



# Gender Reassignment – A Guide for Employers

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# 1 List of Abbreviations

APP	Appropriate Personal Pension
COSR	Contracted-Out Salary Related
CRB	Criminal Records Bureau
DPA	Data Protection Act
EOC	Equal Opportunities Commission
EPB	Equivalent Pension Benefit
GMP	Guaranteed Minimum Pension
GOQ	Genuine Occupational Qualification
GRA	Gender Recognition Act
GRC	Gender Recognition Certificate
SDA	Sex Discrimination Act
SHP	Stakeholder Pension

## 2 Introduction

### What is the purpose of this guide?

This guide has been produced to help employers understand how the relevant law applies and how to deal with issues which may arise when a job applicant or a member of their staff is a transsexual person.

Part One of the Guide explains how to apply the relevant legislation, namely the 1999 Gender Reassignment Regulations, found in the Sex Discrimination Act 1975, and the Gender Recognition Act 2004, in the context of employment and training.

Part Two includes some practical suggestions for good practice in the workplace.

The guide has no legal status. It deals only with the employment provisions of the legislation and does not, therefore, cover provisions dealing with goods and services.

### What is gender reassignment?

There are a small number of people in the United Kingdom – about 5000 – whose gender identity does not match their appearance and/or anatomy. This is sometimes called gender dysphoria or gender identity disorder, though these terms are disliked by many transsexual people.

People with this medical condition who decide to adopt the opposite gender to the one assigned at birth are known as 'transsexual people'. Medical treatment to enable transsexual people to alter their bodies to match their gender identity is highly successful. The process is known medically as 'gender reassignment'. The term includes persons living in their new gender, but who have elected for personal reasons not to undergo surgical treatment. This can be for personal reasons connected with their health, age, or finances.

### What is the process of gender reassignment?

Diagnosis of transsexualism may take a matter of months or a period of years. Preliminary diagnosis is followed by hormone therapy, and typically after about six months the individual's physical appearance begins to change. Transsexuals will often change their social gender around this stage, although not necessarily their gender role at work.

At some point the individual will want to start to live full time in their 'new' gender, and their name and other records (such as their driving licence and passport) may be formally changed.

If there are no extraneous delays (for example funding problems or waiting lists), the individual usually proceeds to one or more reassignment surgeries after one or two years of hormone therapy, although some individuals never undergo surgery.

The individual is expected to live and work in their new gender role for a period of one year prior to any irreversible surgical intervention. This period is often referred to as the 'real life experience' or 'real life test'.

Some people may opt for early surgical procedures. The extent of these will vary according to the needs of the individual. A few require less than two weeks' absence from work, whilst many require a number of months. It would be unlawful to dismiss an individual for reasons of impending gender reassignment treatment.

Many transsexual people wish to keep their transsexual status private, whilst others are willing to discuss it confidentially or even openly. When a person is at work while undergoing gender reassignment, it is important for employers to discuss procedures for disclosure and other practical matters such as the use of single sex facilities.

Employers must not breach the personal privacy of employees, recognising that the right to disclose or discuss their medical history is the prerogative of the individual.

Transsexualism is not the same as, and should not be confused with, 'cross-dressing', transvestism, or sexual orientation.

### **What is gender recognition?**

The Gender Recognition Act 2004 allows transsexual people (who are able to satisfy the necessary evidential requirements) to apply for full legal recognition in their acquired gender. Following a successful application, the law regards the transsexual person, for all purposes, as being of their acquired gender.

# 3 Part One: Legal Framework

## Equal Opportunities in Employment

Every business wants the best person for the job. Unequal treatment, prejudice or harassment of an employee discredits both the employer and their business. It can also be very costly.

It is in the employer's interest to treat his or her employees fairly and to ensure that they do not suffer any unlawful discriminatory treatment at work. It is currently unlawful for an employer to discriminate against an employee on grounds of sex, gender reassignment, disability, sexual orientation, race, religion or belief. (From 2006 it will also be unlawful to discriminate on grounds of age).

This section of the guide looks specifically at the provisions of the Sex Discrimination Act 1975, the Gender Recognition Act 2004, the Data Protection Act 1998 and the Asylum and Immigration Act 1996. It also looks at how the law applies to different agencies.

## Sex Discrimination Act 1975 (SDA)

### What does the SDA say?

Basically, the Act says that it is unlawful for an employer to discriminate against an employee, job applicant or contractor on the grounds of that person's sex, or gender reassignment, or because they are married or in a civil partnership. It applies equally to men and women.

The employment provisions of the Act cover recruitment, transfer, training and promotion, access to work-related benefits, facilities and services, dismissal, and any other detriment.

It is also unlawful for an employer to instruct someone else to do something discriminatory – for instance, telling an employment agency not to hire a transsexual person. Pressure to discriminate is also unlawful – for example employees threatening not to work unless their employer dismisses a colleague who has decided to undergo gender reassignment.

### What is 'discrimination on grounds of gender reassignment'?

It is unlawful to discriminate against someone if he or she:

- intends to undergo gender reassignment, or
- is undergoing gender reassignment, or
- has at some time in the past undergone gender reassignment.

This ensures that the initial stage is covered by the legislation, when an individual indicates an intention to commence gender reassignment. It is not necessary for all three circumstances to apply.

Discrimination in this context means treating a transsexual person less favourably than you treat (or would treat) another employee who is not undergoing gender reassignment (or contemplating it etc).

### **Does the SDA provide protection from harassment?**

Yes. Harassment of an individual on the ground of gender reassignment – either by their employer or by other employees – will usually be a form of unlawful discrimination.

Such discrimination should be dealt with in the same way as harassment against any other member of staff, for example on the basis of their sex or race.

There is currently no specific definition of harassment under the SDA, but as a result of a recently amended European directive, that will soon change. However, employees can bring actions under the SDA's employment provisions as they currently stand, and there is a body of case law on this issue.

### **Does the SDA provide protection from victimisation?**

Yes. The SDA says it is unlawful to victimise someone by treating them less favourably because they have made a complaint about gender reassignment discrimination, just as it is unlawful to victimise someone for asserting their rights because of, say, sex discrimination.

It is equally unlawful to victimise someone who gives evidence on behalf of a person who has complained of unlawful discrimination.

### **What does the legislation say about medical treatment?**

The legislation does not specify a minimum or maximum time that employers should allow for treatment. If, however, the transsexual employee is absent for a long period, retirement on medical grounds may be considered in the same way as for any other person who is medically unfit for work. However, individual rights under the Disability Discrimination Act 1995 must be considered where the individual has been diagnosed as suffering from 'Gender Dysphoria' or 'Gender Identity Disorder' and the condition is likely to last for more than twelve months, lasted twelve months or will remain with the individual for the rest of their life. More information on the Disability Discrimination Act can be obtained from [www.disability.gov.uk/dda/](http://www.disability.gov.uk/dda/)

An employer must not, however, treat the person any less favourably than he or she treats, or would treat, a person absent due to illness or for some other reason where it would be reasonable to allow a similar amount of time off work.

Part two of this guidance suggests good practice examples for dealing with an absent employee undergoing gender reassignment.

### **Are employers liable for discriminatory acts by their employees?**

In certain circumstances, yes. An employer is liable for any act done by an employee in the course of their employment (with or without the employer's knowledge or approval), unless the employer can show that he or she had taken such steps as were reasonably practicable to stop the employee from doing the particular act or acts of that kind. For example, an employer might be able to show that he or she provided equal opportunities training to all employees and deals thoroughly with any discrimination complaints.

Employees remain individually liable for their own discriminatory acts, even where the organisation is potentially liable also.

## Are there any exceptions which allow discrimination against transgender people?

Yes, but only in three limited circumstances:

- first, if the employer can show there is a genuine occupational qualification (GOQ) which means that the job has to be done by someone of a particular sex, and that it is reasonable to prevent the transsexual person from doing the job as a result. This is known as a 'single sex GOQ'.
- second, if the job involves conducting intimate searches pursuant to statutory powers (such as the Police and Criminal Evidence Act).
- third, if the job involves working in a private home where there would be close physical or social contact, or knowledge of the intimate details of a person's life, and the employer can show that people would object.

In addition, there are some limited *temporary* exceptions which apply during the process of gender reassignment only (see below).

Nor does the legislation apply to employment for the purposes of an organised religion which, for religious reasons, is limited to those who are not undergoing and have not undergone gender reassignment.

## Do the exceptions apply to someone with a recognition certificate?

No. If someone has a full gender recognition certificate under the Gender Recognition Act 2004 it is not lawful to discriminate other than on grounds that would apply to anyone else of their acquired gender.<sup>1</sup>

So a male to female transsexual person could only be lawfully discriminated against in a situation where it would be lawful to discriminate against any other woman.

<sup>1</sup> There is one exception. It is possible for organised religions to discriminate where there are genuine religious reasons to refuse to employ a transsexual person – for example, in relation to clergy in some denominations – even if the person has a gender recognition certificate.

## What happens if a 'single sex GOQ' applies to a job, but the job holder changes gender?

This is obviously rare, but can happen. If it does, the legislation allows the employer to consider dismissing the individual or taking some other form of action.

The employer must be able to show that a GOQ applies to that particular job, **and** that the way they have treated the individual is reasonable in all the circumstances.

In other words, even if a GOQ applies, there could still be unlawful discrimination if the employer behaves unreasonably. Part two of this guide provides some good practice examples, such as discussing options with the employee at an early stage to try to come to a mutually satisfactory arrangement.

## What about recruitment to a post with a 'single sex GOQ'?

It may be unreasonable for employers to refuse to recruit someone on grounds of gender reassignment, even if a single sex GOQ applies to the post: for example where a task requiring to be done by a person of a particular sex forms only part of a job and could be allocated to other employees. The onus is on the employer to show that he or she acted reasonably.

Financial and organisational concerns will not automatically constitute reasonable grounds for a GOQ.

### Are there any exceptions which only apply during the process of gender reassignment?

Limited exceptions apply when individuals have to share accommodation, and it is not reasonable on privacy or decency grounds to do so while in the process of undergoing gender reassignment (such as working on a ship where there are no private facilities).

In that case, the employer has to show that it would not be reasonable to provide alternative accommodation for the individual.

If someone already has a job requiring him or her to share accommodation, the employer should take all reasonable steps short of dismissal to sort out an alternative – for example, redeploy them, or replace them temporarily while they are undergoing gender reassignment.

There is also a limited exception if a post requires the holder to provide vulnerable individuals with personal services, and the employer reasonably believes those services cannot be effectively provided by someone undergoing gender reassignment. This exception will apply only in very rare circumstances.

None of this applies to someone with a full gender recognition certificate.

For more details of the SDA, visit [www.womenandequalityunit.gov.uk](http://www.womenandequalityunit.gov.uk) and download *A Guide to the Sex Discrimination Act 1975*.

### Gender Recognition Act 2004 (GRA)

The Gender Recognition Act 2004 gives legal recognition in their acquired gender to transsexual people who satisfy the Gender Recognition Panel (a judicial body of lawyers and doctors) that they:

- have or have had gender dysphoria, and
- have lived in the acquired gender for two years prior to the application, and
- intend to live permanently in the acquired gender.

The Panel or the Secretary of State can also apply for medical evidence, marital status and other information, which must be given for an application to be successful.

Following a successful application, a transsexual person will acquire the rights and responsibilities of their acquired gender from the date of recognition.

### Changes to Legal Identity

The gender recognition process ensures that transsexual people are afforded all the rights and responsibilities appropriate to that gender.

If a transsexual person is successful in applying for gender recognition, and they are unmarried, they will get a full gender recognition certificate (GRC), and if their birth was registered in the UK will be automatically entered on the Gender Recognition Register held by the Registrar General. Their original birth register entry will be marked, confidentially, to indicate that they have become recognised in their acquired gender.

They will then be able to marry a person of the opposite gender and be eligible for the state retirement pension and other benefits at the age appropriate to their new gender. If their birth has been registered in the UK they will receive a new birth certificate, in their acquired name and gender.

Individuals who are married cannot receive a full GRC because marriage is not permitted between two members of the same sex. They may, however, apply to a Gender Recognition Panel for an interim GRC.

This enables them to obtain a full GRC after their marriage is annulled, and provides a new ground for annulment to ease the process.

## Data Protection Act 1998 (DPA)

Under the Data Protection Act 1998, transsexualism and gender reassignment would constitute 'sensitive data' for the purposes of the legislation. It can only be processed for certain specified reasons set out in the Act.

For more information, see guidance from the Information Commissioner at <http://www.informationcommissioner.gov.uk/>

## Section 8 Asylum and Immigration Act 1996

Since May 2004 a potential employer must see an applicant's proof of identity and right to work in the UK. This includes a UK/EEC passport or a full birth certificate and a P45, P60, National Insurance card or a letter from a Government agency.

For more details go to:  
[http://www.ind.homeoffice.gov.uk/ind/en/home/0/preventing\\_illegal](http://www.ind.homeoffice.gov.uk/ind/en/home/0/preventing_illegal)

Some transsexual people may not have any identification documents in their acquired gender, and may have to disclose their transsexual identity. Employers must ensure that this information is kept confidential.

## Legal Obligations of Other Agencies

### Criminal Records Bureau (CRB)

#### What is the CRB?

The Criminal Records Bureau provides a new service called 'Disclosure.' By providing wider access to criminal record information, the CRB helps employers in the public, private and voluntary sectors identify candidates who may be unsuitable for certain work, especially those positions that involve contact with children or other vulnerable members of society.

#### What is the clearance procedure?

To enable it to do its job, the CRB has to be aware of any previous names and/or gender of prospective employees. However, the bureau has now devised a process which allows transsexual people to pass details on to the CRB without first revealing them to the employer.

#### What do transsexual applicants have to do?

The CRB has developed a separate application procedure, which allows transsexual applicants to exclude previous names from the Disclosure Application form. However, applicants will still be required to send details of their previous identity in a separate letter directly to the 'Sensitive Casework

Manager' within the CRB. The CRB will then check the data sources held against both current and previous names.

This avoids the need for disclosure about gender history or former name to the employer or voluntary body at the application stage, but allows the CRB to carry out the requisite checks against any previously held identities.

It should be noted that where a conviction or (in Enhanced Disclosure cases) other relevant information has been recorded in a previous name, this will be revealed on the Disclosure and as such details of any previous identity may be revealed. Where there are no convictions recorded, the details of any previous names that have been provided directly to the CRB will not be revealed on the Disclosure.

Transsexual applicants wishing to take advantage of this separate procedure should contact the CRB for further details (see under list of Useful Organisations).

## **Recruitment Agencies**

### **What is the law regarding recruitment agencies?**

It is unlawful for a recruitment agency to discriminate against a transsexual person:

- in the terms on which it offers to provide any of its services, or
- by refusing or deliberately omitting to provide them, or
- in the way in which it provides any of them

unless one of the exceptions under the SDA applies, such as a genuine occupational qualification (GOQ).

### **Is the agency covered if the employer is wrong about the exception?**

If the employment agency has been assured by the employer that a vacancy is covered by a GOQ and this turns out to be wrong, the agency has a defence if it can prove that:

- it acted in reliance on a statement by the employer that its action would not be unlawful, and
- that it was reasonable for it to rely on the statement

It is a criminal offence punishable by a fine of up to £5,000, knowingly or recklessly to make a statement that is generally false or misleading.

### **Do agencies have to tell employers that an applicant is transsexual?**

This question should only arise if there is a relevant GOQ relating to the particular job.

There is no legal obligation to disclose information about the transsexual status of an individual, and agencies should not provide such information without the individual's prior consent.

### **What about voluntary workers?**

Volunteers are only protected by the SDA if they have a contract about the work that they do. As most volunteers do not have a contract they will not, therefore, be protected by the legislation for the purposes of their voluntary work.

## 3 Part Two: Workplace Good Practice

### Equal opportunities policies

Equal opportunities policies should refer to discrimination on grounds of gender reassignment, as well as grounds of sex.

Employers who have policies and procedures on sexual orientation, culture and religion, age and HIV status as well as race, sex and disability should add gender identity to the list.

### The Transition Process

#### What should employers do first?

If the organisation has a policy on gender identity, managers (and anyone else prepared to act as a point of contact) should be made aware of it.

Whoever is approached must first reassure the individual (who is likely to be under considerable stress) that the company will be as supportive as possible.

The next step is to confirm who should be the main point of contact to manage the transition from the company's perspective, and then to arrange a meeting (with the nominated person) to have a more detailed discussion and to agree the process for handling the transition.

#### What should happen at the first formal meeting?

It is a good idea for the employer and employee to write an action plan together for managing the transition at work. This, along with any other notes of the meeting, must be kept strictly confidential in the individual's personnel file.

The action plan might include:

- whether the employee is to stay in their current post or be redeployed
- the expected timescale of the medical and surgical procedures, if known
- the time off required for medical treatment, if known
- the expected point or phase of change of name, personal details and social gender
- whether the employee wishes to inform their line manager, colleagues and clients themselves, or would prefer this to be done for them, and whether training or briefing of colleagues or clients will be necessary
- what amendments will need to be made to records and systems
- whether a transsexual employee is adequately covered by existing policy on issues such as confidentiality, harassment and insurance and if not, how these will be amended
- agreeing a procedure for adhering to any dress code
- agreeing the point at which the individual will commence using single sex facilities in their new gender (such as toilets)

After a person has successfully transitioned into their new gender role, or obtained a gender recognition certificate, it would not be appropriate to keep these records within the personnel file and they should be destroyed.

If the company has an occupational health team, it may also be useful to involve them at this stage.

### Should colleagues, clients and customers be informed?

It is good practice for employers to take responsibility for informing whoever needs to know, unless the individual going through the process would prefer to do this. If so, the employer will just need to know when the disclosure is to take place and in what detail, so that they can agree and provide appropriate support. Employers should not inform colleagues, clients and the public that an employee is intending to undergo, or is undergoing, gender reassignment, without the individual's explicit consent.

It is never appropriate to inform colleagues, clients and the public that an employee has in the past undergone gender reassignment. This should be a private matter since gender reassignment will have no bearing on that person's ability to do their job. Employers should bear in mind that if such an employee is in possession of a gender recognition certificate it is unlawful to disclose their transgendered status without their consent.

Education should take place on two levels: general information about transsexualism and specific information to enable people to understand the needs of the person involved.

At the point of change of gender, it is common for transsexual people to take a short time off work and return in their new name and gender role. This is often used as an opportunity to brief others.

If someone has 'transitioned' prior to joining an employer or a new department, the employer should not mention their transsexual history. Indeed, this could constitute a criminal offence in the case of someone who has obtained a gender recognition certificate.

*Case Study: B transitioned from male to female while working as an assistant in a department store. After discussion with management it was decided that she would remain in a customer-facing role as she was well liked by colleagues and she felt happy in her present work environment. Her colleagues were very accepting of her transition. During a busy period a few weeks into transition B noticed a woman customer who moved away whenever she approached to see if she could help. Finally another assistant became free and served her. As she completed her purchase she complained that she had to wait a long time because she did not want to be served by B. The assistant called a manager who listened to her complaint and then explained that B was a capable and valued member of staff and that it was not the company's practice to discriminate on any basis and that it did not allow customers to discriminate against staff either.*

### **What happens at the point of changing gender at work?**

The action plan should contain the date when the person intends to change their gender role, and all briefing sessions should be completed by then.

If applicable, the individual concerned should be given their new uniform early on in the process to allow them to become comfortable wearing it. Again, if applicable, the employer should provide a new locker in the relevant area, along with a new name badge.

All personnel records must be updated for the transition. Employers are encouraged to create new records rather than amend old ones, to ensure confidentiality. All data protection regulations must also be adhered to.

### **What can members of staff do to make the transition easier?**

All members of staff should try to refer to the transsexual person by their new name and use pronouns appropriate to their new gender role. In the early days it is only natural that people may occasionally get mixed up, and the transsexual person should be aware that this could happen and be prepared to make allowances. Employers must also be aware of the genuine concerns that members of staff may have, and resolve any issues quickly.

Unfortunately, no matter how much preparation is made and support given, there may still be people who do not understand the situation or are unsympathetic. It is advisable to discuss this in advance with the transsexual person and agree informally how they would prefer this to be managed.

Any incidents of misconduct, harassment, bullying or victimisation should be dealt with quickly and in accordance with the company's Disciplinary and/or Grievance Procedure – ensuring compliance with the Dispute Resolution Regulations. See: [www.dti.gov.uk/resolving\\_disputes](http://www.dti.gov.uk/resolving_disputes)

### **Should employers offer relocation?**

A transsexual person may want to be relocated during the initial period if, for example, their working environment is stressful, perhaps because they have direct contact with the public.

Relocation may not always be necessary or appropriate, however, and any decision should always be made in consultation with the individual. Some employees may prefer to stay within the environment in which they have made friends and where they feel supported.

### **What time off should be allowed for medical treatment?**

As far as possible, employers should discuss how much time the individual will need to undergo gender reassignment treatment. When the individual is absent for treatment or surgery then normal sick pay arrangements should apply.

They should also follow their normal policy for medical appointments. As a matter of good practice, employers should offer flexibility to individuals who may need to take holiday or rearrange working hours in order to attend additional appointments (for instance, for electrolysis).

Employers should remember that it would constitute unlawful discrimination if they treat an individual undergoing gender reassignment treatment less favourably than someone who is absent for some other medical reason.

### What about dress codes?

Many employers operate a dress code system. It is good practice to allow enough flexibility in the dress code to accommodate the process of transition from one sex to the other.

*Good practice example: M was working as a sales assistant when she began her transition to female. Her employer discussed the possibility of temporary redeployment out of the public gaze, but M preferred to remain with her team. So the company relaxed its dress code, giving M flexibility over the length and style of her hair, her jewellery and makeup, prior to the point at which she felt comfortable in a skirt rather than trousers. For a period some customers perceived her as female and others as male, but M felt happy to accept this, and indeed used the perceptions of customers as an indicator of when to begin presenting as unequivocally female.*

### When should the person start to use different single sex facilities?

The employer and employee should agree the point at which the use of facilities such as changing rooms and toilets should change from one sex to the other. This may be, for example, the point at which the individual begins to present permanently in the sex to which they identify.

It is not acceptable to treat a transsexual person as though they have a third sex, i.e. neither male nor female. It is therefore not acceptable to insist on a transsexual employee using separate facilities in the long term, for example an accessible toilet for disabled people.

A transsexual employee should be granted access to 'men only' or 'women only' areas according to the sex in which they permanently present. Under no circumstances should they be expected, after transitioning, to use the facilities of their former gender.

### How should employers handle media interest?

Instances of gender reassignment can attract the attention of the local and national press. If the organisation has a press office it should prepare a statement which can be issued as and when necessary.

If not, a member of management should be nominated to liaise with the media. Other staff should be advised to maintain strict confidentiality and not provide any information.

If an employee is being harassed by the media, their employer should try to protect them, and consider strategies which minimise personal exposure and the need for the person to defend their decision.

In extreme cases, employers and employees can complain to the Press Complaints Commission.

**Good practice example:** *R, a university researcher, was 'outed' to the media by a colleague. This colleague felt that R should not be admitted as a member of a women's college because of her ambiguous legal identity (her social identity and most documentation reflected the gender with which she identifies, whilst her legal status remained that recorded at birth).*

*R, who had not made a secret of her status to her employer, but who was not widely known as transsexual, found herself the subject of gossip and controversy. Her employer protected her from direct media harassment at work, and made its own statement to the effect that the matter was between them and R, and that they were entirely satisfied with her qualifications and abilities to undertake the work for which she was employed.*

*Colleagues were supportive, and interest in the issue soon died away.*

## Human Resource Issues

### What questions can employers ask at interview?

Interviewees may not necessarily want to disclose their transsexual status at interview, and it is not a question that should be asked.

However, if one of the exceptions applies (see part one), an individual would be expected to disclose his or her transsexual status and an interviewer would therefore be able to ask an appropriate question. An exception will not apply if a person has obtained a gender recognition certificate, unless the employment is for the purposes of an organised religion (see margin note on p9).

### What about references and certificates?

When an employer is asked for a reference for a transsexual person, he or she must provide it, without hinting that the person has had a change of gender.

If the employer has to keep evidence of professional status or qualifications, he or she should discuss with the individual concerned how to retain such evidence on file – if, for example, certificates are in the individual's original name – so as not to compromise or breach disclosure of protected information.

### What about keeping records?

The employer should ensure that all documents, public references (such as telephone directories, prospectuses, web biographies) and employment details reflect the acquired gender of the person. This will prevent any breach of confidentiality.

Where documents have been seen and copies taken at the point of starting employment (such as a birth certificate) then every effort should be made to replace those with equivalent documents in the new name and gender.

In some instances, however, it may be necessary to retain records relating to an individual's identity at birth, for example, for pension or insurance purposes prior to obtaining gender recognition. However, once a person has obtained a Gender Recognition Certificate these **MUST** be replaced with new details.

### **Who should have access to the records?**

Access to records showing the change of name and any other details associated with the individual's transsexual status, (such as records of absence for medical treatment) must be restricted to staff who need the information to do their work.

They could include people directly involved in the administration of a process, for example the examining medical officer, or the person who authorises payments into a company pension scheme. They do not include colleagues, clients or line managers.

Once a person has obtained a Gender Recognition Certificate there must be no disclosure of this information, not least because it may be a criminal act subject to a maximum £5000 fine. Breaches of confidentiality should be treated in the same serious manner as disclosure of personal details of any other member of staff (see below).

Transsexual people in employment may choose voluntarily to disclose information at a secondary level, for example, answering an equal opportunities questionnaire, or asking for support from a line manager. Again, strict confidentiality should be observed as further disclosure must not be made without the express permission of the transsexual person.

### **When can the employer make a disclosure?**

The GRA defines information about a person's application for gender recognition and a person's gender history as 'protected information'.

This means that if an employer or employee acquires the information in the course of official duties, it is a criminal offence to disclose it. It is not an offence, however, to disclose 'protected information' if the person cannot be identified or if the individual gives their consent.

Any records held on a transsexual employee in their birth gender and those held on the same person in their acquired gender should be kept confidential, with only specified staff having access to them. The DPA limits the purposes for which information may be kept, and when that information is no longer useful it must be destroyed.

### **What about insurance?**

Employers registering staff for corporate insurance and benefits policies should ask their underwriters if they need to be informed of a transsexual employee's status, since some insurers automatically invalidate a policy if gender reassignment is not disclosed.

The employer should get the employee's prior written consent before disclosing the information. If an employer is unaware that an employee has reassigned gender, the obligation to disclose falls upon the employee, who could also be held liable in the event of an incident for which no valid insurance cover existed.

An employer should inform insurers, if they require the information, in confidence, in the following cases of group insurance policies:-

- a) Group life assurance
- b) Group permanent health or income protection
- c) Group private medical insurance
- d) Group personal accident insurance
- e) Group motor vehicle insurance in the case of company cars

This requirement does not apply if the person has a gender recognition certificate.

## Pensions

### What is the individual's entitlement to a state pension?

A transsexual person who receives a full gender recognition certificate will be treated according to their acquired gender for state pension purposes. This means that their state pension age will be the same as for other members of their acquired gender – currently 65 for men and 60 for women.

Transsexual people who do not obtain a full gender recognition certificate retain their state pension rights in accordance with the sex that is recorded on their birth certificate.

A transsexual woman without a full gender recognition certificate who is working beyond the age of sixty is able to make separate arrangements for the payment of national insurance contributions so as to retain her privacy in the workplace.

### What about occupational and personal pensions?

In terms of pension provision, it is good practice for people to be treated as having their birth gender up to the point of transition (i.e. when they start to live fully in the acquired gender) and their acquired gender from the point of transition. This would apply for example in calculating funds transfers between pension plans.

In some cases, however, it is considered administratively convenient, with the agreement of the transsexual person, to treat them as having the acquired gender for the entire duration of the pension contribution history.

When a person has undergone gender reassignment (but does not have a gender recognition certificate) and is a member of a contracted out pension scheme, they will often be treated according to their birth gender for the purposes of the contracted out rights.

It is up to the scheme to decide how to treat any rights over and above the contracted out rights. A person who has obtained a full gender recognition certificate must be treated according to their acquired gender for the purposes of contracted out pension rights, from the date of the certificate. The effect on contracted out rights is explained more fully below.

Occupational pension schemes are required to provide equal overall scheme benefits for men and women in respect of pensionable service from 17 May 1990. It is for the scheme to decide how to treat any non-contracted out rights accrued before that date.

The GRA contains provisions dealing with the treatment of Guaranteed Minimum Pension (GMP) rights when a person obtains a full gender recognition certificate. Anything other than the treatment of GMPs and Equivalent Pension Benefit (EPB) rights would be matters for schemes to decide on the basis of their own legal advice.

Occupational pension schemes that are contracted-out of the additional state pension scheme (SERPS/S2P) provide benefits in place of additional state pension rights.

### **What about contracted out salary related (COSR) pension schemes?**

From April 1978 to April 1997, members of contracted out salary related (COSR) pension schemes built up rights to a guaranteed minimum pension (GMP). GMP rights built up at a different rate for men to that for women because women reached pension age at 60 and men at 65. Since April 1997, COSR schemes have to satisfy a test of overall quality and from that date, men and women have built up benefits at the same rate.

If a person obtains a full gender recognition certificate, any GMP rights that person has built up between 1978 and 1997 would have been worked out on the basis of their birth gender rather than their acquired gender, and the amount of accrued GMP will not be affected by recognition in their acquired gender.

Further, any pension rights built up in a COSR scheme since April 1997 will not be affected if they get a full gender recognition certificate because since that date rights for men and women have built up at the same rate.

### **What about survivor benefits?**

In terms of survivor's benefits, this depends in large part upon the marriage relationship or civil partnership status of the individual. Regardless of legal gender, married partners and civil partners have legal rights to certain degrees of provision. Any other provision for survivors is normally at the discretion of the trustees of the pension scheme if not specifically covered in the pension scheme rules.

Most people who contract out of the additional state pension by joining either a contracted out money purchase (COMP) scheme or an appropriate personal pension (APP) scheme (including a stakeholder pension (SHP) scheme) will have a pension fund made up of both protected rights (made up mainly from the investment of the National Insurance contribution rebates) and non-protected rights.

At retirement, the existing rules require that annuities (pensions payable for life) purchased with the protected rights must be the same for both men and women. This requirement does not apply to the non-protected rights (rights made up mainly from the investment of payments made by the employee and/or his or her employer).

This means that annuities purchased with the non-protected rights are in most cases higher for men because women, on average, live longer and their annuities are likely to have to pay out more money over the course of their retirement. So, most members of these types of scheme will find that some of their benefits will be affected when they obtain a full gender recognition certificate.

Those people who have already purchased an annuity before they obtain a full gender recognition certificate will not be affected.

## 4 Useful Organisations

### Advisory Conciliation and Arbitration Service (ACAS)

Acas works with employers and employees to improve working life through better employment relations. You can ring its helpline for advice on rights at work.

Head Office  
Brandon House  
180 Borough High Street  
London SE1 1LW  
020 7210 3613  
[www.acas.org.uk](http://www.acas.org.uk)  
Acas Helpline – 08457 47 47 47  
Textphone users – 08456 06 16 00 (Monday – Friday 08:00 – 18:00)

### Criminal Records Bureau

The Criminal Records Bureau helps employers in the public, private and voluntary sectors identify candidates who may be unsuitable for certain work, especially those positions that involve contact with children or other vulnerable members of society.

For further information, you may wish to contact the Sensitive Casework Manager on 0870 90 90 811 or by writing to:

Sensitive Casework Manager  
Freepost NWW5699A  
PO Box 165  
Liverpool L3 1ZY  
[www.crb.gov.uk](http://www.crb.gov.uk)

### Data Protection

The Office of the Information Commissioner oversees and enforces compliance with both the Data Protection Act 1998 and the Freedom of Information Act 2000. The office also runs a helpline.

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF  
Tel: 01625 545 700  
email: [mail@ico.gsi.gov.uk](mailto:mail@ico.gsi.gov.uk)  
[www.informationcommissioner.gov.uk/](http://www.informationcommissioner.gov.uk/)  
Data Protection Help Line: 01625 545 745  
Email: [mail@ico.gsi.gov.uk](mailto:mail@ico.gsi.gov.uk)  
Registration/Notification Line: 01625 545 740  
Email: [data@notification.demon.co.uk](mailto:data@notification.demon.co.uk)

## Equal Opportunities Commission

The Equal Opportunities Commission (EOC) is the principal source of advice and guidance to the public on the Sex Discrimination Act. This includes provisions of the Act relating to discrimination on grounds of gender reassignment.

### Great Britain

Arndale House  
Arndale Centre  
Manchester  
M4 3EQ  
Email: [info@eoc.org.uk](mailto:info@eoc.org.uk)  
Fax: 0161 838 1733

### Scotland

St Stephens House  
279 Bath Street  
Glasgow  
G2 4JL  
Email: [scotland@eoc.org.uk](mailto:scotland@eoc.org.uk)  
Fax: 0141 248 5834

### Wales

Windsor House  
Windsor Lane  
Cardiff  
CF10 3GE  
Email: [wales@eoc.org.uk](mailto:wales@eoc.org.uk)  
Fax: 0292 064 1079

Helpline: 0845 601 5901  
Website: [www.eoc.org.uk](http://www.eoc.org.uk)

## Equality Direct

This service is aimed at business managers to give them easy access to advice on a wide range of equality issues.

Helpline: 0845 600 3444  
Website: [www.equalitydirect.org.uk](http://www.equalitydirect.org.uk)

## FTM Network

The FTM network is an informal self-help group, open to all female to male transgender and transsexual people, or those exploring this aspect of their gender.

FTM Network  
BM Network  
London WC1N 3XX  
Email: [membership@ftm.org.uk](mailto:membership@ftm.org.uk)  
Website: [www.ftm.org.uk](http://www.ftm.org.uk)

## Gender Recognition Panel

The Panel determines applications for Gender Recognition Certificates. Its website features guidance on the consequences of obtaining legal recognition of an acquired gender.

[www.grp.gov.uk](http://www.grp.gov.uk)

### **Gender Trust**

The Gender Trust is a charity which specifically helps adults who are transsexual, gender dysphoric or transgender.

The Gender Trust  
P.O.Box 3192  
Brighton  
BN1 3WR  
Email: [info@gendertrust.org.uk](mailto:info@gendertrust.org.uk)

### **Press for Change**

Press for Change is a political lobbying and educational organisation, which campaigns on behalf of all transgender people in the UK.

Press for Change  
BM Network  
London WC1N 3XX  
Email: [letters@pfc.org.uk](mailto:letters@pfc.org.uk)  
Website: [www.pfc.org.uk](http://www.pfc.org.uk)

### **Women and Equality Unit**

Further copies of this booklet and the *Guide to the Sex Discrimination Act 1975* can be obtained from [www.womenandequalityunit.gov.uk](http://www.womenandequalityunit.gov.uk) and from:

Women and Equality Unit  
1 Victoria Street  
London SW1H 0ET  
Email: [info-womenandequalityunit@dti.gsi.gov.uk](mailto:info-womenandequalityunit@dti.gsi.gov.uk)  
Telephone: 0845 001 0029

## 5 Glossary

### Acquired gender

The new gender of a person who has had their gender reassigned and/or legally recognised.

### FTM

Female to male transsexual. A person who is changing, or has changed, gender from female to male.

### Gender

The overwhelming majority of people have a gender that accords with their anatomical sex.

Gender consists of two related aspects: gender identity, which is a person's internal perception and experience of their gender; and gender role, which is the way that the person lives in society and interacts with others, based on their gender identity.

Gender is less clearly defined than anatomical sex, and does not necessarily represent a simple 'one or the other' choice. Some people have a gender identity that is neither clearly female nor clearly male.

For the purpose of the law, however, people can only be male or female.

### Gender dysphoria

A person with gender dysphoria may feel that they have a gender identity that is different from their anatomical sex. As a result, they may experience anxiety, uncertainty, or persistently uncomfortable feelings about their birth gender.

### Gender reassignment

A process which is undertaken under medical supervision for the purpose of reassigning a person's sex by changing physiological or other characteristics of sex.

### Gender Recognition Certificate

A **full Gender Recognition Certificate** shows that a person has satisfied the criteria for legal recognition in the acquired gender. It will be issued to a successful applicant if he or she is not married or in a civil partnership. From the date of issue, the holder's gender becomes the acquired gender for all purposes. An **interim Gender Recognition Certificate** will be issued to a successful applicant if he or she is married at the time of the application. The interim certificate is issued to allow the applicant and his or her spouse to end their marriage easily. It has no legal significance beyond this use. When the marriage is ended, a full Gender Recognition Certificate will be issued to the successful applicant

### MTF

Male to female transsexual. A person who is changing, or has changed, gender from male to female.

### **Sexual orientation**

An orientation towards persons of the same sex (lesbians or gay men) or an orientation towards a person of the opposite sex (heterosexual) or an orientation towards persons of the same sex and the opposite sex (bisexual).

### **Transsexual person**

A person with gender dysphoria who feels a consistent and overwhelming desire to live their life in the gender that is opposite to that assigned them at birth.

### **Transgender person**

A person who through the use of hormones and surgery takes on the characteristics of the opposite sex and lives permanently in the gender role appropriate to that sex. They do not undergo full genital reassignment surgery.

### **Transsexual person**

A person with gender dysphoria who feels a consistent and overwhelming desire to live their life in the gender that is opposite to that assigned them at birth.

### **Transvestite**

The clinical name for a cross-dresser. A person who dresses in the clothing of the opposite sex. Generally, transvestites do not wish to alter their body and do not necessarily experience gender dysphoria.

### **Trans**

A generic term generally used by those who identify themselves as transgender, transsexual or transvestite. The term should only be used as an adjective.









Women and Equality Unit  
1 Victoria Street  
London SW1H 0ET

[www.womenandequalityunit.gov.uk](http://www.womenandequalityunit.gov.uk)

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