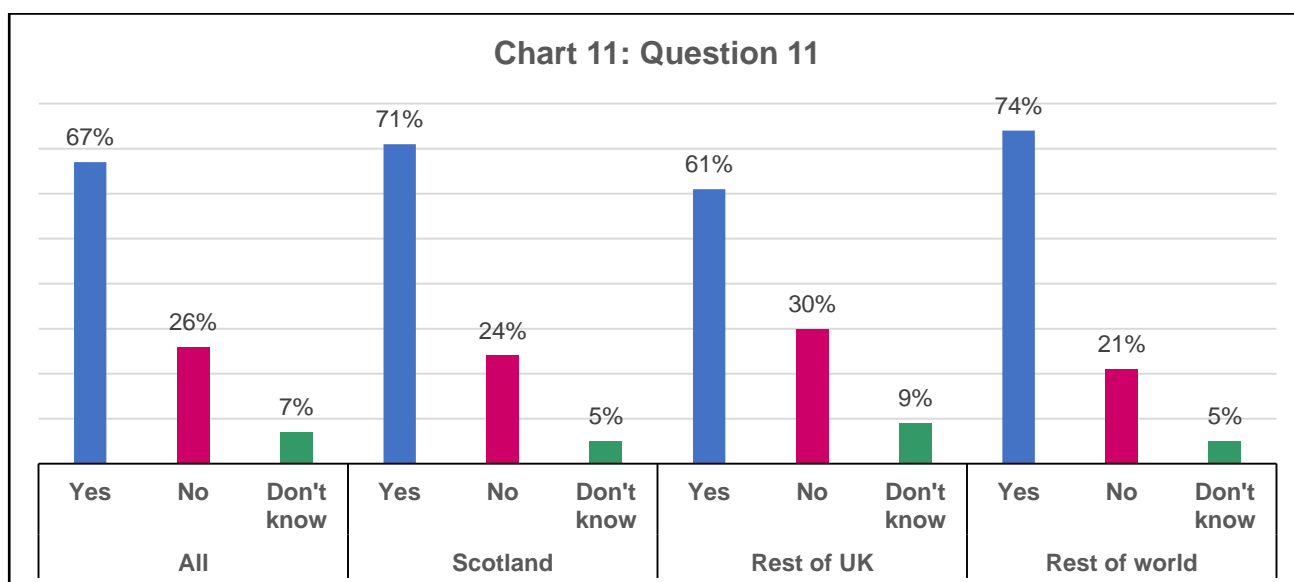
- 5.26. Reform to section 22(4)(c) was proposed by a Trans Group, which argued that a loophole allowing protected information to be disclosed if a person's GRC status is unknown should be closed, so that disclosure of someone's protected information is an offence, regardless of perceived certificate status. Issues concerning access to the Gender Recognition Register¹¹ were also raised by another Trans Group respondent.
- 5.27. A Union or Political Party respondent suggested guidance is needed, particularly for educational establishments. The need to have clear policies and access to professional learning about prohibitions on disclosing information was highlighted, especially for a teacher or lecturer taking on pastoral care or 'named person' duties or roles.

¹¹ When the Gender Recognition Panel notifies the Registrar General for Scotland that a GRC has been issued to a person whose birth (or adoption) was registered in Scotland, the Registrar General will make an entry in the Gender Recognition Register. This entry forms the basis of a new birth certificate (or extract from the Adopted Children Register) to be issued to the successful applicant.

Recognition in Scotland of a person whose acquired gender has been recognised under foreign law

5.28. The consultation paper explains the Scottish Government’s position that Scotland should, in future, grant automatic recognition in Scotland where a person’s acquired gender has been legally recognised in another country, including elsewhere in the UK. It also notes that this could be subject to a public policy exception whereby recognition could be refused if there were serious concerns either about the process by which the person obtained legal gender recognition or in relation to a specific case. In the event of a dispute, an application could be made to the Scottish courts to determine the matter.

Question 11 - Should a person who has been recognised in their acquired gender under the law of another jurisdiction be automatically recognised in Scotland without having to make an application?



5.29. A majority of respondents, 67% of those answering the question, thought that a person who has been recognised in their acquired gender under the law of another jurisdiction should be automatically recognised in Scotland without having to make an application. Of the remaining respondents, 26% thought they should not be recognised automatically and 7% did not know. Respondents resident in Scotland and the rest of the world were more likely to think they should be automatically recognised and those resident in the rest of the UK less likely.

5.30. Around 1,740 respondents made a further comment at Question 11.

Comments by those thinking recognition should be automatic

- 5.31. Around 800 respondents who thought that people should be automatically recognised went on to make a further comment.
- 5.32. The most frequently made comment was that individuals should not need to reapply when their gender has already been recognised elsewhere. Around 1 in 3 respondents raised this issue. Around 3 in 10 stated their general agreement, sometimes suggesting this to be a fair or common-sense approach, or to reduce the administrative burden. A small number of respondents suggested that there could or should be only a very simple, fast-track application process, sometimes adding that this should be nothing more than confirmation or notification of status.
- 5.33. The potentially harmful effects on an individual if required to reapply for legal recognition already obtained elsewhere were also highlighted. It was suggested that the process of gender recognition may be both stressful and expensive, and that it would be unwelcoming, distressing or contrary to an individual's human rights to require a second process to be completed. This type of issue was raised by around 1 in 5 respondents. A small number of respondents suggested that other people arriving in Scotland are not required to prove their gender, so trans people should not have to do so either.
- 5.34. Smaller numbers of respondents:
- Suggested that the approach proposed by the Scottish Government would be simple, efficient or cost-effective from an administrative point of view
 - Argued that automatic recognition would be analogous to the way that other events such as marriage, divorce, adoption or a change of name that take place in other jurisdictions are accepted in Scotland
 - Referred to self-declaration of gender as being in line with international best practice and suggested that granting automatic recognition would be consistent with this. A small number of respondents specifically referenced the systems in place in Malta and Ireland. A Trans Group and an LGBT Group respondent also noted that the need for the current overseas track would effectively be removed.
- 5.35. Comments on the principle of a public policy exception as set out in the consultation paper were made by only a small number of respondents, but those who did express a view indicated their agreement. A Trans Group respondent argued that examination of any exceptions must be rigorous to allay concerns about the process of gender acquisition in another jurisdiction. An Other Group respondent suggested that a list of recognised authorities may be helpful to ensure that the process in other jurisdictions is considered appropriate for recognition in Scotland. However, other respondents suggested that, if Scotland adopts self-declaration, it is unlikely that other jurisdictions would have a less rigorous systems and such scrutiny would not be needed.

- 5.36. It was also noted that a public policy exception is a standard provision in the context of international private law, acting as a safeguard in circumstances such as where a person has been inappropriately attributed an acquired gender.
- 5.37. A small number of respondents who had agreed with automatic recognition added caveats to their answer, including that:
- They did not approve of recognition granted under a self-declaration system, or without criteria equivalent to the requirements of the 2004 Act
 - Criteria from another jurisdiction must be equivalent to or at least as stringent as those in place in Scotland
 - Evidence of an individual's legal gender recognition must be available
 - Reciprocal arrangements should be in place.
- 5.38. Finally, equivalent recognition of non-binary individuals was also proposed, although again by only a small number of respondents.

Comments by those who did not think recognition should not be automatic

- 5.39. Around 775 respondents who did not think people should be automatically recognised went on to make a further comment.
- 5.40. Around 1 in 4 respondents suggested that other countries may have legal systems or gender recognition systems that are either of unknown rigour or are less robust than those in place in Scotland and that this is a reason for not granting automatic recognition. In connected points respondents argued that:
- Other jurisdictions must have comparable or more robust criteria for gender recognition to those in place in Scotland for automatic recognition to be granted. Around 1 in 6 respondents made this point.
 - The laws of other countries cannot be allowed to determine decisions made in Scotland, or that anyone living in Scotland must be subject to Scottish law. It was also suggested to be inconsistent to recognise one law made in another country but not others. Around 1 in 7 respondents made these points, while the need for everyone awarded a GRC in Scotland to have gone through the same process was suggested by a small number of respondents.

- 5.41. The importance of making an application that can be assessed and verified was highlighted by around 1 in 8 respondents. The majority of these respondents thought that a new application should be necessary in all cases, although sometimes that the process could be simplified or separate from the standard application system. While some respondents suggested that documentary evidence or proof of status could be required, others noted that verifying evidence from other jurisdictions could be very difficult. A small number of respondents expressed a view that reapplication should be necessary where legal transgender status has been granted under a self-declaration system, or that their view would depend on whether Scotland goes ahead with proposals for self-declaration.
- 5.42. Around 1 in 7 respondents raised concerns surrounding the risk of harm to women and girls, sometimes reiterating views on the shortcomings of the proposed self-declaration as expressed at earlier questions, while around 1 in 8 stated their opposition to the concept of changing sex or the proposals for self-declaration. Respondents from outside Scotland were more likely to make the latter points. A smaller number of other respondents pointed to the potential for abuse.

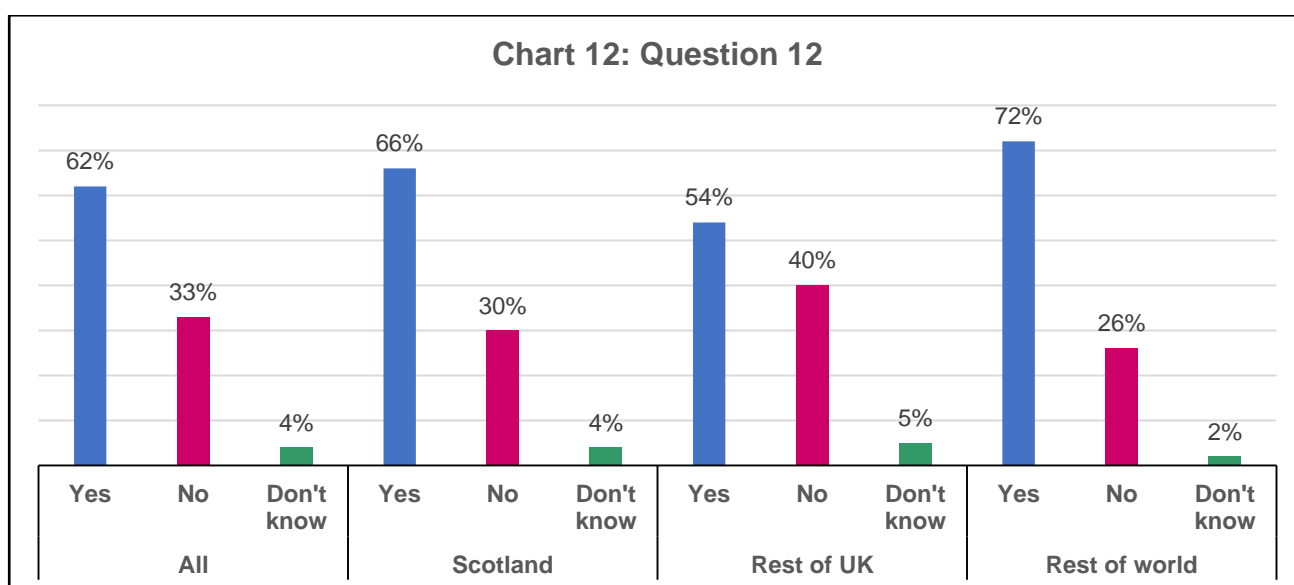
Comments by those who did not know

- 5.43. Around 160 respondents said they did not know whether there should be automatic recognition in Scotland of a gender legally recognised elsewhere and then went on to make a further comment. Points raised included:
- Around 3 in 10 suggested that this should be dependent on the jurisdiction in question and the regulatory system in place
 - Around 1 in 4 argued that the system must be broadly comparable to, or more robust than, that in place in Scotland
 - Around 1 in 5 restated their opposition to the concept of changing gender or the proposals for self-declaration.

6. Non-binary people

- 6.1. The consultation paper explains that a non-binary person's gender identity is not that of a man or woman and that the Equality and Human Rights Commission Note on Measuring Gender Identity reported that 0.4% of people who answered a question about their gender identity reported that they identified in another way from a man or woman. The consultation paper suggests that taking action to ensure that non-binary people are not excluded could increase non-binary peoples' acceptance and reduce the levels of discrimination they experience.

Question 12 - Should Scotland take action to recognise non-binary people?



- 6.2. A majority of respondents, 62% of those answering the question, thought that Scotland should take action to recognise non-binary people. Of the remaining respondents, 33% did not think Scotland should take action and 4% did not know. Respondents resident in Scotland and the rest of the world were more likely to think Scotland should take action, while those resident in the rest of the UK were less likely.
- 6.3. Around 3,370 respondents went on to make a further comment at Question 12.

Comments by those who agreed

- 6.4. Around 910 respondents who had agreed at Question 12 went on to make a comment. Of these, around 1 in 10 simply made a statement of support.
- 6.5. The most frequently made comment by those who agreed that Scotland should take action to recognise non-binary people was that the non-binary gender exists and that being non-binary is just as valid as being one of the binary genders or being a trans woman or man. Around 4 in 10 respondents highlighted this issue. Those raising this issue sometimes noted that they themselves are non-binary. Others noted that they have non-binary partners, family members or friends. Respondents commented on difficulties they themselves, or those known to them, experience in their day-to-day lives. They talked of the pain and humiliation that can result from being misgendered in all aspects of life, and with specific reference to being misgendered by health and other public services. Some talked of the negative impact misgendering can have on their lives, including feeling rejected by, and alienated from, society. Respondents also noted the negative impact this can have on their feeling of self-worth and their mental health.
- 6.6. Around 1 in 4 respondents felt that it is important for Scotland to take an inclusive approach in which non-binary people have the same rights as everyone else. Respondents resident in Scotland were more likely to raise this issue than those from elsewhere. Further comments included that non-binary people deserve respect and recognition and that enshrining this approach in law could help wider society take a more accepting and inclusive approach. Smaller numbers of respondents suggested that legal recognition is key and could act as a driver of societal change. It was also suggested that Scotland has the opportunity to take a clear and inclusive stand on this issue and in doing so would come into line with other jurisdictions that have recognised non-binary people.
- 6.7. From a slightly different perspective, around 1 in 10 respondents felt that to fail to recognise non-binary people would be to imply that they do not exist or are not entitled to the same rights and acceptance within society as everyone else.
- 6.8. Just as many felt it is important for society to be inclusive, many also highlighted the importance of allowing people self-determination and to make their own choice as to their gender identify. Around 1 in 5 raised this issue, with those resident in Scotland more likely to raise this issue than those resident elsewhere. Further points included that it is wrong to force people to misidentify themselves in order to access key services or to operate within the workplace.

- 6.9. A smaller number of respondents also highlighted the particularly damaging impact being misgendered, or being required to misidentify their gender, can have on the individuals concerned. These respondents referred to the very positive impact recognising their non-binary status could have and the benefits for non-binary people's health and wellbeing. There was particular reference to the positive impact recognition could have on people's mental health. A small number of respondents who said they are non-binary felt that recognition could literally be a life saver for them.
- 6.10. Other points raised, in each case by smaller numbers of respondents, reflected those made at earlier questions and included that gender is a social construct and society should not be defining, or redefining, people based on gender. Others commented that any recognition of non-binary people should not be at the expense of women and girls and should not put their safety and rights at risk. These themes were also raised by those who disagreed at Question 12.

Comments by those who disagreed

- 6.11. Around 2,300 respondents who disagreed at Question 12 went on to make a comment.
- 6.12. The most frequently made comment, made by around 4 in 10 respondents, was that humans are sexually dimorphic and that, apart from a small number of people who are intersex, everyone is born male or female and with XY (male) or XX (female) chromosomes. Some went on to comment that, irrespective of how someone identifies or any other action they take, people will always remain male or female because of their chromosomal makeup.
- 6.13. Around 1 in 10 made a more general point that there is no scientific or biological basis for being non-binary, while a smaller number of respondents thought it important to remember that being non-binary is a gender identity rather than a third sex. Others, again in smaller numbers, suggested that identifying as non-binary is simply an expression of personality or preference rather than a serious statement of self-identity. Some, again in smaller numbers, suggested that being non-binary is a mental illness while others suggested it is nothing more than a fashion or a whim. There were associated concerns that recognising non-binary people could lead to calls for a range of other genders or expressions of self-identity to be recognised.
- 6.14. Commenting on gender rather than sex, around 1 in 5 respondents suggested that most, if not all, people are non-binary in that they do not conform fully to gender-based stereotypes. Respondents from the rest of the UK and the rest of the world were more likely to make this overall point than those resident in Scotland. This also applied to the group of around 1 in 6 who commented that gender is a social construct. The further issues raised by this group of respondents very much reflected those covered at earlier questions.

6.15. Other comments focused on the practical implications of recognising non-binary people. The most frequently made of these points, raised by around 1 in 10 respondents, centred around the use of sex-specific services. There were queries as to whether a third set of non-binary services would be required, or whether a non-binary person would be able to choose which sex-specific service they wished to use. As at other questions, and at Question 1 in particular, respondents raised concerns about biological men having access to female-only services and the potential safety and privacy issues that would result. There was specific reference to women's refuges, health services, changing rooms and toilets, and the prison estate. In terms of a third set of services, respondents tended to suggest this would be impractical and very costly.

6.16. Other challenges raised by smaller numbers of respondents included:

- Non-binary would need to be defined as a term and this would be very difficult if not impossible
- Many of Scotland's laws and customs are based on male and female identities and are gender-based. The introduction of a third gender would require a wholesale revision of those laws and customs.
- The changes required would be very complex and would be a significant administrative and legal burden on Scotland at a time when the country may have other more pressing priorities
- There could be serious implications for the gathering of sex-based data. There were particular concerns that crime data would not reflect the true sex-based picture in relation to the perpetrators of violent crime, sexual assault and rape. There were also concerns that the planning of sex-specific services could be undermined if accurate sex-based data is not available.
- There could also be challenges around ensuring that non-binary people receive the right medical care when that care is dependent on someone's biological sex. Difficulties around ensuring someone is called for the correct sex-based medical screening were also suggested.

6.17. Around 140 respondents either answered that they did not know or did not answer Question 12 and then went on to make a comment. These comments very much reflected those raised by respondents who had disagreed at Question 12, with the exception of some respondents noting that they had little knowledge of non-binary issues and felt unable to give an informed view.

6.18. As the consultation paper notes, the Scottish Government has identified six broad options to advance the recognition of non-binary people and that it may be possible to pursue more than one of these options.

Question 13 - If you answered Yes to Question 12, which of the identified options to give recognition to non-binary people do you support?

Option 1: Changes to administrative forms

Option 2: Book of Non-Binary Identity

Option 3: Limited document changes

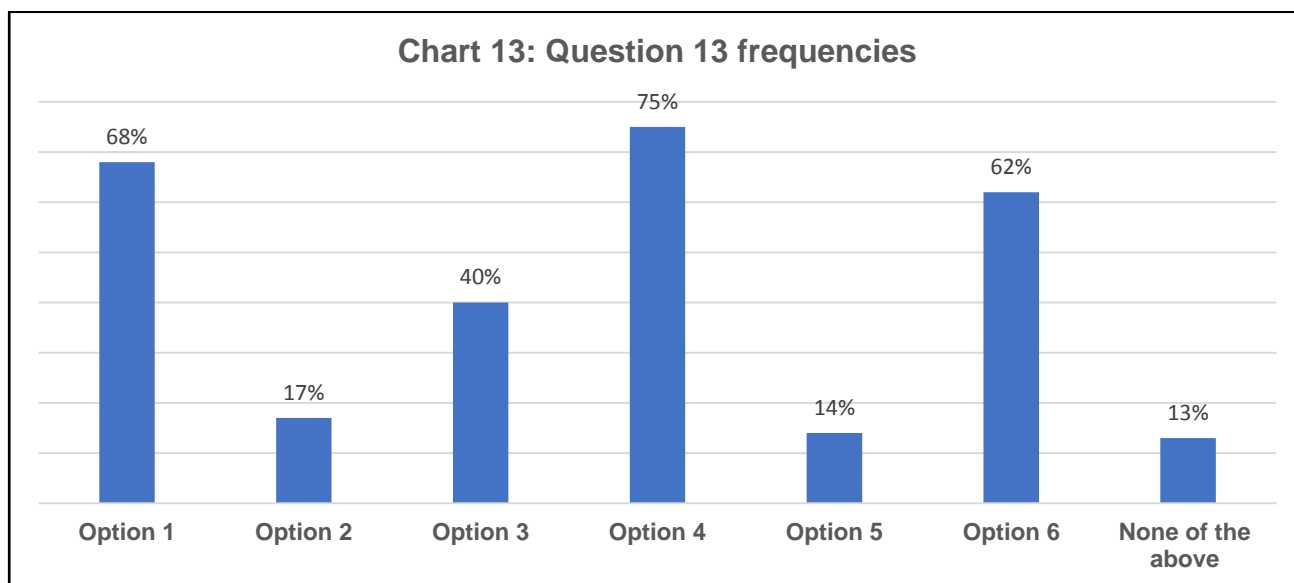
Option 4: Full recognition using proposed self-declaration system

Option 5: Incremental approach

Option 6: Amendment of the Equality Act 2010

None of the above options

6.19. Respondents were able to select as many of the options as they wished. The chart below presents figures for the number of times each option was selected.



6.20. The most frequently chosen option, selected by 75% of those answering the question, was Option 4 – full recognition using the proposed self-declaration system. Options 1 and 6 also received a high level of support, being chosen by 68% and 62% respectively. Option 3 was selected by 40% of those answering the question, while the fewest respondents selected Option 2, Option 5 or None of the above (17%, 14% and 13% respectively).

6.21. As set out with Table 13 at Annex 2, respondents resident in Scotland were slightly more likely to have selected Options 1,3,4,5 and 6 than all other respondents. Respondents resident in Scotland were also slightly less likely to have selected None of the above.

6.22. The three most frequently selected combinations of options were:

- Options 1, 3, 4 and 6. This combination of options was preferred by around 1 in 4 of those answering Question 13.
- Options 1, 4 and 6. This combination of options was preferred by around 1 in 8.
- Option 4 only. This option was preferred by around 1 in 10.

Options 1-6

6.23. Around 1,150 respondents went on to make a further comment. Of these, around 770 had agreed at Question 12.

6.24. The most frequently raised issue, by around 1 in 3 of those who had agreed at Question 12, was that, whichever option or options are chosen, it is important that non-binary people have the same rights and protections as others. Specifically, it was suggested that non-binary people are entitled to the same rights as trans or cis people. Some commented that non-binary people should have an equivalent gender recognition process as trans people. It was also suggested that there is no reason why non-binary people need their gender to be legally recognised less than any trans person; nor is there any reason they should be further scrutinised or unable to determine their gender for themselves.

6.25. Otherwise, comments tended to focus on why respondents agreed or disagreed with one or more of the options set out.

Option 1: Changes to administrative forms

6.26. Around 1 in 6 respondents commented on Option 1, with these comments almost exclusively made in support of Option 1. They tended to centre around the importance of non-binary people not having to misgender themselves on forms. It was suggested that without Option 1 there would be little to gain from someone being recognised as non-binary since they would still be constantly misgendered in documents.

6.27. Other comments included that there is often no need for gender to be gathered at all but that, if there is a need, an 'Mx' or other gender-neutral option should be available. A Union or Political Party respondent reported that they are part way through the process of checking their own internal administrative forms and processes to ensure they are inclusive of non-binary identities. The review includes looking at which requests for information about sex or gender are unnecessary and should be removed, which are justifiable, and which should include options that are inclusive of non-binary people. The intention is then to raise these issues with employers.

6.28. Respondents sometimes noted that they saw Option 1 as being part of the package of options that would provide the necessary legal protections and recognition for non-binary people. This was sometimes linked to being equivalent to the protections proposed for trans people. As noted above, the two most frequently suggested combinations of options both included Option 1.

6.29. Other comments about Option 1 included that:

- Changes to administrative forms would allow for the capture of accurate and valuable data, including for equality monitoring purposes
- Option 1 should be a relatively easy option to deliver.

Option 2: Book of Non-Binary Identity

6.30. Around 1 in 6 respondents commented on Option 2, with the vast majority explaining why they had not selected this option. It was suggested that a Book of Non-Binary Identity would be an expensive waste of time which would only be symbolic, and which would bring no real benefit to non-binary people. Others had concerns that any record could be misused, particularly if made publicly available.

Option 3: Limited document changes

6.31. Around 1 in 5 respondents commented on Option 3. A frequently made comment was that it will be important that non-binary people are able to obtain documents in line with their legal gender recognition. This was frequently connected with the changes to administrative forms as at Option 1. Some respondents went on to suggest that the changes should not be limited and that all identity documents with a gender marker should carry an option to recognise non-binary identities. For example, it was suggested that it should be a legal requirement for all documentation that asks for someone's gender to offer non-binary, trans and/or prefer not to say choices.

6.32. A small number of respondents commented specifically on any requirement for a medical practitioner to confirm someone's gender. It was suggested that this approach could be frustrating for non-binary people and would allow medical professionals to gatekeep someone's gender identity.

6.33. Finally, a Trans Group respondent noted the logistical difficulties that would come with diverging from the approach used in the rest of the UK. They suggested that the Scottish Government should press for wider change and recognition of non-binary rights across the UK.

Option 4: Full recognition using proposed self-declaration system

- 6.34. Around 1 in 6 respondents commented on Option 4, with a number of these respondents noting that they saw this option as being the most important. This applied not only to those who had only selected Option 4 but also to those who had chosen Option 4 amongst others.
- 6.35. The reasons respondents gave for seeing Option 4 as primary included that non-binary people should have access to the same legal gender recognition process as trans people and that it is the option which would do most to advance recognition of non-binary people in Scotland. It was also suggested that having different arrangements for trans and non-binary people would be confusing.

Option 5: Incremental approach

- 6.36. Around 1 in 9 commented on Option 5. These respondents were relatively evenly divided between those who had selected Option 5 and those who had not.
- 6.37. Some of those who had chosen Option 5 and commented felt that the scale of the possible changes meant that an incremental approach was probably the only viable option, particularly given the need to determine the legal implications of full recognition. It was also suggested that it would help minimise the costs involved. A Local Authority, H&SCP or NHS respondent noted that, as a public authority, they are aware of the practical issues associated with creating a new protected characteristic, including around enhanced data gathering and reporting. They also noted the need to gain the public's confidence that this information is being used to reduce barriers and promote equality.
- 6.38. Others who had selected Option 5 raised similar concerns to those who had not. These centred around an incremental approach leading to unnecessary and unreasonable delays, to the detriment of non-binary people. Specifically, it was suggested that an incremental approach would give employers and services the space to continue discriminating, including by not providing the services that are required legally. It was suggested that any changes should be made as quickly as possible and, in particular, that they should be included in any upcoming revision of the Gender Recognition Act.
- 6.39. It was also suggested that Option 5 as presented in the consultation paper represents little more than what is already happening, especially around commissioning research into the particulars of non-binary life. It was suggested that this consultation will provide the Scottish Government with more than enough research and reasoning to support the full legal recognition of non-binary gender identities.

6.40. However, challenges were recognised. For example, it was suggested that while it may not be practical to offer gender-neutral toilets or changing areas in all, most, or even many government or publicly-accessible buildings, it may be practical in some buildings. It was also suggested that there could be a requirement for new-build public buildings to include non-binary spaces if appropriate.

Option 6: Amendment of the Equality Act 2010

6.41. Around 1 in 5 respondents commented on Option 6. A considerable majority of those commenting had selected Option 6. Respondents sometimes suggested that updating the Equality Act 2010 will be an important, if not vital, legislative step for non-binary people. Specifically, it was suggested that creating a non-binary category but not amending the Equality Act to explicitly protect non-binary people could open people up to facing more discrimination on the basis of gender identity than they do currently.

6.42. However, it was noted that while the Gender Recognition Act 2004 has been devolved to the Scottish Parliament, the Equality Act 2010 has not. It was suggested that the Scottish Government will need to lobby actively for amendment of the 2010 Act to include non-binary people. It was also noted that, while the Scotland Act 2016 allows for some areas of equalities to be legislated for in Scotland and while the Equality Act may not be amended by devolved administrations, supplementary provisions can be added. The LGBT group highlighting this issue went on to note that, since any Scottish amendments could only apply to public bodies, they would fail to add critical protections against discrimination in areas such as employment and provision of services. They commented that they would prefer to see consistent protection for all areas across the UK.

6.43. Other comments included that 2010 Act's reference to 'gender reassignment' is ambiguous, confusing and not well understood. A possible solution suggested was to refer to 'gender expression and trans identity'. There was also support for the Equality and Human Rights Commission recommendation (as referenced in the consultation paper), that the definition of the protected characteristic should be broadened to include all people who face ill treatment as a result of their gender, including both gender identity and expression. It was suggested that amending the protected characteristic in this way would ensure not only protections for all trans people, including non-binary people, but also cis-gender people who face similar issues simply for their gender expression.

6.44. Finally, a small number of respondents commented that it will be important to retain sex as a protected characteristic.

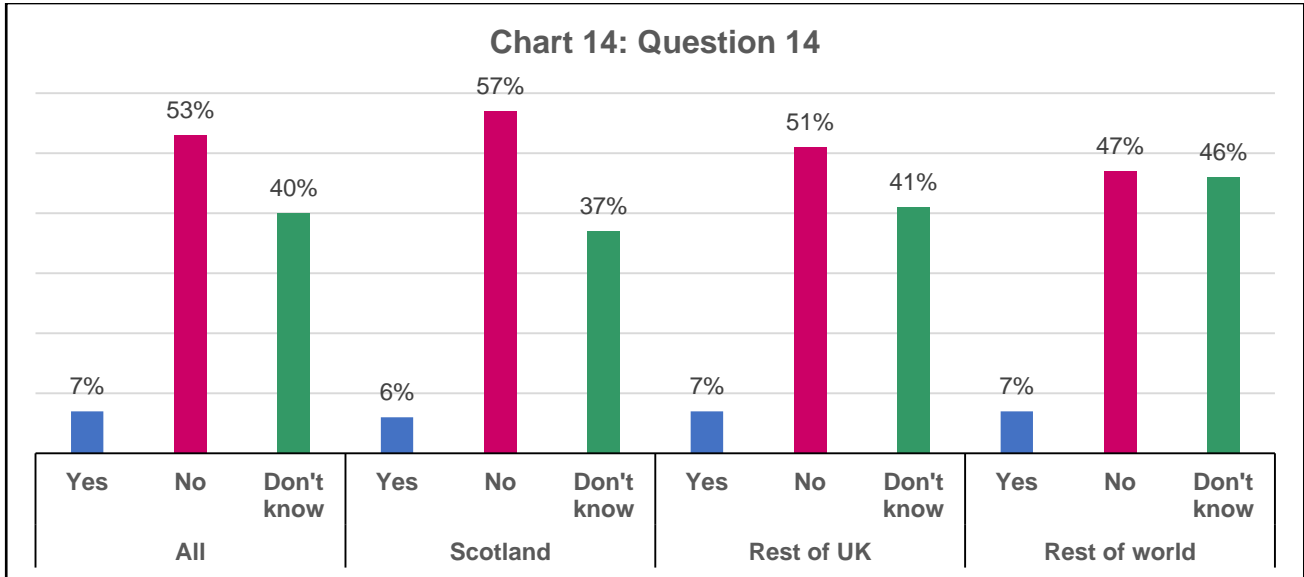
None of the above options

- 6.45. Around 280 respondents selected None of the above options at Question 13 and then went on to make a further comment. Around 80 respondents who had either disagreed or had not answered Question 12 also commented at Question 13. The vast majority of these comments reflected issues raised by those who had disagreed at Question 12. These included that non-binary does not exist, that sex is binary and that any information gathered should record sex not gender.
- 6.46. A small number of alternative approaches to the six options outlined above were suggested. These included:
- Repealing the Gender Recognition Act and amending the Equality Act 2010 by changing the protected characteristic from gender identity to gender non-conformity
 - Carrying out a full Equalities Impact Assessment based on sex as a protected characteristic to fully understand the impact of the proposed changes on women and girls.

Question 14 - At paragraph 7.26. and in Annex J we have identified the consequential legal impacts if non-binary people could obtain legal gender recognition using the proposed self-declaration system.

Are you aware of impacts we have not identified?

If you answered Yes, describe the impacts you have identified.



6.47. The majority of respondents, 53% of those answering the question, were not aware of any additional impacts that the Scottish Government had not identified. Of the remaining respondents, 40% did not know and only 7% said they were aware of additional impacts.

6.48. Around 990 respondents went on to make a further comment, with around 750 of these respondents having answered that they were aware of impacts which the Scottish Government had not identified. The impacts which the Scottish Government had identified (and as set out in Annex J of the consultation paper) were in relation to: Family law; Marriage law; Registration law; and Victims of crime. Given that most of the further comments made addressed these impacts, not all respondents may have referred to the relevant section of the consultation paper or may have wished to comment on the impacts identified. Many comments also did not address the question specifically, but reiterated comments made at earlier questions and at Question 12 in particular.

Equality Act 2010, single sex spaces and women's rights

- 6.49. Respondents sometimes referenced the impact the proposals could have on the sex-based protections provided by the Equality Act 2010. Also reflecting comments at Question 12 was the suggestion that it will be vital to consider the legal and other impacts of the proposals on single sex spaces and the women and girls using them. Around 3 in 10 respondents raised this issue, with respondents living elsewhere more likely to raise this issue than those resident in Scotland. Around 1 in 10 respondents made general points around the erosion of the safety and rights of women and girls.
- 6.50. Further comments by those highlighting these issues included that there are many reasons why, as a society and in certain circumstances, we choose to maintain different spaces and services for men and women, including for reasons of safety, privacy, dignity and fairness. Respondents sometimes suggested that the legal implication of recognising non-binary people would be that either a third set of services would be required, or services would need to be gender neutral, not least because otherwise a non-binary person who was male might otherwise opt to access female only services. Other comments focused on the safety of women and girls, including in single sex facilities or when undergoing medical treatment, if a non-binary person who was male was able to take on a work role that was otherwise reserved for a woman.
- 6.51. Some raising these issues were amongst the 1 in 10 respondents who made specific reference to the impact of the proposals on equalities law and the Equality Act 2010. The general concern was that the proposals could begin the erosion of protections based on sex as a protected characteristic. It was also suggested that any changes would have a major impact on the concept and legal meaning of sexual orientation and gay and lesbian identities, and thus have an impact on the sexual orientation protected characteristic. Specific areas of concern identified included:
- Sports, and in particular non-binary men having an unfair advantage if able to compete against biological women
 - Women only shortlists or quotas and a concern that women could miss out on a range of key opportunities across politics, business and the public sector.
- 6.52. Connected to the latter concern, an LGBT Group respondent commented on an issue which they believed would not be affected by the proposals to amend the Gender Recognition Act 2004. They suggested that there would be no major impact within gender representations on public boards. They commented that the barriers to women in society are equally felt by trans women and non-binary people, and visibility of this population would support and benefit women's rights, not hinder them. They also suggested that equal representation in this manner would combat other inconsistencies, such as the gender pay gap, by ensuring a meritocracy which combats ongoing discrimination against women and trans people alike.

6.53. They also welcomed the amendments to the draft Gender Representation on Public Boards (Scotland) Bill¹², where the language was changed in line with the Equality Act 2010, protecting the representation of women and the removal of the quota for men, allowing accessibility for non-binary people.

Data collection, including crime statistics

6.54. Also as at Question 12, respondents raised concerns about the impact on the collection of sex-based data. Around 1 in 8 respondents highlighted this issue. Further comments included that introducing a non-binary option would mean that important sex-based data is no longer accurate. The use of this data to plan key services, including health-related services, was also highlighted.

6.55. In line with the Scottish Government's assessment, the recoding of crime and gender-based offences was highlighted. There was a specific concern that introducing a non-binary gender could result in violence against women by biological men being under-recorded. It was also suggested that data about rates of pay and the pay gap, employment issues including the number of women entering the STEM professions,¹³ and educational attainment could also become inaccurate.

Other issues

6.56. Respondents also commented on a range of other issues in smaller numbers. These included:

- The implications for medical treatment and for ensuring that people receive the appropriate medical treatment based on their sex
- The cost to business and public services of providing a third set of non-binary services or making other necessary provisions and changes
- Agreeing that family, marriage and registration law will need to be considered. Respondents tended to not make any additional comment.

¹² The Gender Representation on Public Boards Bill was passed in the Scottish Parliament in January 2018. It requires public sector boards to work towards a target of having 50 per cent of non-executive members be women by 2022.

¹³ The STEM professions are Science, Technology, Engineering and Mathematics.

Other areas in which there are possible legal implications

6.57. Relatively few respondents suggested additional areas in which there may be legal implications which need to be considered. Those areas of law which were suggested included:

- Pensions, including where the state pension age remains dependent on sex
- Housing
- Employment
- Asylum, immigration, visas and waivers
- Those covering the armed forces or the Police
- Those covering disclosure or other safety-related checks such as those required for fostering or adoption
- Succession, and specifically the Succession (Scotland) Act 1964
- Any areas which affect the treatment of UK nationals when abroad.

6.58. Finally, it was suggested that legislation similar to the Interpretation Act 1978 (which amends all laws to include the feminine as well as the masculine gender) could be made to make legislative language more neutral and non-binary inclusive, without changing every law individually.

7. Conclusion

Impact Assessments

- 7.1. The consultation paper explains that, in accordance with usual practice, the Scottish Government has prepared a number of impact assessments in relation to the development of policy in this area and that four partial impact assessments are attached as annexes.

Question 15 - Do you have any comments about, or evidence relevant to:

- (a) the partial Business and Regulatory Impact Assessment (BRIA);**
- (b) the partial Equality Impact Assessment (EQIA);**
- (c) the partial Child Rights and Wellbeing Impact Assessment (CRWIA); or**
- (d) the partial Privacy Impact Assessment (PIA)?**

- 7.2. Around 1,180 respondents made a comment at Question 15. Although the overall level of comment was relatively low at this question, a small number of respondents, particularly organisational respondents who are opposed to the changes proposed, submitted extensive remarks.
- 7.3. Overall, around 1 in 4 respondents commented on the lack of detail, supporting data or evidence in the impact assessments and suggested that more work is required. In particular, the failure to identify potential negative impacts was noted. Further involvement of women's groups and the trans community in the ongoing development of the impact assessments was also proposed by a smaller number of respondents.
- 7.4. There were few specific comments on the partial BRIA or PIA, with the majority of respondents concentrating their observations on the partial CRWIA or the partial EQIA. At this question, where given, the frequency of comments made are expressed as a proportion of those respondents commenting on an individual impact assessment, rather than for the question as a whole.

Partial Business and Regulatory Impact Assessment (BRIA)

- 7.5. The partial BRIA outlines the anticipated costs and benefits to business associated with the various options for gender recognition discussed at earlier questions. The consultation paper suggests that the change to a self-declaration system for legal gender recognition would have minimal cost implications for employers as the possibility of legal recognition already exists and the estimated number of applicants per year is low. It also noted that it is not currently possible to identify the costs of the different options for recognising non-binary people.

- 7.6. Only a small number of respondents commented specifically on the contents of the partial BRIA.
- 7.7. Amongst these respondents the most frequently raised issues were in relation to cost implications and concerns about the Scottish Government's estimate of costs. The predominant view was that the potential number of those self-declaring and the potential costs involved have been under estimated. However, others considered the estimates appropriate. It was also suggested that any initial costs are justified by the benefits to trans people and may lead to other savings in the longer term. An alternative perspective was that costs of the level likely to be required would be excessive given the small number of people who will benefit from the proposed changes.
- 7.8. A small number of respondents commented on the absence of estimated costs for the different options for recognising non-binary people, including that this is reasonable since there has been no decision on the different options available. However, it was also suggested that this undermines any conclusions on the costs associated with the proposals as a whole. There was also a specific objection to the reference to costs associated with construction of a prison for non-binary people. With reference to IT costs it was suggested that periodic updates to IT systems are inevitable in any case, and that work could be spread over a period of time to reduce costs.
- 7.9. Respondents raised issues concerning costs for business if required to provide additional staff toilets, changing facilities or sleeping areas, with one suggestion that government grants should be available to help meet costs.
- 7.10. Finally, a small number of respondents suggested potential difficulties created for businesses if any staff were to oppose sharing facilities with trans colleagues.

Partial Equality Impact Assessment (EQIA)

- 7.11. The protected characteristics under the Equality Act 2010 are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.
- 7.12. Around 7 in 10 respondents to Question 15 commented on the partial EQIA and, among these respondents, around 9 in 10 commented on the protected characteristic of sex – specifically in terms of their concerns for the rights and safety of women. Smaller numbers commented on sexual orientation, gender reassignment, religion or belief and disability. There were very few comments on other protected characteristics; any general comments on children have been considered in the discussion on the CRWIA.

Sex

- 7.13. The most frequently made point, raised by around 6 in 10 respondents, was that contrary to the partial EQIA, the proposals for self-declaration will have a profound impact on women. Around 1 in 3 respondents argued that there needs to be a specific assessment of the impact on women and girls.
- 7.14. Other frequently raised issues reflected those already outlined at Question 1: around 1 in 2 respondents cited effects of the proposals on access to women's safe spaces; around 1 in 4 suggested a resulting risk of abuse; around 1 in 7 highlighted the effects on women's sports; and 1 in 8 that the rights of trans people should not be protected at the expense of women. Smaller numbers raised issues surrounding: the distinction between sex and gender; the right to choose the sex of a person providing intimate medical or social care; the potential effects on the accuracy of statistical information relating to crime recording or equality monitoring; issues around freedom of speech and a right to disagree.
- 7.15. With respect to equalities issues, potential consequences for women in the workplace or the public sphere were raised by around 1 in 8 respondents. Concerns were expressed that:
- Places on all-women short lists, or women's places on boards or committees may be filled by trans women
 - Data on employment rates and gender pay gaps will be skewed if trans women are included.
 - Roles reserved for women may be filled by trans women. A recent appointment in the Labour Party was cited as evidence that this already happens.
 - Trans women will be eligible for other awards or quotas previously reserved for women.
- 7.16. In many cases it was argued that trans women were raised with the male privilege that these measures were designed to redress.

Religion or belief

- 7.17. The majority of those who commented on religion or belief argued that the proposed changes will impact women whose religion or beliefs prevent them from sharing spaces with men. Use of public toilets, changing rooms and refuges, and participation in sport were given as examples.
- 7.18. In terms of gender reassignment being contrary to religious beliefs, two Religious or Belief Body respondents expressed disappointment at the brevity of the assessment on negative impacts set out in the partial EQIA.

Sexual orientation

- 7.19. Respondents who commented on sexual orientation most frequently referred to a negative effect of gender reassignment for the lesbian community. It was suggested that gender non-conforming children are being encouraged to transition when they would otherwise grow up to be lesbian or gay, and that both gay and lesbian people are coming under increasing social pressure to change their gender rather than to live as gay or lesbian.
- 7.20. Additionally, it was suggested that lesbians may be abused or accused of transphobia if they refuse to enter sexual relationships with trans women, but that sexual orientation is based on biological sex not gender identity. It was also suggested that believing that gender identity is more important than biological sex is homophobic. Although sexual orientation is a protected characteristic, it was suggested that trans issues are being prioritised over lesbian issues and also that, when lesbian organisations or advocacy groups are joined by trans women, trans issues often take priority.

Disability

- 7.21. Issues raised by those respondents who commented on disability included querying assumptions made with respect to mental health – both that the higher rates of mental ill health amongst the trans community are caused by the prejudice and discrimination faced, and that mental health is improved by transitioning.
- 7.22. Concerns were also raised regarding links with autism, with a number of respondents citing figures relating to the proportion of children referred to the Tavistock Gender Identity Clinic who are on the autistic spectrum. Reference was also made to the frequency of Attention Deficit Hyperactivity Disorder among gender dysphoric children.

Gender reassignment

- 7.23. The most frequent comment was that trans rights should be protected. However, a substantial majority of those making this point added that this should not be at the expense of women's rights. A similar number argued that the impact assessments in general only consider the rights of trans people and do not give adequate weight to the consequences for the rest of society. It was also suggested that failure to balance these interests could damage the relationships between the groups involved, and that this could be detrimental to the trans community.
- 7.24. Potentially negative effects on those with gender dysphoria were also suggested, with respondents arguing that self-declaration may trivialise this condition or may devalue the experience of trans women who have a GRC obtained under the present system.

Partial Child Rights and Wellbeing Impact Assessment (CRWIA)

- 7.25. The partial CRWIA considers which Articles of the UNCRC are engaged by the proposals and policy options identified for people under 18 and sets out the evidence that the Scottish Government has identified so far as being relevant to the assessment of these options.
- 7.26. Around 475 respondents made a comment about children or young people more generally or the Partial Child Rights and Wellbeing Impact Assessment (CRWIA) in particular.
- 7.27. Respondents most frequently raised concerns that the proposals would not be in the best interests of children, with around 1 in 3 respondents concerned that children who do not conform to gender stereotypes are being pushed towards gender transition. Further comments very much reflected themes raised by respondents who did not think that people aged 16 and 17 should be able to apply for and obtain legal recognition of their acquired gender (Question 5).
- 7.28. These comments included that children may be vulnerable to peer pressure and bullying or may be confused about their sexuality or vulnerable to incorrectly concluding they are trans for a range of other reasons. Small numbers of respondents referred to 'social contagion' and questioned whether the power of suggestion, and particularly coverage in social media, could lead children to wonder whether they too are trans.
- 7.29. A small number of respondents also commented on other situations in which they felt children could be exposed to messages which encourage them to consider whether they are trans or even promote being trans. Suggestions included that schools may teach that being trans is a mainstream choice or that children could be at increased risk from irresponsible mental health professionals working with children and adolescents.
- 7.30. Respondents commented on the need to be protected from decisions they might come to regret. There was a specific concern, raised by around 1 in 5, that the proposals could result in children undergoing medical treatment that would be irreversible and which could, for example, leave them infertile or in a prolonged state of prepubescence. However, it was also noted that the NHS Gender Identity Development Service¹⁴ supports 'watchful waiting' for children who have issues around gender and that this allows these thoughts to develop and mature.

¹⁴ The Gender Identity Development Service is a specialised clinic for young people presenting with difficulties with their gender identity, commissioned by NHS England. In NHS Scotland, there is a multi-disciplinary team based at Sandyford, Glasgow who specialise in working with young people up to the age of 18.

- 7.31. As at a range of earlier questions, and as also with reference to the EQIA, respondents commented on the impact the removal of female only safe spaces would have on girls. Around 1 in 4 raised this issue. Smaller numbers referenced the impact on girls' sports.
- 7.32. General comments on the partial CRWIA itself included that it is based on the assumption that this law only impacts the trans community and has virtually no adverse impact on others. Overall, around 1 in 8 respondents made an observation, with points raised including that it requires further work and lacks detail. For example, an LGBT Group respondent highlighted instances in which the assessment simply states that there will be an impact but where they felt more information should be included. A small number of respondents also identified specific issues which they felt should be covered in the CRWIA. These included:
- The high proportion of autistic children referred for gender identity issues and ensuring that these children receive specialist assessment and care
 - In line with the safe spaces issue, 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.

7.33. A smaller number of respondents made specific points about how the proposals relate to the United Nations Convention on the Rights of the Child (UNCRC). It was noted that the Scottish Government uses the UNCRC as a framework to consider children's rights when making policy decisions and that its CRWIA is used to ensure that all policies, measures and legislation protect and promote the wellbeing of children and young people. However, some respondents felt that the proposals are not line with and do not reflect the spirit of the UNCRC and that the UNCRC is not reflected adequately in the CRWIA. Specific points made included 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
- The Scottish Government claims that Article 5 would support their proposals to allow gender recognition for children. However, the Article only refers to 'rights recognised under the present Convention', and the right to gender reassignment is not recognised in the text of the UNCRC.
- Article 13, which covers a child's right to freedom of expression, could be an issue if children are considered transphobic if they struggle to understand being trans or question a trans child. Alternatively, the right could relate to receiving information about gender identity and 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
- The Scottish Government's claim that Article 26 on social security may be relevant to children with a non-binary gender identity looks like a desire to have non-binary identity recorded on National Insurance.

7.34. Finally, a small number of respondents raised concerns that the Scottish government has been advised solely by pro-trans organisations. A particular suggestion was that experts in child development should be consulted.

Partial Privacy Impact Assessment (PIA)

- 7.35. Only a very small number of respondents commented on the partial PIA.
- 7.36. Points made included: that any impacts of the General Data Protection Regulation should be noted; reference to exemptions in section 22 of the 2004 Act (discussed at Question 10); and concerns that a trans person's right to privacy may allow women to be put at risk.

Question 16 - Do you have any further comments about the review of the Gender Recognition Act 2004?

7.37. Around 3,970 respondents made a comment at Question 16. In many cases these comments reiterated points made at earlier questions and, where already covered elsewhere in the report, these issues are not covered again here. Hence, while at other questions the points discussed reflect the subjects raised most frequently by respondents, this is not the case in the analysis below.

Policy development

7.38. With reference to the development of the proposals it was suggested that the Scottish Government sought the views of trans organisations but has not engaged with women's groups. It was argued that, as a result, trans groups have had undue influence over the reforms being proposed. There were many calls to listen to women's opinions or to consult with women's groups before any changes are enacted. There were also suggestions that further research is needed or that some of the existing research cited in support of the Scottish Government's position is of poor quality.

The consultation paper

7.39. The consultation paper was sometimes suggested to not be neutral in approach and it was also suggested that the questions were asked in such a way as to affirm the Scottish Government's position. Questions about detail surrounding possible changes were sometimes seen as indicating that a decision to proceed has already been taken. There were also suggestions that the consultation paper was too long, too complicated, or lacked important definitions.

The public consultation process

7.40. A range of points was made about the consultation process and the analysis of responses including that:

- The consultation was not adequately advertised, and many people are still not aware of the changes that are being proposed. Several respondents noted that they had only heard of it by chance or from a friend, sometimes at the last minute. It was suggested that a wider public debate is required.
- It was suggested that groups opposed to the proposed reforms have spread information about the consultation on line and have encouraged their supporters to respond. It was suggested that this should be taken into account during analysis of responses, or that it may skew the results.
- Limitations on who should have been allowed to respond were suggested, including that that the consultation should have been restricted to those who live in Scotland and will be directly affected. Some respondents also argued that it should be a matter only for trans people or that the views of trans people should be given greater weight.
- The nature of hostility to the proposals (and, by extension, to the trans community) both in elements of the press and on social media, was suggested to have distressed many trans people and their supporters. It was suggested that much of the criticism has been either prejudiced or ill-informed. It was also suggested that it may be helpful to remind the media of guidelines pertaining to the reporting of trans people's identities.
- Hostility from trans activists towards women and women's groups who have publicly questioned the proposals was reported by respondents, with suggestions that accusations of bigotry or transphobia and threats of violence represent a concerted attempt to shut down any debate.

Suggested actions or points for the Scottish Government to consider

- 7.41. It was suggested that the 2004 Act is widely misunderstood and misquoted and that any reforms should include plans for dissemination of clear and accurate information regarding its purpose, limits and consequences.
- 7.42. There were also suggestions that the 2004 Act should be repealed, both from those who disagreed with the idea that sex/gender can be changed at all, but also from respondents who suggested it to be unnecessary in the light of the availability of same sex marriage or protections for gender reassignment under the Equality Act 2010.
- 7.43. With respect to the Equality Act 2010, it was argued that existing exemptions should be reviewed, retained or strengthened. It was also suggested that some organisations may already be reluctant to use these exemptions because they fear accusations of transphobia.
- 7.44. It was also suggested that review of the 2004 Act should include consideration of changes that would be required from local authorities and the public sector, particularly in relation to service provision. Examples included for the NHS and in relation to allocation of housing.
- 7.45. Increased provision of professional support and counselling services for children experiencing difficulties relating to gender was proposed as was improved funding for Gender Identity Clinics.
- 7.46. Education on gender identity, for schools but also for the wider public, was seen as important for improving understanding and reducing stigma. The need to raise awareness for employers was identified, as was training on trans issues for staff working for a range of bodies including the NHS, social services, local authorities and the police.

Annex 1 – Organisations responding to the consultation

Respondent	Group type
Children and Young People's Commissioner Scotland	Children's or Young People's Group or Body
Children in Scotland	Children's or Young People's Group or Body
Scouts Scotland	Children's or Young People's Group or Body
The Scottish Children's Reporter Administration	Children's or Young People's Group or Body
Together (Scottish Alliance for Children's Rights)	Children's or Young People's Group or Body
YES Matters UK	Children's or Young People's Group or Body
YouthLink Scotland	Children's or Young People's Group or Body
Biscuit	LGBT Group
Brighton & Hove LGBT Switchboard	LGBT Group
Co-Chair LGBT+ Network, City, University of London	LGBT Group
Different Visions Celebrate	LGBT Group
Edinburgh Frontrunners	LGBT Group
Erinyes Autonomous Activist Lesbians	LGBT Group
Free2B Alliance	LGBT Group
Galop	LGBT Group
GULGBTQ+	LGBT Group
ILGA – the International Lesbian, Gay, Bisexual, Trans and Intersex Association	LGBT Group
LEAP Sports Scotland	LGBT Group
Lesbian Rights Alliance	LGBT Group
Lesbian Strength Scotland	LGBT Group
LGBT Bristol	LGBT Group
LGBT Health and Wellbeing	LGBT Group

LGBT Youth Scotland	LGBT Group
Our Story Scotland	LGBT Group
Pink Saltire	LGBT Group
Queer Sport Split	LGBT Group
Saints LGBT+	LGBT Group
Stonewall Scotland	LGBT Group
SWAN Networking for LGBT People	LGBT Group
The Rainbow Project	LGBT Group
University of Aberdeen LGBT Staff & Postgraduate Student Network	LGBT Group
University of Edinburgh Staff Pride Network	LGBT Group
Yellow Garland	LGBT Group
Aberdeen City Council	Local Authority, H&SCP or NHS
Aberdeenshire Council	Local Authority, H&SCP or NHS
Director of Public Health NHS Forth Valley	Local Authority, H&SCP or NHS
Dumfries and Galloway Council	Local Authority, H&SCP or NHS
Dundee City Council	Local Authority, H&SCP or NHS
Dundee Health and Social Care Partnership	Local Authority, H&SCP or NHS
Golden Jubilee Foundation	Local Authority, H&SCP or NHS
North Lanarkshire Council	Local Authority, H&SCP or NHS
Orkney Islands Council	Local Authority, H&SCP or NHS
Stirling Council	Local Authority, H&SCP or NHS
The City of Edinburgh Council	Local Authority, H&SCP or NHS
4thwavenow	Other
ADF International	Other

Amnesty International UK - Scotland Office	Other
Amnesty International UK LGBTI Network	Other
Bradan Press	Other
City Of Glasgow College	Other
Clan Childlaw	Other
Equality Challenge Unit (ECU)	Other
Faculty of Advocates	Other
Fallin Community Enterprises t/a Recyke-a-bike	Other
Family Education Trust	Other
Glasgow Non-Binary Night group (an LGBT Health and Wellbeing community group)	Other
House of Rainbow CIC	Other
Human Rights Implementation Centre, University of Bristol	Other
Jedburgh Three Peaks ultramarathon and relay	Other
Law Society of Scotland	Other
Lyons' Point Educational Coop	Other
Non-binary finary	Other
Non-Binary Northern Ireland	Other
NON-GENDERED - Fighting for Legal Recognition	Other
Rufus Garland Foundation	Other
Scottish Council on Human Bioethics	Other
Scottish Out of School Care Network	Other
SKO Family Law Specialists	Other
Solidarity for Humanity	Other

Swansea University	Other
The Association of Registrars of Scotland	Other
The Coalition for Marriage	Other
The Equality and Human Rights Commission	Other
The Robert Gordon University Sports Clubs	Other
The Royal Bank of Scotland plc	Other
UK Intersex Association	Other
Anscombe Bioethics Centre	Religious or Belief Body
Augustine United Church	Religious or Belief Body
CARE for Scotland	Religious or Belief Body
Catholic Parliamentary Office of the Bishops' Conference of Scotland	Religious or Belief Body
Christian Concern	Religious or Belief Body
Christian Medical Fellowship	Religious or Belief Body
Church of the Nazarene	Religious or Belief Body
Evangelical Alliance	Religious or Belief Body
Free Church of Scotland	Religious or Belief Body
Glasgow Reformed Presbyterian Church of Scotland	Religious or Belief Body
Hawick Baptist Church	Religious or Belief Body
Humanist Society Scotland	Religious or Belief Body
Maryburgh & Killearnan Free Church of Scotland	Religious or Belief Body
Metropolitan Community Church in Glasgow	Religious or Belief Body
Reformed Presbyterian Church of Scotland	Religious or Belief Body
Scottish Catholic Education Service's Parent Involvement Working Group	Religious or Belief Body

Scottish Independent Advocacy Alliance	Religious or Belief Body
Snizort FCC Church Isle of Skye	Religious or Belief Body
The Apostolic Church (UK), Scotland.	Religious or Belief Body
The Christian Institute	Religious or Belief Body
The Pagan Federation (Scotland)	Religious or Belief Body
The Religious Society of Friends (Quakers) in Britain	Religious or Belief Body
The River of Life Church	Religious or Belief Body
Edinburgh Rape Crisis Centre	Third sector support organisation
Forth Valley Rape Crisis	Third sector support organisation
HIV Scotland	Third sector support organisation
NAT (National AIDS Trust)	Third sector support organisation
Survivors' Network	Third sector support organisation
Waverley Care	Third sector support organisation
Women's Rape and Sexual Abuse Centre (Dundee)	Third sector support organisation
A&B Hangouts group (a group supported by Waverley Care)	Trans Group
Agnodice Foundation	Trans Group
Association "Spectra"	Trans Group
CTSAR Plus	Trans Group
Enfranchise	Trans Group
Equality Network and Scottish Trans Alliance	Trans Group
Gendered Intelligence	Trans Group
Global Action for Trans Equality - GATE	Trans Group
Institute TransAkcija	Trans Group
Mermaids	Trans Group

My Genderation	Trans Group
SAIL NI	Trans Group
Support Transgenre Strasbourg	Trans Group
The Canadian S.A.G.A Society	Trans Group
The Clare Project	Trans Group
Trans Aid - Association for promoting and protecting the rights of trans, inter and gender variant persons	Trans Group
Trans Alliance	Trans Group
Trans Masculine Scotland	Trans Group
Trans Pride Scotland	Trans Group
Transcend	Trans Group
Transgender Europe - TGEU	Trans Group
Transgender Fife	Trans Group
Transgender Trend	Trans Group
Transgenderkring Vlaams-Brabant	Trans Group
TransInterQueer, Berlin	Trans Group
Transnational Queer Underground	Trans Group
Transparentsees	Trans Group
União Libertária de Travestis e Mulheres Transexuais (Brazil)	Trans Group
Aberdeen University Students' Association	Union or Political Party
Educational Institute of Scotland (EIS)	Union or Political Party
GMB	Union or Political Party
LGBT Committee Scotland, Unite the Union	Union or Political Party
NASUWT: The Teachers' Union	Union or Political Party

NUS Scotland LGBT+ Campaign	Union or Political Party
Scottish Trades Union Congress	Union or Political Party
The Liberal Party	Union or Political Party
The University of Glasgow Students' Representative Council	Union or Political Party
UNISON Scotland	Union or Political Party
UNISON, the public service union	Union or Political Party
Australian Radical Feminists	Women's Group
Critical Sisters	Women's Group
East Dunbartonshire Women's Aid	Women's Group
Engender, Scottish Women's Aid, Close the Gap, Rape Crisis Scotland, Zero Tolerance and Equate Scotland	Women's Group
Fair Play For Women	Women's Group
Gender Identity Watch	Women's Group
Girls Rock Glasgow	Women's Group
Glasgow Feminist Collective	Women's Group
Midlothian Women's Spaces	Women's Group
Newfoundland and Labrador Feminists and Allies	Women's Group
OBJECT – Women Not Sex Objects!	Women's Group
Ross-shire Women's Aid	Women's Group
Scottish Women's Aid	Women's Group
The Audacious Women Collective	Women's Group
TIGER Bristol Co-op	Women's Group
University of Bristol's Feminist Society	Women's Group
Woman's Place UK	Women's Group

Women's Spaces in Scotland (Edinburgh)	Women's Group
Women's Spaces in Scotland (North East Scotland)	Women's Group
YWCA Scotland - The Young Women's Movement	Women's Group

Annex 2 – Responses to closed questions

Table 1: Question 1

Type of respondent	Agree				Disagree				Don't know				Grand Total
	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	
Organisations													
Children or Young People	5	0	0	5	0	1	0	1	0	0	0	0	6
LGBT Group	13	8	2	23	1	2	0	3	0	0	0	0	26
Local Authority, H&SCP or NHS	11	0	0	11	0	0	0	0	0	0	0	0	11
Other	16	7	1	24	1	4	1	6	0	0	0	0	30
Religious or Belief Body	6	0	0	6	14	3	0	17	0	0	0	0	23
Third sector support	5	2	0	7	0	0	0	0	0	0	0	0	7
Trans Group	7	9	10	26	0	1	1	2	0	0	0	0	28
Union or Political Party	10	1	0	11	0	0	0	0	0	0	0	0	11
Women's Group	6	2	0	8	5	2	3	10	0	0	0	0	18
Total organisations	79	29	13	121	21	13	5	39	0	0	0	0	160
% of organisations answering	79%	69%	72%	76%	21%	31%	26%	24%	0%	0%	0%	0%	100%
Individuals													
Individuals	4826	2977	1423	9226	2559	2960	579	6098	109	35	10	154	15478
% of individuals answering	64%	50%	71%	60%	34%	50%	29%	39%	1%	1%	0%	1%	100%
All respondents													
All respondents	4905	3006	1436	9347	2580	2973	584	6137	109	35	10	154	15638
% of all respondents	64%	50%	69%	60%	34%	49%	28%	39%	1%	1%	0%	1%	100%
% of all those answering	65%	50%	71%	60%	34%	49%	29%	39%	1%	1%	0%	1%	100%

Table 2: Question 2

Type of respondent	Should				Should not				Don't know				Grand Total
	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	
Organisations													
Children or Young People	2	0	0	2	0	0	0	0	1	1	0	2	4
LGBT Group	7	5	0	12	4	2	2	8	0	3	0	3	23
Local Authority, H&SCP or NHS	10	0	0	10	1	0	0	1	0	0	0	0	11
Other	10	5	2	17	4	5	0	9	1	0	0	1	27
Religious or Belief Body	13	1	0	14	2	0	0	2	3	0	0	3	19
Third sector support	5	0	0	5	0	1	0	1	0	1	0	1	7
Transgender Group	2	4	4	10	4	5	5	14	0	1	0	1	25
Union or Political Party	3	1	0	4	4	0	0	4	1	0	0	1	9
Women's Group	6	3	2	11	4	1	1	6	0	0	0	0	17
Total organisations	58	19	8	85	23	14	8	45	6	6	0	12	142
% of organisations answering	67%	49%	50%	60%	26%	36%	50%	32%	7%	15%	0%	8%	100%
Individuals													
Individuals	3637	3104	750	7491	2727	2094	977	5798	864	684	220	1768	15057
% of individuals answering	50%	53%	39%	50%	38%	36%	50%	39%	12%	12%	11%	12%	100%
All respondents													
All respondents	3695	3123	758	7576	2750	2108	985	5843	870	690	220	1780	15199
% of all respondents	48%	52%	31%	48%	36%	35%	40%	37%	11%	11%	9%	11%	97%
% of all those answering	51%	53%	39%	50%	38%	36%	50%	38%	12%	12%	11%	12%	100%

Table 3: Question 3

Type of respondent	Should				Should not				Don't know				Grand Total
	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	
Organisations													
Children or Young People	1	1	0	2	1	0	0	1	1	0	0	1	4
LGBT Group	0	2	0	2	11	6	2	19	1	2	0	3	24
Local Authority, H&SCP or NHS	2	0	0	2	7	0	0	7	2	0	0	2	11
Other	5	4	1	10	5	5	1	11	5	1	0	6	27
Religious or Belief Body	12	2	0	14	4	0	0	4	1	0	0	1	19
Third sector support	0	0	0	0	5	2	0	7	0	0	0	0	7
Trans Group	0	2	2	4	6	7	7	20	0	1	0	1	25
Union or Political Party	0	0	0	0	9	1	0	10	0	0	0	0	10
Women's Group	2	2	2	6	7	2	1	10	1	0	0	1	17
Total organisations	22	13	5	40	55	23	11	89	11	4	0	15	144
% of organisations answering	25%	33%	31%	28%	63%	58%	69%	62%	13%	10%	0%	10%	100%
Individuals													
Individuals	2926	2856	584	6366	3616	2487	1193	7296	704	545	178	1427	15089
% of individuals answering	40%	49%	30%	42%	50%	42%	61%	48%	10%	9%	9%	9%	100%
All respondents													
All respondents	2948	2869	589	6406	3671	2510	1204	7385	715	549	178	1442	15233
% of all respondents	39%	48%	24%	41%	48%	42%	49%	47%	9%	9%	7%	9%	97%
% of all those answering	40%	48%	30%	42%	50%	42%	61%	48%	10%	9%	9%	9%	100%

Table 4: Question 4

Type of respondent	A. only to people whose birth or adoption was registered in Scotland, or who are resident in				B. to everyone?				Don't know				Grand Total
	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	
Organisations													
Children's or Young People's	2	1	0	3	0	0	0	0	1	0	0	1	4
LGBT Group	1	1	0	2	11	7	2	20	0	2	0	2	24
Local Authority, H&SCP or NHS	2	0	0	2	8	0	0	8	1	0	0	1	11
Other	3	3	0	6	7	6	1	14	4	1	0	5	25
Religious or Belief Body	8	1	0	9	5	0	0	5	4	0	0	4	18
Third sector support	0	0	0	0	5	2	0	7	0	0	0	0	7
Trans Group	2	3	3	8	4	7	6	17	0	0	0	0	25
Union or Political Party	1	0	0	1	9	1	0	10	0	0	0	0	11
Women's Group	4	1	2	7	5	2	1	8	1	1	0	2	17
Total organisations	23	10	5	38	54	25	10	89	11	4	0	15	142
% of organisations answering	26%	26%	33%	27%	61%	64%	67%	63%	13%	10%	0%	11%	100%
Individuals													
Individuals	2406	2129	411	4946	4095	2855	1279	8229	680	837	238	1755	14930
% of individuals answering	34%	37%	21%	33%	57%	49%	66%	55%	9%	14%	12%	12%	100%
All respondents													
All respondents	2429	2139	416	4984	4149	2880	1289	8318	691	841	238	1770	15072
% of all respondents	32%	36%	16%	32%	54%	48%	50%	53%	9%	14%	9%	11%	96%
% of all those answering	33%	37%	21%	33%	57%	49%	66%	55%	10%	14%	12%	12%	100%

Table 5: Question 5

Type of respondent	Agree				Disagree				Don't know				Grand Total
	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	
Organisations													
Children's or Young People's	5	0	0	5	0	1	0	1	0	0	0	0	6
LGBT Group	13	8	2	23	1	2	0	3	0	0	0	0	26
Local Authority, H&SCP or NHS	11	0	0	11	0	0	0	0	0	0	0	0	11
Other	14	7	1	22	1	4	1	6	1	0	0	1	29
Religious or Belief Body	5	0	0	5	14	3	0	17	1	0	0	1	23
Third sector support	5	2	0	7	0	0	0	0	0	0	0	0	7
Trans Group	7	8	11	26	0	2	0	2	0	0	0	0	28
Union or Political Party	9	1	0	10	0	0	0	0	0	0	0	0	10
Women's Group	5	1	0	6	5	3	3	11	0	0	0	0	17
Total organisations	74	27	14	115	21	15	4	40	2	0	0	2	157
% of organisations answering	76%	64%	78%	73%	22%	36%	21%	25%	2%	0%	0%	1%	100%
Individuals													
Individuals	4929	3056	1415	9400	2369	2753	571	5693	166	153	26	345	15438
% of individuals answering	66%	51%	70%	61%	32%	46%	28%	37%	2%	3%	1%	2%	100%
All respondents													
All respondents	5003	3083	1429	9515	2390	2768	575	5733	168	153	26	347	15595
% of all respondents	66%	51%	67%	61%	31%	46%	27%	37%	2%	3%	1%	2%	99%
% of all those answering	66%	51%	70%	61%	32%	46%	28%	37%	2%	3%	1%	2%	100%

Table 6: Question 6

Type of respondent	Option 1				Option 2				Option 3			
	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total
Children or Young	0	1	0	1	0	0	0	0	2	0	0	2
LGBT Group	0	1	0	1	1	0	1	2	10	6	1	17
Local Authority, H&SCP or	1	0	0	1	2	0	0	2	7	0	0	7
Other	0	2	1	3	1	1	0	2	5	2	1	8
Religious or Belief Body	14	1	0	15	0	0	0	0	3	0	0	3
Third sector support	0	0	0	0	0	0	0	0	4	1	0	5
Trans Group	0	1	0	1	0	1	0	1	6	5	10	21
Union or Political Party	0	0	0	0	0	0	0	0	4	0	0	4
Women's Group	4	1	2	7	0	0	0	0	3	1	0	4
Total organisations	19	7	3	29	4	2	1	7	44	15	12	71
% of organisations	21%	18%	16%	20%	4%	5%	5%	5%	49%	38%	67%	48%
Individuals	2082	2297	449	4828	466	385	99	950	2007	982	535	3524
% of individuals answering	28%	39%	22%	31%	6%	6%	5%	6%	27%	17%	27%	23%
All respondents	2101	2304	452	4857	470	387	100	957	2051	997	547	3595
% of all respondents	28%	38%	22%	31%	2%	2%	5%	6%	22%	12%	27%	23%
% of all those answering	28%	39%	24%	31%	6%	6%	5%	6%	27%	17%	29%	23%

Table 6 continued: Question 6 continued

Type of respondent	Option 4				Option 5				None of these				Grand Total
	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	
Children or YP	1	0	0	1	1	0	0	1	1	0	0	1	6
LGBT Group	0	0	0	0	2	1	0	3	0	1	0	1	24
Local Authority, H&SCP	0	0	0	0	0	0	0	0	0	0	0	0	10
Other	0	0	0	0	4	3	0	7	6	2	0	8	28
Religious or Belief	0	0	0	0	1	0	0	1	0	2	0	2	21
Third sector support	0	0	0	0	0	0	0	0	0	0	0	0	5
Trans Group	0	0	0	0	1	2	1	4	0	1	0	1	28
Union or Political Party	0	0	0	0	2	1	0	3	1	0	0	1	8
Women's Group	0	0	0	0	1	1	0	2	2	1	1	4	17
Total organisations	1	0	0	1	12	8	1	21	10	7	1	18	147
% of organisations	1%	0%	0%	1%	13%	21%	5%	14%	11%	18%	5%	12%	100%
Individuals	559	368	201	1128	1733	1359	561	3653	572	552	155	1279	15362
% of individuals	8%	6%	10%	7%	23%	23%	28%	24%	8%	9%	8%	8%	100%
All respondents	560	368	201	1129	1745	1367	562	3674	582	559	156	1297	15510
% of all respondents	7%	6%	10%	7%	23%	23%	28%	23%	8%	9%	8%	8%	99%
% of all those answering	7%	6%	11%	7%	23%	23%	30%	23%	8%	9%	8%	8%	100%

Table 7: Question 7

Type of respondent	Should				Should not				Don't know				Grand Total
	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	
Organisations													
Children's or Young People's	1	0	0	1	0	0	0	0	0	1	0	1	2
LGBT Group	12	8	2	22	1	2	0	3	0	0	0	0	25
Local Authority, H&SCP or NHS	10	0	0	10	1	0	0	1	0	0	0	0	11
Other	12	7	1	20	0	3	1	4	2	0	0	2	26
Religious or Belief Body	4	0	0	4	14	3	0	17	1	0	0	1	22
Third sector support	5	2	0	7	0	0	0	0	0	0	0	0	7
Trans Group	6	7	9	22	0	2	0	2	0	0	0	0	24
Union or Political Party	9	1	0	10	0	0	0	0	0	0	0	0	10
Women's Group	6	2	0	8	3	2	3	8	1	0	0	1	17
Total organisations	65	27	12	104	19	12	4	35	4	1	0	5	144
% of organisations answering	74%	68%	75%	72%	22%	30%	25%	24%	5%	3%	0%	3%	100%
Individuals													
Individuals	5155	3893	1504	10552	1796	1535	358	3689	333	468	101	902	15143
% of individuals answering	71%	66%	77%	70%	25%	26%	18%	24%	5%	8%	5%	6%	100%
All respondents													
All respondents	5220	3920	1516	10656	1815	1547	362	3724	337	469	101	907	15287
% of all respondents	68%	65%	63%	68%	24%	26%	15%	24%	4%	8%	4%	6%	97%
% of all those answering	71%	66%	77%	70%	25%	26%	18%	24%	5%	8%	5%	6%	100%

Table 8: Question 8

Type of respondent	Should				Should not				Don't know				Grand Total
	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	
Organisations													
Children's or Young People's	1	0	0	1	0	0	0	0	0	1	0	1	2
LGBT Group	12	8	2	22	1	2	0	3	0	0	0	0	25
Local Authority, H&SCP or NHS	10	0	0	10	1	0	0	1	0	0	0	0	11
Other	10	6	1	17	1	0	1	2	3	4	0	7	26
Religious or Belief Body	6	0	0	6	5	1	0	6	4	0	0	4	16
Third sector support	4	2	0	6	0	0	0	0	0	0	0	0	6
Trans Group	5	8	8	21	0	0	0	0	1	1	1	3	24
Union or Political Party	9	1	0	10	0	0	0	0	0	0	0	0	10
Women's Group	6	4	1	11	3	0	1	4	1	0	1	2	17
Total organisations	63	29	12	104	11	3	2	16	9	6	2	17	137
% of organisations answering	76%	76%	75%	76%	13%	8%	13%	12%	11%	16%	13%	12%	100%
Individuals													
Individuals	5309	4151	1444	10904	1287	1031	209	2527	627	683	294	1604	15035
% of individuals answering	74%	71%	74%	73%	18%	18%	11%	17%	9%	12%	15%	11%	100%
All respondents													
All respondents	5372	4180	1456	11008	1298	1034	211	2543	636	689	296	1621	15172
% of all respondents	70%	69%	58%	70%	17%	17%	8%	16%	8%	11%	12%	10%	97%
% of all those answering	74%	71%	74%	73%	18%	18%	11%	17%	9%	12%	15%	11%	100%

Table 9: Question 9

Type of respondent	Should				Should not				Don't know				Grand Total
	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	
Organisations													
Children's or Young People's	0	0	0	0	0	1	0	1	1	0	0	1	2
LGBT Group	8	6	2	16	3	2	0	5	2	2	0	4	25
Local Authority, H&SCP or NHS	8	0	0	8	3	0	0	3	0	0	0	0	11
Other	7	3	1	11	5	6	1	12	2	1	0	3	26
Religious or Belief Body	4	0	0	4	11	3	0	14	1	0	0	1	19
Third sector support	2	2	0	4	1	0	0	1	1	0	0	1	6
Trans Group	5	8	8	21	1	2	0	3	0	0	1	1	25
Union or Political Party	9	1	0	10	0	0	0	0	0	0	0	0	10
Women's Group	2	1	0	3	6	3	2	11	2	0	1	3	17
Total organisations	45	21	11	77	30	17	3	50	9	3	2	14	141
% of organisations answering	54%	51%	69%	55%	36%	41%	19%	35%	11%	7%	13%	10%	100%
Individuals													
Individuals	2445	1700	873	5018	3379	3356	763	7498	1309	841	319	2469	14985
% of individuals answering	34%	29%	45%	33%	47%	57%	39%	50%	18%	14%	16%	16%	100%
All respondents													
All respondents	2490	1721	884	5095	3409	3373	766	7548	1318	844	321	2483	15126
% of all respondents	33%	29%	35%	32%	45%	56%	30%	48%	17%	14%	13%	16%	96%
% of all those answering	35%	29%	45%	34%	47%	57%	39%	50%	18%	14%	16%	16%	100%

Table 10: Question 10

Type of respondent	Yes				No				Don't know				Grand Total
	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	
Organisations													
Children's or Young People's	0	0	0	0	0	1	0	1	1	0	0	1	2
LGBT Group	2	1	0	3	8	3	0	11	2	6	1	9	23
Local Authority, H&SCP or NHS	1	0	0	1	7	0	0	7	2	0	0	2	10
Other	1	1	1	3	6	4	1	11	7	5	0	12	26
Religious or Belief Body	4	1	0	5	5	1	0	6	8	0	0	8	19
Third sector support	0	0	0	0	2	1	0	3	1	0	0	1	4
Trans Group	1	3	2	6	3	6	3	12	2	1	4	7	25
Union or Political Party	1	0	0	1	4	1	0	5	3	0	0	3	9
Women's Group	3	2	1	6	5	1	0	6	1	1	2	4	16
Total organisations	13	8	4	25	40	18	4	62	27	13	7	47	134
% of organisations answering	16%	21%	27%	19%	50%	46%	27%	46%	34%	33%	47%	35%	100%
Individuals													
Individuals	945	1004	257	2206	2400	1800	579	4779	3640	3025	1075	7740	14725
% of individuals answering	14%	17%	13%	15%	34%	31%	30%	32%	52%	52%	56%	53%	100%
All respondents													
All respondents	958	1012	261	2231	2440	1818	583	4841	3667	3038	1082	7787	14859
% of all respondents	13%	17%	9%	14%	32%	30%	21%	31%	48%	50%	39%	50%	95%
% of all those answering	14%	17%	14%	15%	35%	31%	30%	33%	52%	52%	56%	52%	100%

Table 11: Question 11

Type of respondent	Yes				No				Don't know				Grand Total
	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	
Organisations													
Children's or Young People's	3	0	0	3	0	0	0	0	0	1	0	1	4
LGBT Group	12	8	2	22	1	2	0	3	0	0	0	0	25
Local Authority, H&SCP or NHS	11	0	0	11	0	0	0	0	0	0	0	0	11
Other	13	7	1	21	0	2	1	3	1	1	0	2	26
Religious or Belief Body	5	0	0	5	12	1	0	13	0	0	0	0	18
Third sector support	5	2	0	7	0	0	0	0	0	0	0	0	7
Trans Group	6	9	9	24	0	1	0	1	0	0	0	0	25
Union or Political Party	9	1	0	10	0	0	0	0	0	0	0	0	10
Women's Group	5	2	0	7	4	1	3	8	1	1	0	2	17
Total organisations	69	29	12	110	17	7	4	28	2	3	0	5	143
% of organisations answering	78%	74%	75%	77%	19%	18%	25%	20%	2%	8%	0%	3%	100%
Individuals													
Individuals	5136	3586	1451	10173	1741	1769	413	3923	366	536	94	996	15092
% of individuals answering	71%	61%	74%	67%	24%	30%	21%	26%	5%	9%	5%	7%	100%
All respondents													
All respondents	5205	3615	1463	10283	1758	1776	417	3951	368	539	94	1001	15235
% of all respondents	68%	60%	60%	66%	23%	29%	17%	25%	5%	9%	4%	6%	97%
% of all those answering	71%	61%	74%	67%	24%	30%	21%	26%	5%	9%	5%	7%	100%

Table 12: Question 12

Type of respondent	Yes				No				Don't know				Grand Total
	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	
Organisations													
Children's or Young People's	5	0	0	5	0	1	0	1	0	0	0	0	6
LGBT Group	13	8	2	23	1	2	0	3	0	0	0	0	26
Local Authority, H&SCP or NHS	10	0	0	10	1	0	0	1	0	0	0	0	11
Other	13	7	1	21	0	4	1	5	3	0	0	3	29
Religious or Belief Body	6	0	0	6	13	3	0	16	1	0	0	1	23
Third sector support	5	2	0	7	0	0	0	0	0	0	0	0	7
Trans Group	7	8	11	26	0	2	0	2	0	0	0	0	28
Union or Political Party	10	1	0	11	0	0	0	0	0	0	0	0	11
Women's Group	7	2	0	9	4	2	3	9	0	0	0	0	18
Total organisations	76	28	14	118	19	14	4	37	4	0	0	4	159
% of organisations answering	77%	67%	78%	74%	19%	33%	21%	23%	4%	0%	0%	3%	100%
Individuals													
Individuals	4915	3231	1437	9583	2238	2399	522	5159	295	312	46	653	15395
% of individuals answering	66%	54%	72%	62%	30%	40%	26%	34%	4%	5%	2%	4%	100%
All respondents													
All respondents	4991	3259	1451	9701	2257	2413	526	5196	299	312	46	657	15554
% of all respondents	65%	54%	67%	62%	30%	40%	24%	33%	4%	5%	2%	4%	99%
% of all those answering	66%	54%	72%	62%	30%	40%	26%	33%	4%	5%	2%	4%	100%

Table 13: Question 13

Type of respondent	Option 1				Option 2				Option 3				Option 4			
	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total
Organisations																
Children's or Young People's	3			3			0	0	3			3	4			4
LGBT Group	11	7	2	20	1	1	0	2	10	6	1	17	13	6	2	21
Local Authority, H&SCP or NHS	9			9			0	0	7			7	9			9
Other	10	4	1	15	1	2	0	3	5	1	1	7	12	6	1	19
Religious or Belief Body	4			4	1		0	1	3			3	4			4
Third sector support	5	2		7			0	0	5	2		7	5	2		7
Trans Group	6	6	9	21		1	1	2	5	4	8	17	7	8	11	26
Union or Political Party	7	1		8			0	0	7	1		8	9	1		10
Women's Group	5	1		6			0	0	4	1		5	5	2		7
Total organisations	60	21	12	93	3	4	1	8	49	15	10	74	68	25	14	107
% of organisations	72%	72%	75%	73%	4%	14%	6%	6%	59%	52%	63%	58%	82%	86%	88%	84%
Individuals																
Individuals	3832	2495	1154	7481	912	659	306	1877	2358	1292	676	4326	4212	2708	1309	8229
% of individuals answering	71%	63%	71%	68%	17%	17%	19%	17%	43%	33%	42%	39%	78%	69%	81%	75%
All respondents																
All respondents	3892	2516	1166	7574	915	663	307	1885	2407	1307	686	4400	4280	2733	1323	8336
% of all respondents	51%	42%	57%	48%	12%	11%	15%	12%	32%	22%	34%	28%	56%	45%	65%	53%
% of all those answering	71%	63%	71%	68%	17%	17%	19%	17%	44%	33%	42%	40%	78%	69%	81%	75%

Table 13 continued: Question 13 continued

Type of respondent	Option 5				Option 6				None of These Options			
	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total
Organisations												
Children's or Young	1		0	1	4			4			0	0
LGBT Group			0	0	12	7	2	21		1	0	1
Local Authority, H&SCP or NHS	2		0	2	9			9	1		0	1
Other	1	1	0	2	8	4	1	13	3		1	4
Religious or Belief Body			0	0	4			4	3		0	3
Third sector support			0	0	5	2		7			0	0
Trans Group			0	0	7	7	9	23			0	0
Union or Political Party	2		0	2	8	1		9			0	0
Women's Group	1		0	1	5	1		6	2		0	2
Total organisations	7	1	0	8	62	22	12	96	9	1	1	11
% of organisations	8%	3%	0%	6%	75%	76%	80%	75%	11%	3%	6%	9%
Individuals	806	490	200	1496	3592	2272	943	6807	539	721	193	1453
% of individuals	15%	12%	12%	14%	66%	58%	58%	62%	10%	18%	12%	13%
All respondents	813	491	200	1504	3654	2294	955	6903	548	722	194	1464
% of all respondents	11%	8%	10%	10%	48%	38%	47%	44%	7%	12%	10%	9%
% of all those answering	15%	12%	12%	14%	66%	58%	59%	62%	10%	18%	12%	13%

Table 14: Question 14

Type of respondent	Yes				No				Don't know				Grand Total
	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	Scotland	Rest of the UK	Rest of the World	Total	
Organisations													
Children's or Young People's	0	1	0	1	1	0	0	1	0	0	0	0	2
LGBT Group	2	1	0	3	7	7	1	15	3	1	0	4	22
Local Authority, H&SCP or NHS	1	0	0	1	9	0	0	9	0	0	0	0	10
Other	0	0	0	0	10	8	0	18	3	2	1	6	24
Religious or Belief Body	3	1	0	4	6	0	0	6	5	0	0	5	15
Third sector support	0	0	0	0	2	2	0	4	1	0	0	1	5
Trans Group	1	1	2	4	4	8	5	17	1	0	2	3	24
Union or Political Party	2	0	0	2	3	0	0	3	2	1	0	3	8
Women's Group	4	0	1	5	3	2	1	6	3	1	1	5	16
Total organisations	13	4	3	20	45	27	7	79	18	5	4	27	126
% of organisations answering	17%	11%	21%	16%	59%	75%	50%	63%	24%	14%	29%	21%	100%
Individuals													
Individuals	382	408	128	918	3850	2864	886	7600	2540	2327	867	5734	14252
% of individuals answering	6%	7%	7%	6%	57%	51%	47%	53%	38%	42%	46%	40%	100%
All respondents													
All respondents	395	412	131	938	3895	2891	893	7679	2558	2332	871	5761	14378
% of all respondents	5%	7%	4%	6%	51%	48%	28%	49%	33%	39%	27%	37%	92%
% of all those answering	6%	7%	7%	7%	57%	51%	47%	53%	37%	41%	46%	40%	100%



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