

ANNEX H: DRAFT FAIRER SCOTLAND DUTY ASSESSMENT

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| Title of policy/ practice/ strategy/ legislation etc. | The Gender Recognition Reform (Scotland) Bill |
| Lead Minister | Cabinet Secretary for Social Security and Older People |
| Directorate Division Team | Justice Civil Law and Legal System Family Law Unit |

1. What is the aim of your policy/strategy/plan?

The aim of the Bill is to replace the current system for obtaining legal gender recognition, which involves applying to a UK tribunal (the Gender Recognition Panel) with a system which involves applying instead to the Registrar General for Scotland.

Who will it affect (particular groups/businesses/geographies etc)?

The changes to the system will affect trans people who apply for a full Gender Recognition Certificate (GRC). The Scottish Government expects, based on international experience, that the numbers from Scotland applying for a GRC might increase from around 30 a year to around 250 a year.

What main outcomes do you expect the policy/strategy/plan to deliver?

The key aim is to establish a more straightforward system for obtaining legal gender recognition in Scotland.

2. What is your timeframe for completing the Fairer Scotland assessment?

This is a draft assessment for consultation purposes: a question seeking comments on the Impact Assessments, including this one, is included in the consultation.

The Scottish Government will publish a final version of this Fairer Scotland Duty Assessment when we introduce the Gender Recognition Reform (Scotland) Bill into Parliament.

3. Who else in the organisation will be involved in the assessment and what roles will they be playing?

This Assessment has been drawn up by a policy official who has sought comments from other policy officials and from colleagues in Analytical Services.

STAGE 2 - EVIDENCE

Please answer the questions below to help meet the duty's evidence requirements.

4. What does the evidence suggest about existing inequalities of outcome, caused by socio-economic disadvantage, in this specific policy area?

There is some evidence that people with the protected characteristic of gender reassignment may experience socio-economic disadvantage when compared with the population generally.

For example, a Scottish Public Health Network Report on Healthcare Needs Assessment of Gender Identity Services in Scotland noted that:

“Service Data highlighted a potential socio-economic gradient in referrals to Scottish GICs nationally, with higher proportions of referrals from adults and especially young people from more deprived areas” (page 108).¹⁵⁶

The same report notes evidence from probability sample surveys in the US which suggested that trans people were more likely to be below the poverty line, or to be unemployed, although these findings may not be entirely transferrable to Scotland (page 29).

Research carried out by Stonewall in Great Britain found that around 1 in 4 of the trans people who responded to the survey had experienced homelessness.¹⁵⁷ It should be noted that this was not a random sample and findings cannot be generalised to the British trans population as a whole. In Scotland, at least 8% of the general population had experienced homelessness at some point in their lives, as of 2015.¹⁵⁸

An LGBT Survey was carried out by the UK Government Equalities Office in 2017. The survey was carried out online with a self-selected sample, which means respondents are drawn from a non-representative sample of LGBT people across the UK and findings cannot therefore be generalised to the trans population in the UK as a whole.

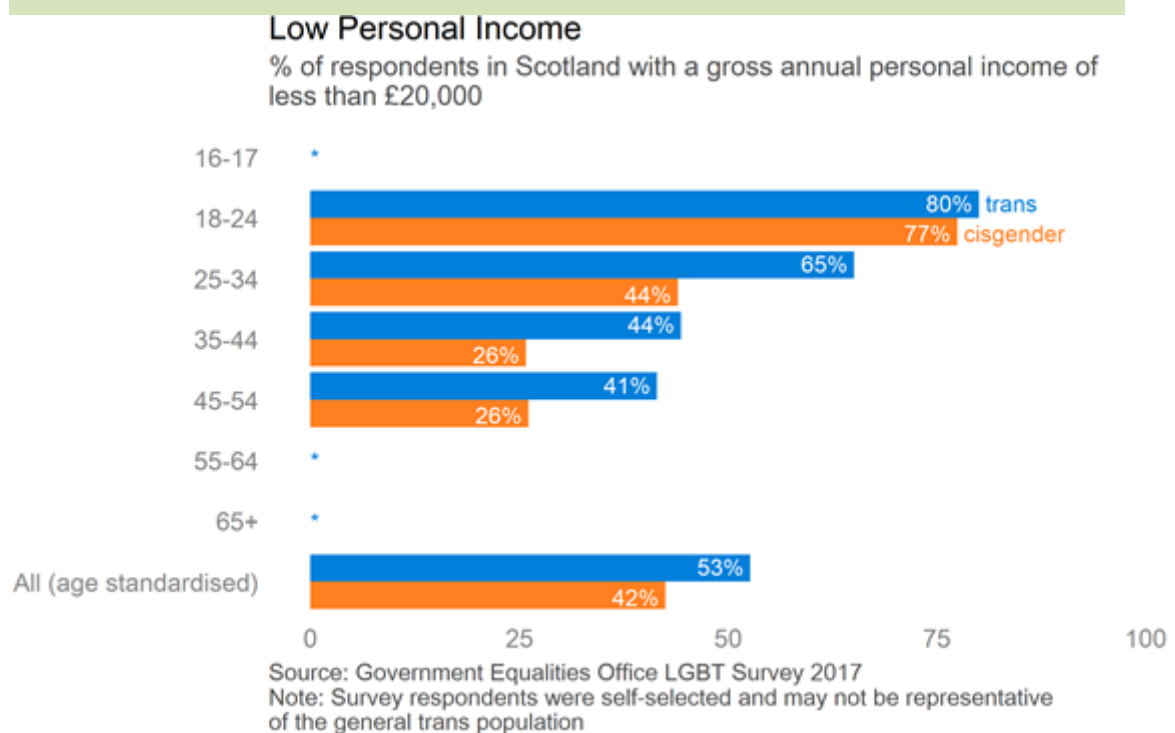
¹⁵⁶ https://www.scotphn.net/wp-content/uploads/2017/04/2018_05_16-HCNA-of-Gender-Identity-Services.pdf

¹⁵⁷ https://www.stonewall.org.uk/system/files/lgbt_in_britain_-_trans_report_final.pdf.

¹⁵⁸ <https://www.gov.scot/publications/health-homelessness-scotland/pages/1/>

A greater proportion of the 1,160 self-selecting trans respondents in Scotland had a personal income of less than £20,000 compared with non-trans respondents (53% and 42% respectively). By comparison, the Family Resources Survey found that for the general population, 57% of adults in Scotland had an income less than £20,000. However direct comparisons between the surveys are difficult to make due to differences in the income questions asked.

There was little difference for the 18-24 age group, where 80% of trans respondents and 77% of non-trans respondents had a personal income of less than £20,000. For all age groups older than 25, there was a relatively large difference between trans and non-trans respondents, with the largest gap (15 percentage points) seen in the 45-54 age group.



There were also differences in the proportion of trans and non-trans respondents neither in education or employment across all age groups. The largest gap was seen in the 35-44 age group where 21% of trans respondents in Scotland weren't in education or employment in contrast to 6% of non-trans respondents.

Overall 78% of survey respondents in Scotland were in employment, which is broadly consistent with the Annual Population Survey where 74% of the Scottish population aged 16-64 were in employment in 2017.

The survey also asked about trans respondents' reasons for not applying for a GRC. The most common reasons that trans women gave for having not applied for a GRC were the process being too bureaucratic (48%), not meeting the requirements (35%) and the cost of the application (33%). For

trans men, not meeting the requirements was the most common reason for not applying for a GRC (51%), followed by the application cost (37%) and the process being too bureaucratic (33%).

The differences between men and women may partly be explained by the different age profiles of the respondents, with trans men respondents being younger and fewer having completed transitioning.

The survey was carried out online with a self-selected sample, and promoted via stakeholders, at Pride events, through national media coverage, and through the Government Equalities Office's and other government social media channels. The methodology used means respondents are drawn from non-representative sample of LGBT people across the UK. Whilst the sample size is large enough to produce statistics for the trans respondents from Scotland, it isn't possible to generalise to the general Scottish trans population. For example, the survey doesn't include people who are unwilling to disclose their LGBT status on a government survey (even anonymously), and will under represent trans people who are less engaged with Pride events and LGBT organisations. As such, lived experiences of the respondents may differ from the experiences of trans people who didn't take part in the survey.

5. What does the evidence suggest about any possible impacts of the policy/programme/decision, as currently planned, on those inequalities of outcome?

Broadly positive.

At the moment, the UK Gender Recognition Panel (GRP) charges a fee of £140 for applications.¹⁵⁹ This fee can be reduced if the applicant is on certain benefits or a low income.

The fees for applications are, under section 7(2) of the Gender Recognition Act 2004 as it currently stands, laid down by the UK Secretary of State.¹⁶⁰

Under the Gender Recognition Reform (Scotland) Bill, fees under the proposed new system could be charged by the Registrar General for dealing with applications. No decision has yet been taken on whether fees should be charged or on what level any fees should be. However, it is likely that any fees would be lower than £140, as there would be no need to meet the costs associated with a tribunal.

The general approach taken by the Registrar General is to meet the costs of providing the day to day service through fees. This would not include the initial set-up costs of establishing the service (e.g. changes to IT; initial recruitment of staff; the initial preparation of forms and guidance) which would be met by Government.

¹⁵⁹ <https://www.gov.uk/apply-gender-recognition-certificate/how-to-apply>

¹⁶⁰ <http://www.legislation.gov.uk/ukpga/2004/7/section/7>

Under the current system for obtaining legal gender recognition and the proposed new system, applicants have to provide statutory declarations. In Scotland, these are made before a notary public (most solicitors in Scotland are notaries public) or a justice of the peace. Notaries public can be expected to charge for this service but it is currently provided without charge by justices of the peace.¹⁶¹

6. Is there any evidence that suggests alternative approaches to the policy/programme/decision? E.g. Evidence from around the UK? International evidence?

There are a variety of systems in place across the world for obtaining legal gender recognition, including systems similar to the one being proposed now for Scotland.

7. What key evidence gaps are there? Is it possible to collect new evidence quickly in areas where we don't currently have any? For example, through consultation meetings, focus groups or surveys?

There is a lack of evidence on the income levels of trans people when compared with the general population. The Scottish Government would welcome evidence in this area during the consultation.

However, there is no robust evidence about how many trans people live in Scotland, or about other characteristics of the trans population as a whole, which means that it is not currently possible to know the degree to which the samples of trans people in surveys are representative of the transgender population. National Records of Scotland are currently proposing to include, and have tested, a 'trans status' question for the 2021 Census. This will provide the first official estimate of the trans population in Scotland, the characteristics of this population and their outcomes across a range of policy areas.

8. How could you involve communities of interest (including those with lived experience of poverty and disadvantage) in this process? The voices of people and communities are likely to be important in identifying any potential improvements to the programme/policy/decision.

Comments during the consultation would be welcome.

¹⁶¹ <https://www.scotcourts.gov.uk/the-courts/jp-court/signing-documents>

STAGE 3 – ASSESSMENT AND IMPROVEMENT

9. What options could strengthen this programme/policy/decision in terms of its impacts on inequalities of outcome?

- A. The Registrar General not charging a fee.
- B. The Registrar General charging differential fees, depending on the income levels of the applicant.

10. What are the pros and cons of these options?

On A, there would be a clear benefit to applicants. The disadvantage is that the costs of providing the service would fall on Government, rather than users.

On B, the advantage is that fee levels could reflect the applicant's financial circumstances. The disadvantage is that charging differential fees could lead to a considerable amount of administrative work in relation to a service which is unlikely to be used by a large number of people. As a result, it is possible that differential fees might give rise to more costs than savings.

11. How could the programme/policy/decision be adjusted to address inequalities associated with particular groups? Particular communities of interest or communities of place who are more at risk of inequalities of outcome?

This is covered by the answers above.

STAGE 4 - DECISION

Key questions to discuss at this summary stage are:

12. What changes, if any, will be made to the proposal as a result of the assessment? Why are these changes being made and what are the expected outcomes?

Consideration will be given to whether in principle, any fees for gender recognition applications should be charged and to the level of fees charged by the Registrar General. There will be a further consultation before any fees are laid down.

13. If no changes are proposed, please explain why.

Not applicable

**Sign off of the Fairer
Scotland Assessment
template**

TO BE COMPLETED WHEN FSDA FINALISED.

FAIRER SCOTLAND DUTY SUMMARY TEMPLATE

| | |
|---|--|
| Title of Policy, Strategy, Programme etc. | The Gender Recognition Reform (Scotland) Bill |
| Summary of aims and expected outcomes of strategy, proposal, programme or policy | The key aim is to establish a more straightforward system for obtaining legal gender recognition in Scotland. |
| Summary of evidence | There is some anecdotal evidence that people with the protected characteristic of gender reassignment may be on lower incomes when compared with the population generally. |
| Summary of assessment findings | Consideration will be given to the level of fees charged by the Registrar General. There will be consultation before any fees are laid down. |
| Sign off | TO BE COMPLETED WHEN FSDA FINALISED. |

The Scottish Government
December 2019