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Consultation: *Gender Recognition Reform (Scotland) Bill*

Consultation response on behalf of the Scottish Council on Human Bioethics:

The **Scottish Council on Human Bioethics** (SCHB) is an independent registered Scottish charity composed of doctors, lawyers, biomedical scientists, ethicists and other professionals from disciplines associated with medical ethics.

The principles to which the Scottish Council on Human Bioethics subscribes are set out in the **United Nations Universal Declaration of Human Rights** which was adopted and proclaimed by the UN General Assembly resolution 217A (III) on the 10th of December 1948.

The SCHB is very grateful to the Scottish Government for this opportunity to respond to the consultation on the ***Gender Recognition Reform (Scotland) Bill***. It welcomes its intention to promote public consultation, understanding and discussion on this topic.

Response to the Questions

Are you responding as an individual or an organisation?

Individual
 Organisation

Full name or organisation's name: **Scottish Council on Human Bioethics**

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Where are you resident? (Please see one of the options below)

Scotland Rest of the UK Rest of the world

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name
 Publish response only (without name)
 Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes
 No

Initial Remarks:

The Scottish Council on Human Bioethics (SCHB) is generally opposed to the changes being proposed by the Scottish Parliament in the *Gender Recognition Reform (Scotland) Bill*. It also notes that the current *Gender Recognition Act 2004*, which applies to Scotland, is already compliant with the European Convention on Human Rights.

Moreover, the SCHB is of the opinion that, because of the importance of the subject matter, the Scottish Parliament should build its positions on informed evidence-based research. In addition, it notes that the definitions of sex and gender are often confused which may reflect the associated reasons why persons may want to change gender.¹ For example, different elements about gender need to be clarified, including:

- Whether the gender of a person is just the result of a subjective choice of this individual with respect to socially constructed characteristics of masculinity and femininity? If this is the case, then any person could conceivably just choose to have any gender they want and be able to change this gender any number of times.

This would then, to some extent, reduce the biological body to just a support for a person's gender decisions. In this case, the concept of the biological sex of a person would become unimportant. Science would then have nothing to say about gender since it is all about choice and societal constructs.

- Or do the ways individuals consider their gender have a biological component? This would include genetic, anatomical, physiological and neurological aspects and all the permutations that may occur. In this case a physical body becomes an important part of who the person really is in their very identity.

The SCHB would also like to question the authority and the legal relevance of some of the documents being mentioned by the Scottish Government Consultation including:

- The *Yogyakarta Principles*² which was only drafted by a number of individuals and representatives of non-governmental organisations interested in sexual orientation and gender identity.³

These Principles have never been accepted by the UN's General Assembly and have not generally been endorsed by academic experts working in the field and are considered to be contentious as well as controversial.

- The 2015 *Resolution 2048* of the Parliamentary Assembly of the Council of Europe that has not been ratified by the Committee of Ministers of the Council of Europe which is the main body enacting European Human Rights legislation.

Resolutions of the Parliamentary Assembly have never had the authority of human rights legislation since they are often drafted during the course of only a few months and are certainly not legally binding.

The Scottish Government indicated that the proposals would align Scotland with the best international practice demonstrated in countries who have already successfully adopted self-declaration systems.

¹ Unfortunately, the terms are also not clearly defined in both the UK *Gender Recognition Act 2004* and *Equality Act 2010* (especially since the biological brain can be considered as part of the biological sex of a person).

The UK *Gender Recognition Act 2004* indicates in Section 25 that: "*gender dysphoria*" means the disorder variously referred to as *gender dysphoria, gender identity disorder and transsexualism*".

The UK *Equality Act 2010* indicates in Part 2, Chapter 1, Section 7 under "*Gender reassignment*":

(1) A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.

(2) A reference to a transsexual person is a reference to a person who has the protected characteristic of gender reassignment."

² See <http://www.yogyakartaprinciples.org/>.

³ United Nations General Assembly, Official Records, Third Committee, Summary record of the 29th meeting held in New York, on Monday, 25 October 2010, at 3 p.m. UN Doc. A/C.3/65/SR.29, Paragraph 9

In this regard, however, the Scottish Government reflects a degree of unprofessionalism and even a lack of caution in giving so much legal weight to the above documents.

Moreover, the SCHB would like to query the authority given by the Scottish Government to the UK Parliament's Women and Equality Select Committee. Indeed, such a committee does not sufficiently reflect the required biomedical and psychological expertise necessary to address all the significant and complex elements relating to gender dysphoria.

The Scottish Government also indicated that it is aware that:

*"[T]he current system has an adverse impact on people applying for gender recognition, due to the requirement for a medical diagnosis and the intrusion of having their life circumstances considered by the Gender Recognition Panel. We think that trans people should not have to go through this intrusive process in order to be legally recognised in their lived gender."*⁴

The Scottish Government further mentioned that it:

*"[D]oes not wish trans people to go through procedures which are demeaning, intrusive, distressing and stressful. That is, quite simply, not right for our citizens. There are further reasons for changing the Gender Recognition Act 2004. One is that, as shown by the explanation earlier on this Chapter, the current legislation in this area is complex and needs to be simplified."*⁵

However, the SCHB would like to very much question these statements. Indeed, if it is considered to be demeaning and unduly intrusive for an individual to receive a biomedical diagnosis or go before an expert panel, what kind of message does this then give to all those affected by other biological challenges? For example, what message does this give to those affected by mental health issues who also receive a biomedical diagnosis and go before expert panels such as Mental Health Tribunals? Is this simply 'not right', as well, for such patients?

In this respect, the important protection of the relevant individuals should not be taken away just because they may see it as demeaning and intrusive. Instead it is for society to seek to change so that such procedures are not associated to any stigma or seen in a negative manner. Language portraying procedures seeking to help a person as 'simply not right' undermines the message of campaigns, such as 'Time to Change',⁶ which seeks to transform the way people think and act about some of their biological problems, such as their mental health issues.

On this basis, the SCHB would like to support a greater acceptance and recognition of all people (and sub-groups) as equally deserving of full human rights. Otherwise, people may rebel or feel inadequate. Society should be more tolerant and accepting towards differences.

Finally, the SCHB notes that it is not because legislation on a sensitive and difficult matter is complex that it should simply be simplified.

CONSULTATION QUESTIONS

The new proposals being suggested by the Scottish Government for obtaining legal gender recognition in the future are:

- The removal of current medical requirements;

⁴ Scottish Government, Gender Recognition Reform (Scotland) Bill: A consultation by the Scottish Government, December 2019, p. 15-16.

⁵ Scottish Government, Gender Recognition Reform (Scotland) Bill: A consultation by the Scottish Government, December 2019, p. 15-16.

⁶ See: <https://www.time-to-change.org.uk/>

- The removal of the need to apply to the Gender Recognition Panel (GRP).⁷ Instead, applicants would just apply to the Registrar General for Scotland;
- The gender recognition process would apply to those aged at least 16, thereby reducing the minimum age from 18;
- Applications would be made to the Registrar General for Scotland;
- Applicants would either (a) be the subject of an entry in a birth or adoption record kept by the Registrar General of Scotland or (b) be ordinarily resident in Scotland;
- Applicants would declare that they have lived in their acquired gender throughout the period of 3 months occurring immediately before submitting an application for gender recognition (the current requirement is 2 years), and that they intend to continue to live in their acquired gender permanently;
- The Registrar General for Scotland would not determine an application until after the expiry of a 3 month reflection period, and may only determine the application if the applicant thereafter confirms (within 2 years) that they wish to proceed with it;
- The Registrar General for Scotland would, where required, grant a full Gender Recognition Certificate (GRC) to a single applicant. A full GRC provides legal gender recognition;
- The Registrar General for Scotland would grant a full GRC to a married applicant or applicant in a civil partnership if both parties wish the marriage or civil partnership to continue after the issue of the full GRC, and this is evidenced by statutory declarations from both. If either party does not wish the marriage or civil partnership to continue, the Registrar General for Scotland would instead grant an interim GRC.

Requiring people to live in their acquired gender for 3 months

The Scottish Government considers that requiring people to live in their acquired gender for 3 months; to make statutory declarations; and to go through a period of reflection for 3 months is a balanced and proportionate way of replacing the current system with one that is more respectful of the rights of trans people. As the Cabinet Secretary said in her Parliamentary statement:

“Retaining the requirement for a statutory declaration, making it clear that a false declaration is a criminal offence and building in time for reflection will enshrine in law the seriousness of the process. No one should doubt that it is a significant undertaking, or that it will require the same level of commitment from the individual as the existing system does.”⁸

Question 1. Do you have any comments on the proposal that applicants must live in their acquired gender for at least 3 months before applying for a GRC?

Yes X
No

If yes, please outline these comments.

The SCHB is opposed to any modification of the present *Gender Recognition Act 2004* which requires (1) a person to be 18 years old or over and (2) to be living for a least two years in the opposite gender before being allowed to change gender.

⁷ Currently, the fee for making an application to the GRP is £140. This can be reduced if the applicant is on certain benefits or on a low income.

⁸ The Cabinet Secretary's statement to Parliament is at: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12196&mode=pdf> (columns 93 and 94)

This is because gender dysphoria in individuals is associated with an elevated prevalence of mental health issues, especially mood disorders, anxiety disorders, and suicidality.⁹ In the 2012 Scottish Trans Mental Health Survey, most participants, 84%, had thought about ending their lives at some point (N=581).¹⁰ Thus, there is significant need for a medical role in the process to help with identification and management of mental health issues. This role should be caring, non-judgemental and holistic.

Risk factors for regret concerning gender reassignment are also well-known, meaning that a thorough assessment is required at the start of the reassignment with follow-up counseling during and after the process.¹¹

The SCHB notes that appropriate informed consent is the basis of all responsible and proper decision making which includes:

1. Competence: A person's capacity for decision making.
2. Disclosure: The content of what a person is told during the consent negotiation.
3. Comprehension: How much given information the person understands.
4. Voluntariness: The ability for a person to make a choice without being unduly pressured or influenced to make a particular choice.
5. Implementation: The ability for a person to implement his or her decision.

The very fact that evidence exists demonstrating that some adult transsexual persons have undergone gender reassignment treatments which they have regretted indicates that the principle of informed consent may not always be properly followed (or that people may change their minds).¹² Gender changes are very serious and momentous interventions and should never be undertaken without sufficient information being provided to persons who are competent and able to make an informed decision.

Adolescence is a period when the brain undergoes tremendous neuro-physiological growth.¹³ Total cerebral volume peaks during early adolescence, and neural networks are radically restructured in ways that have impacts on emotional, physical and mental ability.¹⁴

Changes occur more rapidly in certain areas of the brain, such as the limbic system, which are responsible for pleasure seeking, reward processing, and emotional response.¹⁵ Changes take place at a somewhat slower rate in the pre-frontal cortex, the area responsible for decision-making, organization, impulse control and planning for the future¹⁶ evidenced in tendencies to act impulsively and to be uncritical in their thinking.¹⁷ Whilst this does not suggest that adolescents are incapable of decision-making or planning for their futures, caution should at least be taken when implementing policy – especially in early adolescence. Whilst this is an area of scholarly debate, it is suggested that by late adolescence, young people are more capable of

⁹ Zucker KJ et al. Gender Dysphoria in Adults, *Annu Rev Clin Psychol*. 2016;12: 217-47.

¹⁰ Jay McNeil, Louis Bailey, Sonja Ellis, James Morton & Maeve Regan Trans Mental Health and Emotional Wellbeing Study 2012, <http://acthe.fr/upload/1445680190-trans-mental-health-study-2012.pdf>, p. 59

¹¹ Coleman E, et al. Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People, 7th Version. *Int J Transgenderism* . 2012. 13(4): 165-232;
Kuiper AJ, Cohen-Kettenis PT. Gender role reversal among postoperative transsexuals. *Int J Transgenderism*. 1998. 23(2).
De Cuypere G, Vercruyse H. Eligibility and readiness criteria for SRS: Recommendations for Revision of the WPATH Standards of Care. *Int J Transgenderism* . 2009. 11:194-205.

¹² Alison Holt, NHS gender clinic 'should have challenged me more' over transition, *BBC News*, 1 March 2020, <https://www.bbc.co.uk/news/health-51676020>

¹³ Staff U. The state of the world's children 2011-executive summary: Adolescence an age of opportunity: Unicef; 2011.

¹⁴ Giedd JN. The teen brain: insights from neuroimaging. *Journal of adolescent health* 2008;42:335-43.

¹⁵ Patton GC, Viner R. Pubertal transitions in health. *The Lancet* 2007;369:1130-9.

¹⁶ Patton GC, Viner R. Pubertal transitions in health. *The Lancet* 2007;369:1130-9.

¹⁷ Giedd JN. The teen brain: insights from neuroimaging. *Journal of adolescent health* 2008;42:335-43.

abstract thinking, analysis, reflection and rational judgement.¹⁸ In other words, human brains continue to develop until their mid-twenties.¹⁹

Thus, even for 18-25 year olds, understanding all the different aspects of gender reassignment may be challenging. This is because development psychologists consider identity development as a process that continues long after adolescence. It has even been suggested that the term 'emerging adulthood' can designate an important and distinct period from a demographic perspective where 18-25 year olds take part in a significant exploration of their own identity.²⁰

Brain regions can actually be identified which are involved in processing risks and rewards in young adults.²¹ Amongst other reasons, it is because of such risk factors that car insurance for young adults is so expensive. As indicated by the Australian expert on adolescent health, Prof Susan Sawyer, in 2018:

“An expanded and more inclusive definition of adolescence is essential for developmentally appropriate framing of laws, social policies, and service systems. Rather than age 10–19 years, a definition of 10–24 years corresponds more closely to adolescent growth and popular understandings of this life phase and would facilitate extended investments across a broader range of settings.”²²

The SCHB is of the opinion that appropriate informed consent should always be given by a person wanting to legally change gender in order to protect the important concept of autonomy and voluntarism. This will then inform the individual of the possible risks and consequences of the procedure while ensuring that this person is capable of understanding the nature of a change in gender.

Therefore, to ensure that informed consent is obtained, and to protect individuals from any rash or ill-informed decisions, medical evidence should be produced to satisfy a Gender Recognition Panel that they have lived in their acquired gender throughout the period required. In addition, a report must always be obtained from a practitioner in the field of gender dysphoria who is either a registered medical practitioner or a registered psychologist. This report must include details of the applicant's diagnosis of gender dysphoria. A second report must also be provided by a registered medical practitioner who may, but need not, practise in the field of gender dysphoria.

In addition, there seems to be a misunderstanding of the role of the Gender Recognition Panel, part of HM Courts & Tribunals Service, which assesses applications from trans people to provide legal recognition of gender change. Indeed, they are not appointed to discriminate or prevent individuals changing their legal status with respect to gender. Instead, the tribunals exist to make sure that these individuals make well informed and thought through decisions taking into account all the different aspect of the legal change in gender. Of course, as with all legal panels, their decisions are not always perfect, but they do generally support and assist persons seeking to make this momentous decision.

In this regard, it may be appropriate for the tribunals to include a variety of professionals and even individuals who have transitioned or detransitioned themselves, so that it can bring a breadth of knowledge and experience on the subject.

The Gender Recognition Panels are definitely minded to grant applications, wherever legally possible, which is why directions are given rather than making final decisions which might not be in favour of the applicant. So despite the high rate of requests for further information very few applications actually fail outright.

The SCHB would also like to question whether it is appropriate for the Registrar General to just endorse and record decisions. Instead, the Registrar would be required to have expertise in making sure an individual is making an informed decision and has mental competence.

¹⁸ Staff U. The state of the world's children 2011-executive summary: Adolescence an age of opportunity: Unicef; 2011.

¹⁹ Sara B. Johnson, Ph.D., Robert W. Blum and Jay N. Giedd, Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy, *J Adolesc Health*. 2009; 45(3): 216–221.

²⁰ Arnett JJ., Emerging adulthood. A theory of development from the late teens through the twenties. *Am Psychol*. 2000. 55(5): 469-80.

²¹ Steinberg, L. A dual systems model of adolescent risk-taking. *Developmental Psychobiology*. 2010., 52, 216-224.

²² Susan Sawyer S. et al. The age of adolescence, *The Lancet – Child and Adolescent Health*, 2018, 2(3), p223–228.

Question 2. Do you have any comments on the proposal that applicants must go through a period of reflection for at least 3 months before obtaining a GRC?

Yes X

No

If yes, please outline these comments.

The SCHB is opposed to any modification of the present *Gender Recognition Act 2004* which requires (1) a person to be 18 years old or over and (2) to be living for a least two years in the opposite gender before being allowed to change gender.

The SCHB also opposes the introduction of a self-declaratory system for legal gender recognition. This is because such a system will never be sufficient to address the momentous medical and psychological aspects involved in a change in gender identity. Instead, appropriate informed consent must be obtained which means accessing the required medical and psychological expertise.

In other words, the only way applicants can demonstrate that they:

- have a settled and solemn intention of living in the preferred gender for the rest of their lives;
- understand the consequences of the application; and
- make the application of their own free will;

is for them to satisfy a Gender Recognition Panel that they do indeed want to transition. This will confirm that persons wanting to change their gender understand and know what they are doing. The declaration must also include a report from a practitioner in the field of gender dysphoria who is either a registered medical practitioner or a registered psychologist and the details of the applicant's diagnosis of gender dysphoria. A second report must also be provided by a registered medical practitioner who may, but need not, practise in the field of gender dysphoria.

Reducing the minimum age for obtaining legal gender recognition to age 16

The current minimum age for applying for legal gender recognition is 18 but the Scottish Government considers that this should be reduced to 16.

Moreover, the Government notes that there are a number of existing areas in Scotland where people obtain rights. For example, at age 16 an individual can:

- leave home without the consent of his or her parent or guardian;
- get a full-time job and pay National Insurance;
- enter into a legally binding contract;
- consent to surgical, medical or dental procedures and treatments;
- marry or register a civil partnership;
- consent to lawful sexual activity;
- apply for a UK passport on his or her own behalf;
- vote in elections to the Scottish Parliament and Scottish local authorities;
- get a skin piercing;
- record a change of name officially.

In recent years, there have been moves to provide more rights at an earlier age (eg voting in Scottish elections is now allowed at 16 rather than 18).

Question 3. Should the minimum age at which a person can apply for legal gender recognition be reduced from 18 to 16?

Yes

No X

Don't know

If you wish, please give reasons for your view.

Questions about whether and how to treat children affected by gender dysphoria are particularly contentious. Some seem to go through a natural and temporary phase of wanting to be the other gender and dress in other clothes but appear to naturally 'grow out of it' to develop a congruent gender identity. Rates of persistence of gender dysphoria from childhood into adolescence or adulthood vary. In those identified to be male at birth, persistence has ranged from 2 to 30 percent. In individuals identified as female at birth, persistence has ranged from 12 to 50 percent.²³ It is clear that, for the majority of gender-confused children, gender dysphoria desists over time as they enter adolescence, though a significant proportion of them go on to identify as bi-sexual or same-sex attracted.

Adolescence and young adulthood is characterized by pronounced changes in motivated behaviour. This includes an emphasis on potential rewards which may result in an increased tendency to approach novel experiences bringing potential for positive reinforcement but which may also result in risky behaviour. Again, brain regions can actually be identified which are involved in processing rewards in adolescents and functional changes in reward-related brain activity can be examined. As a result, adolescents and young adults have been found to be less averse to risk than more mature adults and have different cognitive control. This is also one of the reasons why it is suggested that under-25s should be kept out of adult prisons.^{24,25}

Two important neurodevelopmental mechanisms are thought to play a role in the genesis of risk-taking behaviours in adolescence and young adulthood: the significant secretion of sex hormones (affecting also the brain) at the beginning of puberty and the delayed maturation of cognitive control.

Because the brains of adolescents and young adults are continuing to develop with the associated behavioural changes, it is unlikely that they will have the same capacity for decision making, voluntariness and the ability to make balanced decisions as more mature adults. This means that they may not be able to give appropriate informed consent for certain momentous decisions requiring mature reflection such as with a change of gender.

That adolescents have not reached full maturity is also reflected in that individuals under 18 years of age cannot:

- Vote in General Elections elections in the UK.
- Stand for election as a local councillor, MP or MSP.
- Serve as a juror.
- Buy alcohol in licensed premises and consume alcohol in a bar.
- Buy cigarettes & tobacco.
- See, rent or buy any film.
- Buy or possess fireworks.
- Place a bet.
- Get tattooed.
- Hire or buy a sunbed.

²³ For example, see Leibowitz S and de Vries AL, Gender dysphoria in adolescence, *Int Rev Psychiatry*, 2016;28(1):21-35. See also Ristori J, Steensma TD. Gender dysphoria in childhood. *Int Rev Psychiatry*. 2016;28(1):13–20.

²⁴ Alan Travis, Keep under-25s out of adult prisons, MPs urge, *The Guardian*, 26 October 2016, <https://www.theguardian.com/society/2016/oct/26/keep-young-offenders-out-of-adult-prisons-mps-urge>

²⁵ T2A Alliance, New Start: Young Adults in the Criminal Justice System, 2009, <https://www.barrowcadbury.org.uk/wp-content/uploads/2011/01/T2A-A-New-Start-Exec-Summary-Final-2009.pdf>

- Hold a licence to drive a medium-sized goods vehicle.
- Become a policeman
- Train to become an army officer

In addition, a person must wait until they are:

21 years old to:

- Hold a license to drive large goods vehicles and minibuses.
- Supervise a learner driver.
- Be sent to an adult prison.

24 years old to:

- Drive very large vehicles if no other exceptions apply.

In other words, just because people want more rights at the age of 16 does not mean they have the maturity to understand the responsibility that goes with it. Moreover, if it is going to be a criminal offence to make a false declaration, what would happen to the persons who change their mind when they become more mature? In this respect, it is also interesting that many of the activities which are prohibited beyond the age of 16 are related to taking inappropriate risks.

As a result, the SCHB does not agree that persons aged 16 and 17 should be able to apply for, and obtain, legal recognition of their acquired gender.

Their social development, while at a very important formative phase, can be affected by the many experiences of getting on with peers, self-confidence and academic achievement. The way others react to them at this age can be very important.

For children whose gender dysphoria does not desist naturally, several treatment options exist that have been recommended by various therapists:

1. 'Watchful waiting' approach in which cross-gender behaviour is permitted but not encouraged. This approach allows children to explore various gender activities without the imposition of rigid gender stereotypes and allows them to gravitate towards their own interests.
2. Intervention to decrease cross-gender identification using behavioural therapy approaches. This may also include coaching parents to ignore cross-sex behaviour and to encourage gender-appropriate activities and play. Furthermore, psychotherapeutic approaches aimed at intervening more 'within' the child can be considered. In this way, assistance can be provided to the majority of children affected by gender dysphoria.
3. Facilitating social transition to the other gender by using affirmative approaches with, for example, the adoption of a new name, preferred gender hairstyle, clothing and play.
4. Puberty Suppression. Children between the ages of 10 and 13 may be given monthly injections of hypothalamic hormone blockers. This would then prevent the gonads from making oestrogen and testosterone in order to delay puberty and allow time for the gender-conflicted child to enter adolescence and make a more considered decision (at around the age of 16) whether to affirm either their birth sex or their cross-gender identity. If they decide to then change their gender identity, they begin taking the hormones of the opposite biological sex.

Given that gender dysphoria will desist naturally, without active intervention, in the majority of children as puberty progresses, there should be no rush to facilitate early social transition or puberty suppression.

There are additional concerns with puberty suppression about brain development, bone growth and sub-fertility, as well as the possibility that the gender dysphoria might naturally have abated at an older age, but by which time treatment would have commenced.²⁶

Sometimes, the natural development of puberty hormones in a person affected by gender dysphoria may actually be part of the solution, as this is when the greatest differentiation takes place.

In conclusion, the SCHB is of the opinion that changing the legal gender of a child should not generally take place. This is because it is impossible to be certain that the child is capable of understanding the momentous consequences of such a change. In other words, in the case of changing gender, because of the child's lack of maturity, it is impossible for all the protective elements included in the principle of informed consent to be followed.

Other comments on the provisions of the draft Bill

Question 4. Do you have any other comments on the provisions of the draft Bill?

Yes X

No

If yes, please outline these comments.

(1) The SCHB notes in paragraph 5.53 that "*The Scottish Government considers that, as outlined above, there area range of exceptions in the 2010 Act which can be used when appropriate to protect women, which might in some specific cases require the exclusion of trans women, if the conditions within the exception are met. These exclusions will not change following GRA reform.*"

However, the SCHB would like to question whether any of these rights for women will be upheld. There may sometimes be a loophole for the trans-person to have their way.

(2) The SCHB would also like to ask what the consequences would be for a young person, who underwent gender reassignment at a young age, through puberty blockers and full reassignment / surgery but who then changes his or her mind at a later date. Would he or she:

- a. Be prosecuted for making a false declaration?
- b. Be able to transition back?
- c. Be given a right to fertility treatment to have his or her own baby?

(3) The SCHB notes (on page 98 of the consultation) that "*The draft Bill provides for a new offence of making a false statutory declaration in association with an application for recognition and a new offence of making a false application. The penalties on conviction for either offence are the same as for the current offence of making a false statutory declaration more generally. On conviction on indictment a person would be liable to imprisonment for a term not exceeding two years or a fine, or both. On summary conviction, the penalty is a maximum prison term of 12 months, or a fine up to the statutory maximum (£10,000) or both.*"

However, the SCHB notes that there is no indication of how this would be enforced. The penalty is there but who will check?

(4) Finally, the SCHB noted that, though Scottish adolescent mental health is poor at present, gains have been made to rectify this.

In 2004, the Scottish Government began developing an action framework to capture the key actions required to meet multisectoral challenges for Scottish children and young people. That process led to the publication in 2006 of *Delivering a Healthy Future: An Action Framework for Children and Young People's Health*. It was geared towards promoting health and well-being increasing access, quality and sustainability as well as developing the workforce, such as with mental health specialists. Furthermore, it

²⁶ Riittakerthu Kaltiala-Heino, Hannah Bergman, Marja Työlajärvi and Louise Frisé, Gender dysphoria in adolescence: current perspectives, *Adolesc Health Med Ther*. 2018; 9: 31–41.

ensured performance management and quality assurance whilst utilising information technology (e.g. tele-medicine to support the needs of remote and rural settings).

Scotland's action framework and policy landscape analysis to improve young people's health was seen as the gold standard and the WHO recommended other nations to follow suit.²⁷ In fact, in the UK and worldwide, Scotland's approach to improving young people's mental health has been praised as a case study of success – especially with setting adolescent mental health as a national priority.

In this regard, if Scotland was to adopt unscientific and unproven approaches, other countries are likely to unfortunately follow suit.

In 2019, a Scottish Government report indicated that there was a worsening of mental wellbeing among adolescent (especially girls) in Scotland in recent years. In short, this report suggests that Scotland's adolescent mental health targets are not being reached.

The association between mental health issues and gender dysphoria should be recognised in Scotland. Thus, mental health services' ability to help people suffering from mood and anxiety disorders (through the efforts made since 2004) should continue.

In this respect, the worsening state of adolescent mental health may be associated to the risk factors for regret concerning gender reassignment²⁸ though further investigations are required.

Finally, the SCHB would recommend that the Scottish Government undertake a thorough and wide-ranging review of all the latest published, peer-reviewed, research on the topic of gender dysphoria and gender transitioning with the assistance of leading academic experts.

Question 5. Do you have any comments on the draft Impact Assessments?

Yes

No **X**

If yes, please outline these comments.

²⁷ WHO. Global accelerated action for the health of adolescents (AA-HA!). Geneva: WHO; 2017.

²⁸ Coleman E, Bockting W, Botzer M, et al. Standards of care for the health of transsexual, transgender, and gender-nonconforming people, version 7. International journal of transgenderism 2012;13:165-232.