



T : 0300 244 4000

E : scottish.ministers@gov.scot

Pam Duncan-Glancy MSP

Pam.Duncan-Glancy.msp@parliament.scot

Copied to ehrcj.committee@parliament.scot

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Dear Pam,

Following the meetings of the Equalities, Human Rights and Civil Justice Committee on 15 and 22 November 2022 at which the Committee considered the Gender Recognition Reform (Scotland) Bill at Stage 2, I wanted to write to you to provide you with some further details on the Scottish Government's plans in relation to the Multi-agency Public Protection Arrangements (MAPPA) and applications for Gender Recognition Certificates, and on other related matters that were discussed.

As you may be aware, the purpose of MAPPA is public protection and the management of risk of serious harm. In Scotland MAPPA brings together the Police, Scottish Prison Service (SPS), Health and Local Authorities, in partnership as the Responsible Authorities, to assess and manage the risk posed for certain categories of offender, namely:

- Sex offenders who are subject to notification requirements under the Sexual Offences Act 2003;
- Restricted patients; and
- Other offenders who are assessed by the Responsible Authorities as posing a risk of serious harm by reason of their conviction.

A number of other agencies are under a duty to co-operate with the Responsible Authorities and include housing providers, the voluntary sector and the Children's Reporter.

A person convicted of a sexual offence included in Schedule 3 of the Sexual Offences Act 2003 becomes subject to the notification requirements of that Act. They must provide the police with certain information, notify of any changes to those details and reconfirm this information periodically. The Police may also require to take fingerprints and photographs to verify identity.

It is not currently a requirement to notify the police of a legal change of gender. However, further information considered relevant to the verification of the identity of a person can be requested by Police Scotland on a case by case basis. The 2003 Act also allows registered



sex offenders to be subject to a Sexual Offences Prevention Order which could include a requirement to notify of a change in legal gender.

These existing processes are working well, but Scottish Ministers have an existing legislative power to vary the information provided at notification. On Tuesday I informed the Committee that the Cabinet Secretary for Justice and Veterans will, before this Bill is commenced, introduce regulations to amend the Sex Offender Notification Requirements so that those on the register are required to notify the Police with details as to whether they have made an application for a gender recognition certificate.

This will mean additional information will be available to help identify an individual and inform their subsequent management under MAPPA. This adds to the information that those on the register are already required to provide to the Police such as name, address, and passport so that the Police are fully informed about information relating to the person's identity.

I think it is worth emphasising that this of course does not mean there is any implied link between trans people seeking gender recognition and sex offenders, but it will mean Police Scotland will be informed of an application by someone on the Register. This will allow them to take action either in relation to the application itself, if necessary, or as part of the broader Police role in managing the registered sex offender population.

The action that Police Scotland could take if they believe an application is fraudulent would be to apply to a sheriff as a person with an interest for revocation of the GRC and/or work toward criminal prosecution under the offences in the Bill. Under Scottish Government amendment 60 which was accepted unanimously by the Committee, the Registrar General if informed by Police Scotland could reject such an application following a successful application to a sheriff, meaning that the applicant would be denied a GRC. This means that it will be possible to prevent someone on the sex offenders register from fraudulently obtaining a GRC.

I also thought it might be helpful to provide further information on one or two related areas which were discussed at the first Stage 2 session on Tuesday 15th.

Disclosure Scotland

All Disclosure Scotland applications require the applicant to give their current and all previous names, including their mother's birth or family name. If there is any uncertainty about an applicant's identity, Disclosure Scotland can request that fingerprints be provided to a UK police force before the disclosure certificate is issued. If identity cannot be properly verified, Disclosure Scotland will not complete the application and no disclosure certificate will be issued. The process protects an individual's right to privacy but does not afford the opportunity for any party to conceal past criminal behaviour.

Any criminal history information that the law says must be disclosed will be, even if that information predates the current name or gender of the applicant.

Prohibition on disclosure

Under section 22 of the 2004 Act, it is a criminal offence for 'a person who has acquired protected information in an official capacity to disclose the information to any other person'. Protected information refers to either a person's application or their gender prior to obtaining a Gender Recognition Certificate.

There are however several existing exceptions to the criminal offence in section 22 such as where the information does not enable the person to which it relates to be identified, the person to whom the information relates has consented to disclosure or where the disclosure is for the purpose of preventing or investigating crime.

Domestic Abuse

Police Scotland's Disclosure Scheme for Domestic Abuse has helped safeguard those who have been suffering from, or are at risk of, domestic abuse. The scheme has been operational across the country since 1st October 2015. It is not a direct reporting mechanism comparable to that for registered sex offenders, but it aims to tackle and prevent domestic abuse by providing individuals with the right to ask police about a partner's background, if they suspect they have a history of domestic abuse.

The purpose of the scheme is to allow people to make an informed decision about their situation when they may be at risk in a relationship. The Scheme also allows Police Scotland to tell people that they may be at risk. This information can be given even if it has not been asked for. Referrals for disclosure under the scheme can be made by officers, often where they have attended a call and identify that a person is in a relationship with someone who has a history of domestic offending.

A formal evaluation of the Scheme is currently being carried out by Glasgow Caledonian University in partnership with Police Scotland.

You may also be interested to note that, the Justice Secretary met with Pam Gosal MSP on 30 August to discuss the launch of the consultation on her proposed Domestic Abuse Register Bill, which comes to a close on 20 November. This Bill would seek to create and develop a domestic abuse offender register, requiring those placed on it to report certain changes in their circumstances to police. As the First Minister confirmed at Thursday's FMQs, we will consider these proposals further following the consultation with an open mind, though any such plans would require careful consideration and further discussions with Police Scotland and other justice partners.

Review and Reporting Requirements

As I noted today, whilst I agree that it is right that we should monitor and review the operation of the Bill, it is important that we carefully consider what it is possible and appropriate to collect information about. I am of course happy to consider if there is any further data or information that could be included as part of the annual duty on the Registrar General to report, and welcome further discussion on that point.

I hope that the above information is of assistance to you and I look forward to discussing these and any other matters pertinent to the Bill when we meet ahead of Stage 3.

Yours sincerely,



SHONA ROBISON