

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. Please note that whilst The Equality Act 2010 refers to someone changing their gender as transsexual, we recognise the potential issues with this term and so the term transgender/trans will be used throughout this factsheet.

Gender reassignment

What the law says

The Equality Act 2010 (the Act) protects you if you are transgender. Gender reassignment is a protected characteristic under the act and is defined as your gender identity differing from your biological gender. It is important to note here that not all individuals who identify as trans will fall under the legal definition.

To qualify for protection under the Equality Act you must either:

- propose to undergo a process (or part of a process) to reassign your sex
- be undergoing a process (or part of a process) to reassign your sex
- have completed a process (or part of a process) to reassign your sex

This process can be by changing physiological or any other “attributes of sex” but 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
- 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 trans person may have suffered.

- There are also some circumstances in which employers may seek a trans individual for a certain project or role. This is known as a "positive action measure" and is supported by the Equality Act.

Non-binary and intersex individuals

Non-binary individuals (those who do not consider themselves a specific gender) and intersex individuals (or people with variations in sex characteristics) may also have protection under the protected characteristic of gender reassignment.

Supreme Court Ruling 16th April 2025

In this landmark ruling in a case related to sex discrimination the court stated that when the term "woman" is used in the Equality Act it is referring to biological sex regardless of whether an individual has a Gender Recognition Certificate (GRC). The judges made clear in this judgement that trans individuals still have protection under the Equality Act's existing provisions. This is currently a live issue and further guidance will be issued as soon as possible.

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 a process to reassign your sex. However, this does mean it may be difficult for your employer to be aware when the process starts and therefore may not 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. As soon as a person decides to live permanently in the opposite gender, regardless of whether they complete any medical procedure or obtain a gender recognition certificate, a change of changing and toilet facilities should generally be considered by the employer. 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. The Supreme Court ruling may affect rights in this area, so it is important to take specific advice if you are experiencing issues with your employer regarding such facilities.

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 or any other mental health issues because of Gender dysphoria, or if you have long-term side effects from any surgery or medication, those conditions could themselves be considered 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. 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 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 - Apply for a Gender Recognition Certificate: [Overview - GOV.UK.](#)

Please note that non-binary is not a legally recognised gender in the UK. If you are intersex or VSC you may not need to use this process to apply to correct your birth certificate.

The supreme court ruling has not affected the process of applying for a GRC.

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 then 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.

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