

About Galop

Galop is the UK's only specialist LGBT+ anti-violence charity. Our mission is to make life safe, just and fair for LGBT+ people. We provide advice, support and advocacy to people who have experienced hate crime, domestic abuse and sexual violence. Further information at www.galop.org.uk.

Executive Summary

Trans and non-binary people face high levels of violence, abuse and discrimination. Updating legal protections to ensure members of this group can expect dignity, respect and safety is desperately needed and long overdue.

Galop welcomes that the Gender Recognition Act (GRA) process will be moved online and the cost reduced. However, an opportunity to adopt a system of self-identification was missed, despite 70% of consultation respondents being supportive of allowing trans people to self-identify. We also believe non-binary people should be included within the legal provisions of the GRA.

The requirements of the current process mean that few trans people are able to obtain Gender Recognition Certificates (GRCs). This increases the likelihood that trans people will need to disclose trans identity in situations where it may be unsafe to do so, leaving trans people at higher risk of hate crime, abuse, violence and discrimination.

The Government's response to the GRA consultation

1. Will the Government's proposed changes meet its aim of making the process "kinder and more straight forward"?

- 1.1. We welcome that the process will be moved online and the cost reduced. However, we are disappointed that the GRA reform will not recognise non-binary identities or allow trans people to self-identify. The process of getting a Gender Recognition Certificate is likely to remain a long and invasive one, and inaccessible to the majority of trans people.
- 1.2. The reform proposals are especially disappointing as the consultation process lasted over two years, during which there was an alarming increase in transphobia in the media and in the general public. This is reflected in the latest Home Office hate crime statistics, showing that reported anti-trans hate crime has increased by 57% in the last two years.¹ Galop research shows that 4 in 5 trans people have experienced a transphobic hate crime in the last 12 months.² Research by Ditch the Label identified that the extension to the GRA consultation on 15th Oct 2018 caused a spike in transphobic discussion.³

¹ Hate Crime, England and Wales, 2019/20, Home Office <https://www.gov.uk/government/statistics/hate-crime-england-and-wales-2019-to-2020>.

² Bradley, C. (2020) Transphobic Hate Crime Report 2020, London: Galop <http://www.galop.org.uk/transphobic-hate-crime-report-2020/>

³ Exposed: The Scale of Transphobia Online- Key Events, 2016-2019, Ditch the Label and Brandwatch, <https://www.brandwatch.com/reports/transphobia/>.

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1.3. The process has resulted in only modest reforms, and has left many trans people feeling that it was harmful to trans people and previous progress on trans rights. Trans people's trust in the Government has unfortunately been damaged by the consultation process, and we urge that the Government seeks to undo the harm caused by taking positive action to protect and support trans people.

2. Should a fee for obtaining a Gender Recognition Certificate be removed or retained? Are there other financial burdens on applicants that could be removed or retained?

2.1. The proposed reduction of the fee to a "nominal" amount would be an improvement, depending on what rate is eventually set. However, we recommend completely removing the administrative fees for obtaining a Gender Recognition Certificate. The reasons for our view are:

2.2. The cost of current GRC processes are prohibitively high for many trans people. Costs include not only the £140 administration fee, but also doctor's fees, solicitors, medical reports and other required paperwork.

2.3. Trans people are at significant risk of poverty and unemployment due to discrimination based on their gender identity, which can make paying administrative fees difficult. Even with the current fee exceptions, some of the most vulnerable trans people may not fit in these categories e.g. those who are homeless and not claiming benefits.

2.4. Galop therefore recommends completely removing the administrative fees to enable more trans people to be able to access Gender Recognition Certificates.

3. Should the requirement for a diagnosis of gender dysphoria be removed?

3.1. Yes. Trans people should not be required to obtain a medical diagnosis before being able to access the benefits of the GRA. Being unable to obtain a GRC whilst awaiting gender-affirming healthcare adds additional layers of risk for trans people at this point, leaving trans people more vulnerable to experiencing hate crime and other forms of abuse, violence and discrimination. Other reasons for our view are:

3.2. The World Health Organisation no longer classifies transgender health issues as a mental or behavioural disorder in the ICD-11. "Gender incongruence" is now classified as a "condition related to sexual health" <https://icd.who.int/browse11/l-m/en>.

3.3. Being trans is not a mental disorder and should not therefore require a mental health diagnosis to have validity. Not all trans people experience gender dysphoria. The ICD-11 defines Gender incongruence as "characterised by a marked and persistent incongruence between an individual's experienced gender and the assigned sex". It does not require a sense of unease or dysphoria, or any mental ill-health or distress. The requirement for a diagnosis of "gender dysphoria" should therefore be removed.

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- 3.4. The current process for getting a medical diagnosis and service from an NHS gender identity clinic is long, with waiting times from referral to first appointment often taking two to three years. Private healthcare is expensive and therefore unavailable to most people. Both NHS and private avenues present obstacles to trans people - the delay in healthcare provision cause real distress and, in the experience of our clients, it is often during this time that they are vulnerable to experiencing hate crime and other forms of abuse, violence and discrimination.
 - 3.5. This risk of abuse, violence and discrimination can be exacerbated by additionally being excluded from the rights set out in the Gender Recognition Act whilst waiting for a medical diagnosis. For example, not having identity documents in the correct gender identity can 'out' trans people and create unsafe situations.
 - 3.6. A medical diagnosis of 'gender dysphoria' should therefore not be required as the ICD-11 does not require it, not all trans people experience it, and even those trans people who do, often are unable to access trans healthcare and receive a formal medical diagnosis for several years because of long waiting lists.
- 4. Should there be changes to the requirement for individuals to have lived in their acquired gender for at least two years?**
- 4.1. Galop does not think that evidence of living in an acquired gender for a period of time should be required, as the current requirements open trans people to experiencing high levels of transphobic violence, abuse and discrimination, and difficulties accessing goods and services. For example, recent Galop research showed that two thirds of trans people felt less confident in applying for jobs, with one respondent describing the difficulties of not having a GRC: “[You’re] less likely to be hired if you’re trans. My right to work documentation is my birth certificate, which is in my birth name, instantly outing me to potential employers. I’ve backed out of interviews rather than show my birth certificate.” Another described difficulty in accessing financial services: “Always mistreated by telephone banking– told I am “obviously not the account holder”, reduced to tears every time, account locked several times, unable to pay my rent as a result.”⁴
 - 4.2. Adopting a self-declaration process is less bureaucratic and more efficient in terms of both time and money. Processes based upon self-determination have been shown to work in other countries, including Ireland, Argentina, Malta and Norway.
 - 4.3. The Government Equalities Office found that 67% of trans people avoid being open about their gender identity for fear of a negative reaction from others.⁵
 - 4.4. Having to evidence living in an acquired gender can be difficult for many trans people and puts them at risk of transphobic violence and abuse. For example, whilst on the waiting list to receive trans health care, trans people may choose clothing options that aren't easily

⁴ Bradley, C. (2020) Transphobic Hate Crime Report 2020, London, Galop, p.30 <http://www.galop.org.uk/transphobic-hate-crime-report-2020/>.

⁵ Government Equalities Office (2018) The National LGBT survey https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721704/LGBT-survey-research-report.pdf.

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recognisable as associated with their gender identity, to be safer in some contexts to avoid transphobic bullying, harassment and violence from colleagues, neighbours and members of the public. If their workplace has a dress code that prescribes binary gendered options, then they might have no choice but to wear clothes that do not represent the gender they know themselves to be, as a means of staying safe and keeping their job.

- 4.5. Providing evidence of living in an acquired gender is particularly difficult for non-binary people. Most aspects of life are gendered in a binary way and so non-binary people may be forced to use an expression of binary gender in some circumstances because alternatives are not available, or because it is safer to do so. The current GRA makes no provision for the growing number of people who identify as non-binary to have to have their gender identity recognised.
- 4.6. What constitutes evidence of living as any gender is culturally, socially, and historically specific. It is also subject to individual interpretation and preference.

5. What is your view of the statutory declaration and should any changes have been made to it?

- 5.1. We believe that a statutory declaration as part of the GRA process would be helpful. The provision of a statutory declaration is a formal step, similar in seriousness of intent as an application for a passport. A statutory declaration could detail the legal and criminal consequences of making false, timewasting, or protest declarations. Galop recommends adopting a system whereby all government records relating to someone (HMRC, DWP, Passport, DVLA, Local Authority etc.) can be updated quickly and easily with a statutory declaration.

6. Does the spousal consent provision in the Act need reforming? If so, how? If it needs reforming or removal, is anything else needed to protect any rights of the spouse or civil partner?

- 6.1. We believe that a spouse's consent should not be required for a trans person to access the benefits of the GRA. The reasons for our view are:
- 6.2. Our research shows that perpetrators of domestic abuse against trans people often used tactics such as withholding medication or preventing treatment needed to express the victim's gender identity.⁶ The spousal veto gives a further potential tool for abuse and coercive control, as the spouse is given power over whether a trans person is able to define their gender legally whilst married, even if separated.
- 6.3. The spousal veto has been dropped in Scotland. It is our position that there should be equity across the UK on this matter.

⁶ Magić, J. & Kelley, P. (2018) LGBT+ people's experiences of domestic abuse: a report on Galop's domestic abuse advocacy service. London: Galop http://www.galop.org.uk/wp-content/uploads/Galop_domestic-abuse-03a-low-res-1.pdf.

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6.4. Galop recommends a system that enables trans, including non-binary, people to apply for gender recognition in their own right without requiring the permission of their spouse or ex-partner who they may still be legally married to.

7. Should the age limit at which people can apply for a Gender Recognition Certificate (GRC) be lowered?

7.1. Yes, all trans people deserve respect and recognition, regardless of their age. The 18+ age limit on applying for a GRC negatively affects young trans people. Self-declaration should apply to trans people aged 16 and over, and to under 16s with a parent or guardian's consent.

7.2. The medicalisation of the GRC process is particularly difficult for young trans people who have less access to gender identity services and fewer financial resources for the GRC process.

7.3. Denying trans young people the possibility of a birth certificate that aligns with their gender presents safety risks, as disclosure of trans identity may need to be made- for example in educational settings, which may lead to transphobic abuse, violence and discrimination from educational professionals and fellow students. It also means that the qualifications received will not match their name and gender identity.

7.4. Galop's casework has found that the level of abuse, harassment and homelessness experienced by young trans people is particularly high, and 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.

8. What impact will these proposed changes have on those people applying for a Gender Recognition Certificate, and on trans people more generally?

8.1. The impact of the government's proposed changes will be a minor improvement for a small number of trans people - binary trans people who: are either single or have a supportive spouse; have the time and resources to gather a large quantity of paperwork spanning several years; have the resilience to submit themselves to be scrutinised by a panel. This group will find the cheaper, online process slightly more accessible. The majority of trans people will not be impacted by these changes.

9. What else should the Government have included in its proposals, if anything?

9.1. Galop was among the 70% of consultation respondents who were supportive of allowing trans people to self-identify. It is Galop's recommendation that a formal declaration is sufficient for someone's gender to be recognised. This would significantly improve accessibility and cause less distress to trans people going through the process. It would also reduce the unnecessary associated safety risks of increased transphobic violence, abuse and discrimination that the current system engenders as detailed above.

9.2. We also strongly recommend the introduction of legal recognition for non-binary people.

10. Does the Scottish Government’s proposed Bill offer a more suitable alternative to reforming the Gender Recognition Act 2004?

9.3. Yes. Galop recommends that a similar model to the Scottish Government’s proposed Bill is adopted is in England and Wales.

Wider issues concerning transgender equality and current legislation:

1. Why is the number of people applying for GRCs so low compared to the number of people identifying as transgender?

1.1. As outlined above, the current requirements and process to obtain a gender recognition certificate often makes it inaccessible to the people who need them most, because the process is complicated, expensive and intrusive. The Government Equalities Office found that among trans people who were aware of the process to apply for a Gender Recognition Certificate but didn’t have one: 44% said they didn’t have a GRC because they did not satisfy the requirements; 38% because the process was too bureaucratic; 34% because it was too expensive. Only 7% said they didn’t have one because they didn’t want one.⁷

2. Are there challenges in the way the Gender Recognition Act 2004 and the Equality Act 2010 interact? For example, in terms of the different language and terminology used across both pieces of legislation.

2.1. Trans people do not need to have a GRC to be protected under the Equality Act, so there should not be challenges in the way that these two pieces of legislation interact. However, there is a large amount of misinformation around how the GRA impacts the Equality Act, so more government guidance is needed to ensure that bodies subject to the Equality Act are aware of this.

2.2. It is important to recognise that the Equality Act does not define ‘male’ or ‘female’ and there is no statutory definition of ‘sex’. The terms ‘sex’ and ‘gender’ are used interchangeably throughout UK law.

3. Are the provisions in the Equality Act for the provision of single-sex and separate-sex spaces and facilities in some circumstances clear and useable for service providers and service users? If not, is reform or further guidance needed?

3.1. 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.⁸ Galop believes that lessons from this good practice can be learnt across the whole sector.

⁷ Government Equalities Office (2018) The National LGBT survey https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721704/LGBT-survey-research-report.pdf.

⁸ Stonewall (2018) Supporting trans women in domestic and sexual violence services: Interviews with professionals in the sector

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- 3.2. This successful practice has not been dependent on trans women having a GRC or having transitioned surgically. A de-medicalised gender recognition process does not mean a process without rigour and legal consequence. Good practice within an agency are more important in operating successful, safe services for all victims and survivors. A number of countries do not require a gender recognition process based on medical evidence, including Ireland, Malta, Norway, Argentina, Portugal, Belgium, Denmark and Pakistan, and none have documented a crisis in single-sex services as a result.
 - 3.3. 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. For all women, accessing safe spaces and accommodation depends on eligibility, suitability of the service to meet her needs, and capacity to offer that service. Robust risk assessments already exist, and should be applied for any woman accessing a space. This assessment should be based the individual person in front of the assessor, rather than a blanket rule based on one aspect of her identity.
 - 3.4. Galop's experience suggests that there are significant 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 generalist services.
 - 3.5. Initial findings from national research by Galop into LGBT+ people's experience of sexual violence (yet to be published) indicate that non-binary people are most at risk of experiencing sexual violence. 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.
 - 3.6. Galop's experience of working with trans victims/survivors of domestic abuse has highlighted that there are still barriers to getting help and support. This may result in trans victims/survivors being excluded from services or being hesitant in approaching services for help. 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.
- 4. Does the Equality Act adequately protect trans people? If not, what reforms, if any, are needed**
- 4.1. The Equality Act is vital for the protection of LGBT+ people. Recent case law recognises non-binary people as covered by the Equality Act (Taylor v Jaguar Land Rover), but previously this has not been clear. As long as in practice people with genders other than male or female continue to be understood to be protected by the Equality Act, the purpose of the act serves to protect all trans people.

4.2. Despite this, the number of cases of discrimination on the basis of gender reassignment that violate the Equality Act brought to court are extremely underrepresented, given the high number of clients who come to us having experienced this type of discrimination. There are currently barriers at all levels of the legal system for trans people who want to challenge discrimination they have experienced.

5. What issues do trans people have in accessing support services, including health and social care services, domestic violence and sexual violence services?

5.1. Trans and non-binary people experience many barriers to accessing services, both at an individual and structural level. Personal barriers include: fear of being misunderstood or be discriminated against; anxiety or reluctance to disclose and explain trans identity within mainstream settings; having to ‘come out’ several times when accessing different layers of support; fear that abuse will not be taken seriously or will be minimised or trivialised; feeling excluded from services which are mostly aimed at heterosexual cisgender women and men; fear of possibility of being misgendered by professionals, either deliberately and accidentally, through the incorrect use of pronouns and names; and fear of lack of knowledge held by professionals in relation to gender transitioning. For some survivors, this will arise from previous negative experiences with service providers.

5.2. Structural and cultural barriers include: gendered eligibility criteria meaning trans and non-binary people have little or no access to services; low visibility and representation of trans people and issues within services, across internal publications and/or publicly available materials and websites or within physical organisational space; lack of established partnerships with LGBT+ communities and organisations; lack of quality referral pathways; low understanding and awareness of professionals around unique forms of coercive control targeted at gender identity; services appearing heterosexist and relying on assumptions that all their clients are heterosexual and cisgender; relying on misconceptions around the dynamics of abuse as it impacts on trans communities.⁹

5.3. Recent research by Galop into experiences of trans people showed that 77% of respondents reported avoiding medical treatment and a further 46% had not received the correct medical treatment due to transphobia. Incidents included being refused treatment; being misgendered; receiving verbal abuse and transphobic comments; and needing to explain trans issues to professionals.¹⁰

5.4. Trans, non-binary, and gender-non-conforming people are at high risk of abuse and violence from a wide range of perpetrators and in every part of their daily lives. More specialist service provision to support the trans community is needed, as well as taking action to reduce barriers to trans victims and survivors accessing help and support in mainstream services.

⁹ Magić, J. & Kelley, P. (2019). Recognise & Respond: Strengthening advocacy for LGBT+ survivors of domestic abuse. London: Galop http://www.galop.org.uk/wp-content/uploads/Galop_RR-v4a.pdf.

¹⁰ Bradley, C. (2020) Transphobic Hate Crime Report 2020, London: Galop <http://www.galop.org.uk/transphobic-hate-crime-report-2020/>.

6. Are legal reforms needed to better support the rights of gender-fluid and non-binary people? If so, how?

6.1. Non-binary people must have legal recognition. Non-binary people face discrimination at work, in education settings, and accessing health care and not having legal recognition of this identity makes harder to challenge this discrimination. Non-binary people often do not feel comfortable to access either male or female specific services, which is a significant issue especially given indications above that suggest that non-binary people are more likely to be experiencing sexual violence. If non-binary people don't legally exist, then there's no impetus for inclusive service provision. England and Wales are currently trailing behind a significant number of countries, such as Denmark, New Zealand, Bangladesh, India and Nepal, when it comes to the legal recognition of non-binary people.

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