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Gender Identity and Transitioning at Work Resources

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Annex A – Terminology

Terminology

Cisgender or Cis: Someone whose gender identity is the same as the sex they were assigned at birth. Non-trans is also used by some people.

Coming out: When a person first tells someone/others about their identity as lesbian, gay, bi or trans.

Dead naming: Calling someone by their birth name after they have changed their name. This term is often associated with trans people who have changed their name as part of their transition.

Gender: Often expressed in terms of masculinity and femininity, gender is largely culturally determined and is assumed from the sex assigned at birth.

Gender dysphoria: Used to describe when a person experiences discomfort or distress because there is a mismatch between their sex assigned at birth and their gender identity. This is also the clinical diagnosis for someone who doesn't feel comfortable with the gender they were assigned at birth.

Gender expression: How a person chooses to outwardly express their gender, within the context of societal expectations of gender. A person who does not conform to societal expectations of gender may not, however, identify as trans.

Gender identity: A person's innate sense of their own gender, whether male, female or something else (see non-binary below), which may or may not correspond to the sex assigned at birth.

Gender reassignment: Another way of describing a person's transition. To undergo gender reassignment usually means to undergo some sort of medical intervention, but it can also mean changing names, pronouns, dressing differently and living in their self-identified gender. Gender reassignment is a characteristic that is protected by the Equality Act 2010, and it is further interpreted in the Equality Act 2010 approved code of practice.

Gender Recognition Certificate (GRC): This enables trans people to be legally recognised in their affirmed gender and to be issued with a new birth certificate. Not all trans people will apply for a GRC and you currently must be over 18 to apply.

You do not need a GRC to change your gender markers at work or to legally change your gender on other documents such as your passport.

Intersex: A term used to describe a person who may have the biological attributes of both sexes or whose biological attributes do not fit with societal assumptions about what constitutes male or female. Intersex people may identify as male, female or non-binary.

LGBT: The acronym for lesbian, gay, bi and trans.

Non-binary: An umbrella term for a person who does not identify as only male or only female, or who may identify as both.

Outed: When a lesbian, gay, bi or trans person's sexual orientation or gender identity is disclosed to someone else without their consent.

Person with a trans history: Someone who identifies as male or female or a man or woman, but was assigned differently at birth. This is increasingly used by people to acknowledge a trans past.

Passing: If someone is regarded, at a glance, to be a cisgender man or cisgender woman. Cisgender refers to someone whose gender identity matches the sex they were 'assigned' at birth. This might include physical gender cues (hair or clothing) and/or behaviour which is historically or culturally associated with a particular gender.

Pronoun: Words we use to refer to people's gender in conversation - for example, 'he' or 'she'. Some people may prefer others to refer to them in gender neutral language and use pronouns such as they/their and ze/zir.

Sex: Assigned to a person on the basis of primary sex characteristics (genitalia) and reproductive functions. Sometimes the terms 'sex' and 'gender' are interchanged to mean 'male' or 'female'.

Trans: An umbrella term to describe people whose gender is not the same as, or does not sit comfortably with, the sex they were assigned at birth. Trans people may describe themselves using one or more of a wide variety of terms, including (but not limited to) transgender, transsexual, gender-queer (GQ), gender-fluid, non-binary, gender-variant, crossdresser, genderless, agender, nongender, third gender, two-spirit, bi-gender, trans man, trans woman, trans masculine, trans feminine and neutrois.

Transgender man: A term used to describe someone who is assigned female at birth but identifies and lives as a man. This may be shortened to trans man, or FTM, an abbreviation for female-to-male.

Transgender woman: A term used to describe someone who is assigned male at birth but identifies and lives as a woman. This may be shortened to trans woman, or MTF, an abbreviation for male-to-female.

Transitioning: The steps a trans person may take to live in the gender with which they identify. Each person's transition will involve different things. For some this involves medical intervention, such as hormone therapy and surgeries, but not all trans people want or are able to have this. Transitioning also might involve things such as telling friends and family, dressing differently and changing official documents.

Transphobia: The fear or dislike of someone based on the fact they are trans, including the denial/refusal to accept their gender identity.

Transsexual: This was used in the past as a more medical term (similarly to homosexual) to refer to someone who transitioned to live in the 'opposite' gender to the one assigned at birth. This term is still used by some although many people prefer the term trans or transgender.

Annex B – Relevant Legislation

RELEVANT LEGISLATION

1. Equality Act 2010

The Equality Act 2010 consolidated the many discrimination acts and regulations established over previous decades. Gender reassignment is now one of the nine distinct protected characteristics covered and the original provisions made previously under the Sex Discrimination Act on gender reassignment are strengthened.

Specifics of the Act:

Section 7 states a person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing the physiological or other attributes of sex. Such a person is referred to under the act as a transsexual person and it is unlawful to discriminate against such a person in work and in the provision of goods, facilities, services and public functions. It is not necessary to be under medical supervision and those perceived as transsexual people along with those associated with transsexual people such as family, friends and colleagues are also protected from unlawful treatment.

In general, direct discrimination (section 13) arises when a transsexual individual is treated less favourably than another because of their gender reassignment. For example, failure to deal with a transsexual woman in the same manner as other women would be direct discrimination; however, even if she is treated in the same manner, indirect discrimination may still arise if an apparently neutral policy, rule, practice or guideline is applied generally but particularly disadvantages transsexual people.

Section 16 confirms that absence from work because of gender reassignment cannot be treated less favourably than absence because of sickness or injury and, importantly, absence for any other reason if not unreasonable to do so. This allows employers to treat gender reassignment absence differently from, but no less favourably than, sickness absence and can remove substantial disadvantage that would otherwise be incurred by transsexual people.

Section 149, the public sector equality duty, requires public authorities to have due regard to the need to eliminate discrimination, harassment and victimisation against transsexual people, to advance equality of opportunity and foster good relations between transsexual people and others. Under the specific duty, public authorities are obliged to publish information used to arrive at objectives supporting trans equality, and to report outcomes that achieve trans equality.

Schedule 9 "Occupational Requirements" does provide for exceptions where the requirement not to be a transsexual person is "a proportionate means of achieving a legitimate aim". The onus is on the employer to prove such an exception applies. In general, a requirement that restricts an occupation to persons of a particular sex should also be open to transsexual persons of that acquired gender. The Codes of Practice published by the Equality and Human Rights Commission are clear that such exceptions will be rare and on a case by case basis. 17

2. Gender Recognition Act 2004

The Gender Recognition Act provides transsexual people with legal recognition in their "acquired" gender. Legal recognition follows from the issue of a full Gender Recognition

Certificate (GRC) in cases where the Gender Recognition Panel (a body made up of judicially trained lawyers and doctors) is satisfied that the applicant meets all of the following criteria:

- a) Has, or has had, gender dysphoria.
- b) Has lived in the acquired gender throughout the preceding two years.
- c) Intends to continue to live in the acquired gender until death.

It should be noted that surgical intervention/gender reassignment surgery is now not a requirement for the issue of a GRC.

Legal recognition has the effect that, for example, a male-to-female transsexual person is recognised as a woman for all purposes - in law. Upon the issue of a full GRC, the person assumes all legal rights of their new gender, including that to marry someone of the opposite gender to their acquired gender, and to retire and receive state pension at the age appropriate to the acquired gender. The effect is just as if they had always been of the acquired gender. A person whose birth was registered in the United Kingdom is entitled to a new birth certificate reflecting the acquired gender.

Specifics of the Gender Recognition Act 2004

Section 13 of the Gender Recognition Act deals with those social security benefits and pensions in which sex discrimination is still being phased out, by ensuring that transsexual people with recognition are treated according to their acquired gender insofar as certain survivor's benefits are concerned: - Widowed Mother's Allowance, Widow's Pension, Widowed Parent's Allowance, Incapacity Benefit and Category A retirement pensions.

Section 22 re-enforces the right to privacy for the transsexual person in that it is an offence for a person to disclose information he has acquired in an official capacity about a person's application for a GRC or about the gender history of a successful applicant - this is "protected information". The term "official capacity" is set out to include a person's functions as a member of the civil service, a constable, an employer or prospective employer, a person acting in the course of business or in the supply of professional services. Once a transsexual person has a GRC, any disclosure that the person was born a different gender to that in which they now live, is a criminal offence. S22 (4)(b) permits disclosure where the individual "has agreed to disclosure of the information" and, if such consent is forthcoming, can facilitate performance of an HR process.

The Act contains a series of exceptions, as listed at 22(4), as well as provision for the Secretary of State to add to them "by order", that allow "protected information" to be disclosed for valid public policy reasons, such as for the purposes of prevention or investigation of crime.

3. Human Rights Act (1998) & Data Protection Act

The European Convention of Human Rights could also be invoked, e.g. Article 8, right to respect for private and family life, Article 10, freedom of expression, and Article 14, prohibition of discrimination.

For the purposes of the Data Protection Act, gender reassignment and any information appertaining to an individual's gender history would constitute "sensitive data" which can only be processed for certain specified reasons, as set out in the Act.

It is the antithesis of the intentions of the privacy provision included in the Gender Recognition Act to ask or expect an individual to evidence they have gender recognition. Given the wider privacy protection applicable to all, it is best practice to assume any transsexual person has gender recognition and treat them accordingly. This also prevents gender recognition becoming

an inappropriate demarcation when the provisions of the Equality Act apply to all transsexual people irrespective of whether they have gender recognition.

Annex C – Managers checklist for staff who are transitioning

Have you read a:gender’s Workplace and Gender Reassignment Guide?	<input type="checkbox"/>
Have you read ONS Gender Identity and Transitioning at Work Policy	<input type="checkbox"/>
Have you sought support from your Employment Relations Team? For reasons of confidentiality, agree with the employee what information should be shared with the caseworker in the Employment Relations Team.	<input type="checkbox"/>
Have you outlined the support available to the employee through: <ul style="list-style-type: none"> ● Occupational Health and Employee Assistance Programme ● special leave ● workplace adjustments - including Workplace Adjustment Passport ● a:gender and Friends of Spectrum? 	<input type="checkbox"/>
Have you spoken to the employee to gain an understanding of any concerns they may have regarding the transition process and any perceived impact on the workplace and their colleagues?	<input type="checkbox"/>
Have you agreed a planned approach, - led by the employee covering: <ul style="list-style-type: none"> ● updating records ● agreeing any workplace adjustments ● planning and agreeing leave for transitioning ● agreeing approach to inform colleagues ● agreeing when single sex facilities will be used ● agreeing first day arrangements? 	<input type="checkbox"/>

Update records	
Have you agreed with the employee who will update various records?	<input type="checkbox"/>
Have you agreed the date that personal records (title, first name, family name and gender) should be updated? The timing of record changes should be synchronised as far as possible.	<input type="checkbox"/>

If you are updating records, have you agreed with the employee what personal information should be shared with colleagues?	<input type="checkbox"/>
<p>Have you or the employee updated the following records?</p> <ul style="list-style-type: none"> ● HR and payroll – pre-existing staff number should be retained ● Email address – a new account is recommended ● IT systems ● Circulation lists ● Staff directories ● Security pass ● Warrants ● Rotas ● Name badges ● McCSP – employee to update as required <p>Records should be updated so that all current and future references pick up the employee's new details and records pre-dating the transition are deleted as far as possible.</p>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Have you identified departmental contacts in HR, Security, payroll and IT in case of glitches? Your Caseworker or HR Business Partner will be able to help identify these contacts.	<input type="checkbox"/>

Workplace adjustments	
<p>Have you agreed any temporary or longer- term workplace adjustments?</p> <p>For example</p> <ul style="list-style-type: none"> ● special leave ● change in role or duties ● no lifting following surgery ● flexible working following facial hair treatment 	<input type="checkbox"/>
Have you reminded the employee that they can record the agreed adjustments in the Workplace Adjustment Passport? Completion is voluntary but it is a good way of keeping track of what has been agreed -particularly if a change of manager or post is anticipated.	<input type="checkbox"/>

Leave for transitioning

Have you agreed the expected time off required, to attend appointments or undertake treatments relating to gender reassignment?	<input type="checkbox"/>
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Use of single sex facilities	
<p>Have you agreed when the employee will start to use single sex facilities, such as toilets and changing rooms, appropriate to their acquired gender? This will usually be on the first day of transition.</p> <p>If colleagues object to sharing facilities with employees going through transition, the situation should be dealt with through communication, discussion and education. If colleagues persist with unreasonable objections you may need to manage the situation via grievance or disciplinary procedures.</p>	<input type="checkbox"/>

Informing colleagues	
Have you agreed with the employee how and when colleagues will be told about the transition? This could be done on a one-to-one basis, in groups or by email. There are some useful example emails in the a:gender guide.	<input type="checkbox"/>
<p>Have you or the employee informed colleagues</p> <ul style="list-style-type: none"> ● what is going to happen and when ● what their responsibilities are ● how they can help and support the employee ● of the facts but not graphic detail? 	<input type="checkbox"/>
If the employee has decided to inform colleagues themselves, have they told you when this will happen so you can provide support as required?	<input type="checkbox"/>

First day arrangements	
<p>Some employees will prefer to take a short break to prepare to return to work in the acquired gender. Have you arranged for:</p> <ul style="list-style-type: none"> ● a friend to meet the employee from reception and accompany him/her back to the work place ● an appointment for a new security pass 	<input type="checkbox"/> <input type="checkbox"/>

<ul style="list-style-type: none"> • a one to one meeting with the employee to discuss on-going support • new uniform to be provided as appropriate? 	<input type="checkbox"/> <input type="checkbox"/>
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Handover to new manager	
<p>Have you spoken to the employee to agree what information should be shared with the new manager?</p>	<input type="checkbox"/>
<p>Have you set up a meeting for you, the employee and the new manager to discuss what has happened to date and what is planned in the future? Previous special leave / sickness absence should be covered to ensure they are accounted for accurately.</p>	<input type="checkbox"/>

Annex D - Employee Gender Transition Template

GENDER TRANSITION TEMPLATE:

	What, who or how?	When?
1. Information before you disclose your intentions:		
Have you read ONS policy on Gender Identity and Transitioning at Work?		
2. Telling people about your situation. Who have you told:		
HR		
Your manager/mentor		
Close colleagues		
Your union rep		
Anyone Else		
3. Planning your transition:		
Your new name (in full) including title		
Your office		
Name of line manager		

Name of confidential contact/project manager		
Medical advisor's name		
Medical advisor's contact phone number		
4. Your medical appointments and absences		
Counselling*		
Psychiatric reports*		
Regular medical/ blood tests for hormone therapy*		
Hair removal treatment*		
Speech therapy*		
Genital surgery:		
pre-surgery consultations		
operation & convalescence		
post-surgery consultations		
Mastectomy:		
pre-surgery consultations		

operation & convalescence		
post-surgery consultations		
Throat surgery:		
pre-surgery consultations		
operation & convalescence		
post-surgery consultations		
Other surgery (please identify what surgery is involved):		
1. pre-surgery consultations		
operation & convalescence		
post-surgery consultations		
2. pre-surgery consultations		
operation & convalescence		
post-surgery consultations		
3. pre-surgery consultations		
operation & convalescence		
post-surgery consultations		

5. Telling your colleagues what is going on		
Tell people face-to-face individually or in groups		
Ask your manager or project manager to tell people for you.		
Use photos		
Pass on your news in other ways		
Carry out awareness sessions		
Answering questions		
Using the grapevine		
6. Getting ready for your first day in your new role		
When will it be?		
Do you need a change of role?		
Are you ready?		
Is your wardrobe ready?		

Are your colleagues ready?		
Can you get into work OK?		
7. Changing everything into your new identity		
Your travel pass & photo		
Your work pass & photo		
Your name (including title):		
do your colleagues know it?		
name badges		
telephone lists		
letter templates		
what else?:		
Your e-mail		
Your HR records		

Your pay records		
Your pension record		

*Medical appointments may be recurring at regular intervals. You will first want to identify which ones are likely to apply to you. Eventually you will get your first appointment. After that, you should be able to let your manager know:

- the likely frequency of appointments of this type
- whether you need official time off to attend them
- if you need official time off in order to travel to or from the appointment (which may itself have been arranged outside of work time)

Annex E – Special Leave

Reason for absence	Eligible for special leave?
1. Appointments with psychiatrists, psychologists or counsellors to <ul style="list-style-type: none">• assess gender dysphoria, in relation to the condition generally, not just in relation to work.• support through the process of transition• provide referrals for medical interventions that will help to live and work effectively in the new gender	Yes
2. Appointments with healthcare professionals for blood tests, blood pressure monitoring, hormone therapy consultations and injections	Yes
3. Appointments with healthcare professionals for a: <ul style="list-style-type: none">• general check up• reason unconnected with the gender transition• reason not directly related the process of transition	No

Reason for absence	Eligible for special leave?
<p>4. Surgical interventions that will help the individual to live and work effectively in the acquired gender :</p> <ul style="list-style-type: none"> • genital surgery • breast surgery, including mastectomy, augmentation and correction of asymmetry • throat surgery (Adam's apple removal/reduction and/or vocal chord surgery) • facial feminisation surgery, for example rhinoplasty (nose re-shaping) • hair transplantation 	Yes
<p>To include the surgery itself, any hospital stay and the immediate recovery period (the period for which a specialist explicitly instructs a patient to restrict their activities and not return to work in order to not jeopardise the benefit of the procedure) and any complications directly arising from the operation.</p>	
<p>5. Appointments required for pre-surgical assessment and post-surgical follow-up, including pre-surgical hair removal from the area to be subjected to surgery. This will include the genital area and also other areas of the body from which any donor skin/flesh is taken.</p>	Yes
<p>6. Treatment for any illness or condition not directly related the process of transition.</p>	No
<p>7. Facial hair removal for transition purposes</p>	Yes

Reason for absence	Eligible for special leave?
8. Speech therapy	Yes