

GENDER RECOGNITION

We are increasingly receiving requests for advice on matters concerning gender recognition, what it means and how individuals may be treated under the law if they are transgender or 'trans' as it is commonly referred to.

Please note that whilst The Equality Act 2010 refers to someone changing their gender as transsexual, we recognise this term may be considered as outdated and so the term transgender will be used throughout this factsheet.

Gender reassignment

What the law says

The Equality Act 2010 (the Act) protects you if you are transgender. If your gender identity differs from the gender you were born with, this is known as gender reassignment under the Act and is a protected characteristic. In other words, you have protection against acts of discrimination and must not be discriminated against because of the change in your gender.

To qualify for protection you must either:

- propose to undergo a transgender process
- be undergoing a transgender process
- have completed a transgender process

In any of these circumstances, there is no requirement to have any medical supervision or undergo any specific surgery or medical procedure. This is because undergoing a transgender process

is a personal transition involving a change in the attributes assigned to your birth gender.

As a transgender person you must not be discriminated against because:

- you are proposing, undergoing or have undergone the transgender process
- someone believes you are transgender, perhaps because you sometimes dress in clothes different to those of your birth gender
- you are associated with, or connected to, a transgender person or someone who is perceived to be transgender

If you are treated differently for any of these reasons it may be that you have been discriminated against. The treatment can be one-off or it can be continuing and does not have to be intentional.

However, there are circumstances when being treated differently due to gender reassignment may not be unlawful. Such circumstances may include:

- Competitive sports

Where a sport organisation decides to restrict entry into teams or events where an entrant has undergone gender reassignment it may not be unlawful. It may be thought, for example, that a transgender woman may have a speed or strength advantage over other teams or entrants.

- Single-sex service

Where a service is provided exclusively to one gender it may not be unlawful to exclude someone of the opposite sex i.e. access to a women's refuge. However, the service provider would have to be able to justify in law why the service was not provided to that transgender person at that time.

This is known as a 'proportionate way of achieving a legitimate aim' or a good enough reason. In other words, it would need to be shown that the action was balanced against any disadvantage that the transgender person may have suffered.

Do I have to tell my employer that I am transgender?

There is no requirement under the Act for you to tell your employer of your gender reassignment status. It is not therefore necessary to tell them that you propose to undergo the transgender process. However, this does mean it may be difficult for your employer to be aware when that process actually starts and therefore be able to offer you any support at that time. Realistically, changes in physical characteristics and/or dress may well indicate that the process is underway. At that point it may be useful to discuss any changes with your employer.

I am undergoing gender reassignment. Does my employer have to provide separate changing and toilet facilities?

The issue of toilet and changing facilities is often the most difficult to resolve in the workplace, often due to objections raised by other members of staff. As soon as a person decides to live permanently in the opposite gender, whether or not they complete any medical procedure or obtain a gender recognition certificate, a change of changing and toilet facilities should be considered. It is potentially discriminatory to expect someone in their acquired gender to have to use facilities of their birth sex or be restricted to using other accessible facilities.

If there are open changing facilities, including showers, consideration should be given to ensuring suitable privacy for all members of staff.

I suffer with gender dysphoria. Am I classed as disabled under the Act?

Gender dysphoria is a condition where an individual suffers significant distress with the gender they were assigned at birth. It is unlikely this condition itself is a disability and will not therefore qualify as a disability under the Act.

However, should you suffer with depression as a result of this condition, or if you have long-term side effects from any surgery or medication, those conditions could themselves become a disability resulting in additional protection under the Act.

I am undergoing gender reassignment surgery. Am I entitled to time off?

Gender reassignment surgery should be treated the same as any other surgical process for which absence is lawful. Furthermore, it is specifically provided within the Act that if you are undergoing such surgery you should be treated no less favourably than someone who was absent from work due to sickness or injury.

Gender recognition certificate (GRC)

The Gender Recognition Act 2004 enables transgender people to have their acquired gender legally recognised. To do this you will have to apply to the gender recognition panel see [here](#) and show that you are:

- are over 18
- have, or have had, gender dysphoria
- have lived in the acquired gender for at least two years prior to the date of the application
- intend to live in the acquired gender until death
- It is not a requirement of the application that you should have undergone surgery or any other medical intervention.

If the application is successful you will be granted a GRC and will be recognised in your new acquired gender. As such, you will benefit from rights and responsibilities associated with that gender. You will also be entitled to a new birth certificate and be able to marry someone of the same or opposite sex to that of your acquired gender.

For more information on this process see .Gov website [here](#).

I am married and want to apply for a GRC – can I do this?

Yes, if you are in a marriage or civil partnership, you may apply for a GRC. If you want to remain married or in the partnership, your spouse or partner will need to agree to that and complete the necessary forms.

Even if your partner/spouse refuses to sign the forms or does not want to remain in the marriage/partnership an application for a GRC can still be made. If successful, you will be granted an 'interim certificate'. This can be used to end the marriage or civil partnership and you will have 6 months to do this.

Once the marriage/partnership is ended a full GRC will be granted.

Differing gender terminology

We sometimes receive enquiries from callers who refer to themselves as 'non-binary', 'pan' gender or 'fluid' gender. Non-binary gender is often used to describe someone who does not identify themselves as male or female.

Someone who has a fluid gender is someone who identifies with a particular gender but that may change or vary over time. For example, they may identify as female some days and male at other times, with a variation at random affected by different circumstances.

To identify as pan gender an individual may consider themselves capable of identifying and able to form relationships with all genders.

There is no automatic protection under the Act for people identifying as being in any of these categories, unless you are also transgender or suffering with a disability.

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