

**Birmingham City Council
Equality Act 2010 Fact Sheet**

GENDER REASSIGNMENT EQUALITY

The Equality Act (2010) protects people who share a protected characteristic from discrimination and harassment. The protected characteristics include: **age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.**

This Fact Sheet looks at the protection afforded to people who share the protected characteristic of **GENDER REASSIGNMENT**

An exemption also applies in the area of occupational requirements. The Equality Act 2010 Statutory Code of Practice Employment states:

An employer may apply, in relation to work, a requirement to have a particular protected characteristic if the employer can show that having regard to the nature or context of the work:

- the requirement is an occupational requirement
- the application of the requirements is a proportionate means of achieving a legitimate aim (see paragraphs 4.25 to 4.32); and
- the applicant or worker does not meet the requirement; or,
- except in the case of sex, the employer has reasonable grounds for not being satisfied that the applicant or worker meets the requirement

In the case of gender reassignment and marriage and civil partnership, the requirement is not to be a transsexual person, married or a civil partner.

Example – Occupational Requirement: A counsellor working with victims of rape might have to be a woman and not a transsexual person, even if she has a Gender Recognition Certificate, in order to avoid causing them further distress.

Source: [Equality Act 2010: Explanatory Notes \(Revised Edition\) August 2010](#)

What about positive action? - The Act contains provisions for employers and service providers to develop and introduce positive action measures and initiatives aimed at addressing inequality and disadvantage specific to a protected characteristic including gender reassignment. As stated in the Equality Act 2010 Code of Practice (Service

What is a Gender Recognition Certificate? - Under the Gender Recognition Act 2004 a transsexual can apply to have his or her “acquired” gender legally recognised, providing the following criteria has been met:

lived permanently in their preferred gender role for at least two years
been under medical supervision⁷ and assessed as having gender
dysphoria, now or in the past
currently unmarried
able to declare that they intend to live permanently in their new
gender role for the remainder of their life

Successful applicant will be issued with a Gender Recognition Certificate (GRC) and a (new) Birth Certificate. Where a person holds a GRC they must be treated according to their acquired gender. Personal records held by organisations must be up-dated.⁸ Key points about the Gender Recognition Act include:

- § Holders of GRC are able to marry someone of the opposite sex or form a civil partnership with someone of the same sex (Civil Partnership Act 2004) to that acquired by him or her⁹
- § In most circumstances, information pertaining to someone who has applied for GRC or has acquired a GRC must not be shared unless the individual concerned has given their explicit consent. This includes disclosure about a person’s previous gender/sex¹⁰.
- § Transsexual people should not be routinely asked to produce their Gender Recognition Certificate as evidence of their legal gender. Such a request would compromise a transsexual person’s right to privacy. If a service provider requires proof of a person’s legal gender, then their (new) birth certificate should be sufficient confirmation¹¹

⁷ “Medical supervision” refers to psychiatric or psychological assessment.

⁸ For further information about GRA see (**GENDER RECOGNITION ACT, EXPLANATORY NOTES** (Available at http://www.legislation.gov.uk/ukpga/2004/7/pdfs/ukpgaen_20040007_en.pdf), and Press for Change – <http://www.pfc.org.uk/GRA2004.html>)

⁹ <http://transequality.co.uk/Legislation.aspx>

¹⁰ www.equalityhumanrights.com/advice-and-guidance/your-rights/transgender/tra... [18/04/12]

¹¹ Equality Act 2010 Statutory Code of Practice Services, public functions and associations
www.equalityhumanrights.com

Resources

1. Press for Change – The UK’s Leading Experts in Transgender Law – Provide legal advice, training and research to trans people, their representatives, and public and private bodies. www.pfc.org.uk
2. Gender Identity Research and Education Society – Provides information for trans people, their families and the professionals. www.gires.org.uk
3. “Collecting information on gender identity” Report by Equality & Human Rights Commission. Available on the EHRC website www.equalityhumanrights.com
4. Government Equality Office’s Transgender e-bulletins. Available at: www.homeoffice.gov.uk/publications/equalities/lgbt-equality-publications/e-bulletin/
5. The Government’s “Advancing transgender equality: a plan for action” December 2011 produced by the Government Equality Office. Available from www.homeoffice.gov.uk/equalities
6. Equality and Human Rights Commission www.equalityhumanrights.com