

Policy name	Gender identity and Transitioning at Work Policy
Date policy was introduced	12.11.2018
This policy has been authorised by (SRO)	
Policy owner	Employment Relations
Other contacts	
Scope of the policy	
Next review date	This policy will be reviewed subject to business need, when issues arise or due to legislation. Any review will be in consultation with DTUS. ONS will monitor the effectiveness of this policy and procedure, with a view to compliance and diversity.

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Summary

ONS recognises that the sex some people are assigned at birth does not match their gender identity (a person's internal perception and individual experience of their gender).

Through this policy and procedure ONS is committed to applying an equality principle of respect for transgender, non-binary and intersex people - respect for their gender identity, for their right to work with dignity, for their name and personal identity, and for their privacy and confidentiality.

Throughout this policy "trans" refers to both binary trans identities and non-binary identities unless otherwise stated. Non-binary people are those for whom the binary categories of man or woman do not completely describe their gender identity all of the time.

Where applicable this policy should be read as part of a wider set of policies within ONS, including:

- Equality and Diversity policy
- Grievance Policy
- Attendance Management Policy and Procedure
- Special Leave Policy
- Disciplinary Policy
- Recruitment and selection procedures

Scope

Through this policy and guidance, ONS is committed to ensuring that no employee, prospective employee, visitor, customer, contractor or supplier, will be treated less favourably, harassed or victimised on the grounds of their transgender, non-binary or intersex status (see glossary of terms in Annex A)

Principles

The following principles underpin this policy and associated guidance:

- ONS recognises its legal obligations under the Data Protection Act (2018), the Equality Act (2010), the Gender Recognition Act (2004), Protection from Harassment (1997) and The Human Rights Act (1998) and is committed to operating within the terms of the relevant codes of practice (see Annex B for a summary of key legislation). ONS extends these obligations to include all transgender, non-binary and intersex persons.
- Knowledge of a person's gender history, acquired in the course of official duties, will be kept strictly confidential and will not be disclosed to a third party without prior consent. Breaches of confidentiality may be considered as a disciplinary offence.
- All trans people should be treated according to the gender in which they identify, irrespective of their legal gender status under the Gender Recognition Act 2004.
- ONS has a zero-tolerance approach to bullying and harassment. Any action deemed to constitute bullying and/or harassment on the grounds of transgender, non-binary or intersex status will result in consideration of action under the ONS Disciplinary Policy and Procedure.
- Managers will support any staff who have undergone, express an intention to or are in the process of transitioning and will confidentially discuss their needs and preferences on an individual basis with the aim of making the transitioning process at work as simple as possible.
- Absences resulting directly from the process of gender reassignment will not count towards absence triggers for the purposes of formal attendance management.

Roles and responsibilities

Employees

All employees have a responsibility to:

- Maintain an awareness of ONS statutory duties regarding trans people. (see annex B)
- Behave in ways that are sensitive to and respectful to others.
- Respect and keep confidential information about any trans or intersex persons, even if they choose to confide in you.
- Use correct names and pronouns.

Managers

All Managers have a responsibility to:

- ensure that this policy is implemented effectively.
- foster a culture in which compliance with this policy is regarded as integral to the work of ONS.
- establish and maintain a working environment that provides equality and respect for all trans employees.
- take proactive steps to prevent bullying or harassment of trans and intersex employees and act promptly if there is evidence that it is occurring.
- respect and keep confidential information about any trans or intersex employee, even if they choose to confide in you.
- not to refer to a trans person's gender history in local records.

Guidance

Confidentiality and Personal Records

1. An employee's gender history is part of their personal medical history and as such the ONS will respect the confidentiality of all transgender, non-binary and intersex employees and will not disclose any such information without explicit consent from the employee.
2. The ONS recognises that the right to disclose or discuss gender identity and history is the prerogative of the individual, however it may be advisable for an employee to inform certain people in confidence of their legal gender status. For example, unless a Gender Recognition Certificate (GRC) is held, records concerning pensions must be based on 'birth gender' with strict procedures in place to prevent disclosure of that birth gender other than solely for administration with that pension environment.
3. A GRC is given to an individual who has made an application under the Gender Recognition Act 2004 to the Gender Recognition Panel. To gain the certificate the individual must show:
 - that he or she has lived in his or her acquired gender for two or more years and intends to do so permanently, and
 - he or she must have been assessed as having gender dysphoria. (See Annex A)
4. A GRC provides legal recognition in the acquired gender, giving that person, the rights and responsibilities belonging to someone of that gender; and further provides the legal right to request that all references to former name and gender are removed and replaced with current name and gender.
5. Although not covered by the Gender Recognition Act (2004), ONS accepts that it is good practice to treat a transgender person who does not hold a Gender Recognition Certificate in the same way as a person who does. Additionally the Equality Act (2010) established Gender reassignment as one of the nine distinct protected characteristics 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. ONS extends this protection from discrimination to include non-binary and intersex persons.
6. Where an employee transitions after joining ONS, many records will already exist that bear previous names and gender. It is important that all are changed to coincide

with the new gender and that adequate steps are taken to prevent disclosure and use of the previous identity. These include:

- Destruction of all information regarding a person's previous gender. If this is not possible, only restricted access should be permitted
 - Encrypt any necessary information stored on a computer
 - Place any paper documents that cannot be destroyed in a sealed envelope and attach it to a new employee file, clearly marked as confidential, to be opened only if required, by a member of the Employment Relations Team
 - Identify an employee responsible for the updating of all records (including old records) in a systematic and timely way
 - Acquire written permission before disclosing any information to a third party
7. The date from which gender is changed on records will be agreed with the individual. No records should be changed without the consent of the employee concerned.

Recruitment

8. ONS will not ask prospective employees for any information regarding their gender history as part of the recruitment process however it may be necessary following provisional offer of employment to make enquiries into previous names and employment history as part of the pre-employment reference and security checks.
9. Where a current or potential employee reveals information about their gender history or legal gender status becomes known through the pre-employment check process, the recipient of the information must keep it confidential and should not reveal it to anyone without the individual's consent. Data will not be retained unless necessary and in any case, will comply with the principles contained within the Confidentiality and Personal Records section above.
10. It is a criminal offence to disclose information relating to an application under the Gender Recognition Act, including the individual's gender history. A breach of confidentiality regarding the gender history of those with or without a GRC may result in consideration under ONS Disciplinary Policy.

Transitioning

Before an Employee joins ONS

11. An employee who has transitioned before commencing employment with ONS is under no obligation to disclose their gender history to their manager or colleagues. If their transition is on-going they should refer to the section below for support and advice. If an individual becomes aware from a third party this should not be disclosed to anyone else without the individual's permission.

Transitioning During Employment with ONS

12. Where an employee transitions during employment, ONS is committed to ensuring that assistance, support and advice is made available for the individual and line manager where appropriate.

13. Transitioning is a unique process for each individual and may include any number of changes to a person's life. It should not be assumed that the goal of every individual's transition is to change their physiology or legal gender.
14. Individuals can seek support from the employee assistance programme, a:gender (the support network for staff in government departments), Friends of Spectrum (ONS LGBT* diversity network), their line manager, the Equality, Inclusion and Wellbeing Team and the Employment Relations team.
15. Line managers may find it helpful to review the line manager check list in Annex C however the first step will be to ask the individual how they would like to manage their transition in the workplace.
16. ONS will be guided by the individual in terms of the speed at which the transition will progress and agreement reached on such matters as:
 - When the individual will first present in their gender
 - When name changes and official records will be changed
 - How and when colleagues will be informed of the change
 - How information will be managed and by whom
 - When the individual will start using facilities relating to the gender to which they are transitioning
 - Time off that may be required for medical or surgical treatment, and/or possible side effects
 - Whether time off will be taken before returning to work in the acquired gender
17. An optional template for the individual undergoing, or intending to undergo transition is provided in annex D to capture key decisions and timescales. The level of detail entered is purely a matter for the individual; they may use it simply as an aide-memoire or they may fill it in together with their line manager as their plans for transitioning emerge. Managers should not impose the use of the template on an individual nor use it to dictate the pace of the transitioning process.
18. Additionally, the individual may consider temporary or permanent adjustments which will support their transitioning process. Workplace adjustments should be led by the individual. The manager should consider such requests sympathetically, and in-line with the Workplace Adjustment Guidance. Any agreed adjustments can be recorded on the workplace adjustment passport, being mindful of confidentiality. Under no circumstances should information be passed to anyone else without the express permission of the individual who is transitioning.

Absence Management

19. Not all people undergo surgery as part of the transitioning process, every individual, with medical support, makes the decision that is right for them. Nevertheless, employees may need to attend many appointments and/or undergo a range of medical or surgical procedures related to their transition which requires time away from work.
20. Where employees are required to be absent from work in circumstances resulting directly from their transitioning process or intersex status, wherever possible appointments should be made outside normal working hours. However, if this is not possible paid special leave will apply if the employee needs time off for appointments

relating to the transitioning process or intersex status. The exact amount of special leave will vary as managers will consider each case on an individual basis.

21. Special leave will also apply where an employee is unfit for work following surgery or other treatments directly related to the transitioning process or intersex conditions. Examples of the type of absence which may qualify for special leave can be found in annex E.
22. Wherever possible the amount of special leave for treatment and recovery should be agreed in advance, based on information from the individual's medical practitioner. The manager and employee should agree keeping in touch arrangements to inform the manager of the progress towards a return to work, and to discuss any adjustments which may help to facilitate this. This should be supported by a fit note for absences over 7 calendar days. The individual may wish to discuss the reason stated on their fit note with their GP in order to maintain confidentiality. Whilst the fit note will be helpful for managers to understand the likely period of absence from work, there will be no requirement to upload this to Fusion if the absence is authorised as special leave.
23. Where an employee remains unfit to attend work and does not recover as expected, the manager will be required to consider the suitability of continued paid special leave. Where the likelihood of a return to work is unknown the manager needs to consider what is reasonable and sustainable in terms of the amount of paid special leave given. In these circumstances absence may be more appropriately considered in accordance with the principles of the Attendance Management Procedure for continuous sickness absence; including review meetings and referral(s) to Occupational Health where appropriate. If a successful return to work is facilitated, sickness absence due to transitioning should not count towards attendance triggers for formal action therefore no attendance improvement warning should be considered.
24. Special leave under this process will not be granted for sickness absences indirectly related to intersex or transitioning procedures. Where this is unclear a referral to Occupational Health should be considered to assess whether special leave, or sickness absence applies.
25. For other indirectly related absences the manager can consider workplace adjustments and flexible working where reasonable and appropriate, including working from home where possible. For guidance managers should refer to policies including, but not limited to, Special Leave, Workplace Adjustments, and Flexible Working (including homeworking).

Dress

26. An employee will decide when it is appropriate to commence presenting themselves in dress they deem appropriate. As part of the transitioning at work process the line manager may need to discuss with the employee their needs and preferences at this time particularly where uniform is worn as part of the role and a replacement required.

Facilities

27. As part of their transition process, the employee will have considered the most appropriate time for them to use facilities such as toilets and changing rooms that are

appropriate to their gender. ONS recognises that it is up to the employee to decide when they feel comfortable using these facilities.

28. Additionally, ONS provides gender neutral facilities at Newport, Titchfield and London offices for individuals who may feel uncomfortable choosing a gendered toilet.
29. A trans employee should not be expected or asked to use the disabled facilities, to expect this may impede the individual's transition, be embarrassing or offensive and may constitute harassment.

Pronouns

30. Pronouns are the 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.
31. A trans employee can expect to be referred to by their preferred pronoun be that gender specific or gender neutral.
32. ONS recognises that unintentional mistakes may occur therefore all employees should be reassured that where they accidentally misgender a trans employee a simple apology and correction is the best resolution in these circumstances. Where deliberate, persistent or malicious misgendering occurs managers should refer to the bullying and harassment section below.

Bullying and Harassment

33. Any employee who believes they have a complaint to make in relation to this policy may prefer in the first instance to take an informal approach which may include raising the issue with their line manager, a Respect contact, a member of the Employment Relations team, or with their countersigning officer to seek a resolution. If that is not successful or not appropriate, they should refer to the grievance procedure, which identifies informal and formal options to resolution, including mediation.
34. Some terms may be considered offensive to the trans community. A glossary of appropriate terms is provided in Annex A.
35. ONS has a zero-tolerance approach to bullying and harassment. Where individuals are subjected to persistent or deliberate unacceptable behaviour this should be addressed under the ONS Disciplinary Policy and Procedures. Such behaviour includes, but is not limited to:
 - Derogatory remarks, innuendo or gossip
 - Persistent, deliberate use of the incorrect name/pronoun
 - Disclosure of gender history
 - Threats of disclosure of gender history
 - Expressing or acting upon stereotypical assumptions
 - Intrusive questioning
36. Managers should be aware of the possibility of trans employees being harassed or discriminated against by the public. Discreet support should be discussed with the individual, and the Employment Relations team where consent is given. A request

made by the individual to be moved from a public facing role should be considered by the manager in-line with workplace adjustments guidance and business needs.

List of additional resources

Annex A – Terminology

Annex B – Legislation

Annex C – Line managers guide

Annex D – Transitioning template

Annex E – Special Leave