

Galop

Questions

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

If yes, please outline these comments.:

Galop does not think that evidence of living in an acquired gender for a period of time should be required.

The reasons for our view are:

- Adopting a self-declaration process is less bureaucratic, and saves time and money. Processes based upon self-determination have been shown to work in other countries, for example, Ireland, Argentina, Malta and Norway.
- Evidence of living in an acquired gender may give power to organisations to define what is legitimate evidence of acquired gender. For example, someone may be on the waiting list for an appointment at their gender identity clinic. During this time, it may feel safer for them to choose a certain clothing option at work, to prevent transphobia from colleagues or members of the public. If their workplace prescribes binary gendered options, then they might have no choice but to wear clothes that do not represent their chosen gender, as a means of staying safe.
- Evidence of living in an acquired gender is particularly difficult for non-binary people to gather. Most aspects of life are gendered in a binary way and so non-binary and gender fluid people may be forced to use an expression of binary gender in some circumstances because alternatives are not available or it is safer to do so.
- The current GRA also makes no provision for non-binary people to have their gender identity recognised.
- What constitutes evidence of living as any gender is culturally, socially and historically specific. It is also subject to individual interpretation and preference.
- There may be GDPR implications for the current requirement of submitting a substantial amount of personal and financial information to provide evidence of living in an acquired gender.

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

If yes, please outline these comments.:

Galop does not think a compulsory reflection period should be required:

- Galop's casework has found that trans people spend years reflecting on their gender before initiating any form of official recognition, additional bureaucratic reflection time is unnecessary.
- As with Question 1, self-determination has already been shown to work in other countries.

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

Yes

If you wish, please give reasons for your view.:

Galop agrees that the minimum age a person can apply for legal gender recognition should be reduced to 16:

- 16- and 17-year olds in Scotland already have the right to marry, gain employment, vote, and be held legally responsible for their actions; there is no reason for gender recognition to be delayed to a later age than these rights.
- Age is a protected characteristic and the 18+ age limit on applying for a GRC negatively affects trans youth, for all the reasons stated above for adults.
- The medicalisation of the GRC process is particularly difficult for young trans people who have less access to gender identity services and the financial resources for the GRC process.
- Galop's casework has found that the level of abuse, harassment and homelessness experienced by young trans people is particularly concerning.
- Galop has also found that services working with under-18s are often ill informed and sometimes unhelpful in recognising the risks faced by young trans people. Lack of access to legal recognition of their gender puts these young people at further risk.

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

Yes

If yes, please outline these comments.:

Galop agrees with the Scottish Government's rationale for reforming the GRA that "trans people should not have to go through this intrusive process in order to be legally recognised in their lived gender", referring to the GRA in its current form.

There are, however, a number of points Galop would like to make about the provisions of the draft bill: Galop thinks that the inclusion of a non-binary option would be beneficial.

The reasons for our view are:

- Non-binary people are currently unable to have their gender identity legally recognised and may therefore face inequalities and discrimination. We believe GRA reform should provide a legal recognition for non-binary. Galop thinks that the suggested additional exceptions to Section 22 of the Gender Recognition Act are not necessary and have potential to undermine trans people's right to privacy. We recommend that the principle of current legal protections be retained but they be redesigned as civil legal protections which individuals are able to enact themselves without having to persuade police forces to enact them.

The reasons for our view are:

- One of the primary purposes of a Gender Recognition Certificate is to allow trans people the option of privacy in situations where disclosure of trans status may lead to discrimination; the example that the Scottish Government gives of a potential additional exception, for HR staff to be able to disclose the trans status of applicants for jobs to other colleagues in their workplace, is a prime example of a situation that would violate trans people's right to privacy and contribute to a hostile environment for trans people.

- Galop is not aware of any prosecutions ever being brought for the criminal offence of a professional outing a trans person as provided for under section 22 of the GRA. This is despite us dealing with numerous cases where we have helped victims present clear evidence to the police that a crime has been committed under this provision.

We believe the problems to be:

- It is framed as a criminal offence instead of a civil law protection. Police forces have seemed unwilling to enforce these due to the police viewpoint that privacy protections are usually the responsibility of individuals to enforce through the civil courts.

- The time frame in which individuals must report, have it investigated and then have a case heard in court are unrealistically short.

- The requirement to have a GRC is an additional hurdle added to people who identify as trans but feel unable or unwilling to apply. Galop has concerns about the proposal that "a person who has an interest in a gender recognition certificate" could apply to the sheriff to have a GRC revoked on grounds of fraudulent application. Galop asks for greater clarity around this aspect of the draft Bill. As individuals may be able to make malicious applications to the sheriff to revoke a trans person's GRC.

Such a process might be used by an unsupportive family member, or an ex-spouse, to cause greater difficulty and distress for a trans person whom they would prefer had not obtained legal gender recognition. Trans people with a high public profile may also be targeted with malicious applications to the sheriff from strangers who hold anti-trans beliefs.

It is important that any process by which an individual could apply to have another person's GRC revoked was sensible and limited in who would be considered "a person who has an interest in a gender recognition certificate". Galop thinks that the requirement that applicants be "ordinarily resident" in Scotland for a Gender Recognition Certificate may unfairly impact trans asylum seekers and refugees.

Many trans people are forced to leave their country of origin due to the levels of violence and discrimination enacted against trans people there; barring these people from applying for a GRC would create further distress and hardship.

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

Yes

If yes, please outline these comments.:

Galop thinks that this Bill will not have a detrimental impact on anyone else's rights. The Bill covers how trans people's birth certificates are changed, which impacts the level of privacy they are entitled to, such as when getting a job or marrying, and how they are recognised after death.

Galop thinks that the changes to the GRA will not affect the ability of single sex services to function effectively and safely as trans people's right to use single-sex services is already protected by the Equality Act 2010.

The reasons for our view are:

- Some trans women have been accessing UK women's services successfully for many years. In Scotland in particular there has been a longstanding history of domestic and sexual violence services being inclusive of trans people (Stonewall Report 2018). Galop believes that lessons from this good practice can be learnt across the whole sector.
- This successful practice has not been dependent on trans women having a GRC or having transitioned surgically. Self-identity, experience as a victim/survivor and good practice within an agency are more important in operating successful, safe services, in Galop's experience. and that of the women's organisations included in the Stonewall Report.
- This positive experience is echoed in other countries which do not require a gender recognition process based on medical evidence.
- A de-medicalised gender recognition process does not mean a process without rigour and legal consequence, as noted in other parts of this document.
- Galop supports the need for single sex and women-only services and supports the development of robust, effective, safe practice within all services working with victims/survivors of domestic and sexual violence.

- Galop believes that all women should be able to access those services on an equal basis. No woman has an absolute right to access a single sex domestic abuse or sexual violence service: it will depend on eligibility, suitability of the service to meet her needs, and capacity to offer that service. However, no woman should be excluded simply because she is trans.

- Galop's experience suggests that there are significant barriers for trans people in accessing services around domestic and sexual violence. Trans people may feel excluded from services which are mostly aimed at heterosexual cisgender women and men. A survivor identifying as trans may feel that they are not entitled to access domestic abuse services, as they would be excluded through eligibility criteria. (Galop, 2019)

- Transgender people also have a heightened awareness of the potential for transphobic reactions, which might lead them to avoid settings, such as public services that would require them to reveal their transgender status (Galop, 2019).

- In addition, daily experiences of discrimination, harassment and other forms of gender identity-based abuse may result in a person internalising negative social impulses, inwardly blaming themselves for the abuse, simply because they identify as trans (Galop, 2019).

- Galop's experience suggests that there are specific barriers for trans men in accessing services around domestic and sexual violence. There are few services accessible to men as a whole and, in Galop's experience, the complexities faced by trans men in seeking help are little understood by all services. Trans men and non-binary people may feel excluded from both women-only and men-only services and unable to find the help and support they need as victims/survivors.

- Galop believes that clarity and change in the GRA will enhance service provision and positively effect trans victims/survivors being able to access help and support.

In summary, existing research that we draw on in our response (Stonewall, 2018 and Galop, 2019) shows that that creating more equitable access to single sex services is primarily about improving practice, rather than legislative change. Positive change to the GRA is needed and will support good practice within services but good practice is, and should be, happening anyway.

Galop also believes that the GRA changes which we support will positively affect the lives of trans people and will not negatively affect the functioning of single sex services.

“Many participants told us that reform of the Gender Recognition Act would have no relevance to how they deliver their services. While respondents were aware of a view that gender recognition reform could allow violent men to pose as women to access their services, with one participant expressing a concern about this, there was otherwise a clear consensus that services' thorough risk assessment procedures would safeguard against this. These participants said that gender recognition reform would not compromise their ability to protect their service against, or turn away, any abusive or disruptive individual.”

Supporting trans women in domestic and sexual violence services, Stonewall, 2018,
p.8