



Workforce

Gender transitioning guide

Introduction

This guide will help managers and employees understand and support colleagues who are considering, undergoing, or have undergone a gender reassignment process.

The following guide forms part of the standard for workforce policies. These policies apply to all staff within NHSScotland, regardless of the board they are employed by.

NHSScotland seeks to create an inclusive workplace where the unique contribution of every individual is valued and encouraged and equal treatment is applied. Equal treatment is fundamental in making sure all employees have the same access to opportunities. This may not always mean treating everyone in the same way.

When following this guide, it is crucial to balance the needs of trans employees while also addressing the needs of all other employees.

Who does this guide apply to?

This guide aims to help create an inclusive and supportive working environment for all applicants for employment, employees, and workers, including bank, agency, and sessional workers.

Other agencies may request individuals working on NHS premises who require support. This may include volunteers, contractors, and those on placement, such as trainees, students, or work experience participants.

Legal framework

In the Equality Act 2010, people who have the characteristic of gender reassignment are proposing to undergo, are undergoing, or have undergone a process or part of a process to reassign their sex by changing physiological or other attributes of sex.

The Equality Act 2010 describes people who have the protected characteristic of gender reassignment as transsexual people. This term is now considered outdated, and it is more appropriate to use the term 'trans.'

Trans people are protected from discrimination under the Equality Act 2010 if they have the protected characteristic of gender reassignment.

No one should disclose information about someone's gender reassignment without their explicit written consent. Such a disclosure may be a criminal offence.

What does trans mean?

Trans is an umbrella term used to describe people whose gender identity or expression is not the same as or does not sit comfortably with the sex they were assigned at birth.

Gender transitioning

Every transition is different. Therefore, it is essential that we support and understand individuals who wish to take or have taken steps to present themselves as a gender different from the one they were assigned at birth. It is everyone's responsibility to create a safe and secure workplace that respectfully considers the needs of trans employees.

Gender reassignment

Gender reassignment is a personal process where an individual transitions from their birth sex to the gender with which they identify. This may involve undergoing medical treatments such as hormone therapy and surgery. However, not all transgender individuals desire or are able to pursue these options.

Each person's transition is unique and may include informing family and friends, adopting different clothing styles, and updating their name and official documents.

There is no requirement for trans people to tell their employer about their gender reassignment status. For example, we may not know someone's trans history if they have been living for some time in the gender they identify as. However, if someone is proposing to undergo gender reassignment, they may want to discuss this with their manager so they can be supported through the process.

Meeting with the employee

When an employee decides to share that they are transitioning, it is good practice to speak sensitively to the employee about their needs. It will help you to understand if there are any reasonable and practical steps that can be taken to support them.

Everyone involved in these conversations must maintain confidentiality, except where agreement has been given beforehand. For example, a manager may ask for guidance and support from HR but must not disclose the person's identity unless permission to do so has been given by them.

Individuals who are transitioning and require specific changes or adaptations to their role or working environment may request adjustments.

Areas of discussion may include:

- The anticipated point or phase of change of name, personal details, and gender.
- Time off for specialist clinical appointments.
- Date of changing their gender presentation at work.
- Who will inform colleagues and consent to do so.
- Compliance with local dress code and uniform policy.
- Access to and use of facilities such as toilets, changing rooms, and showers.
- Any perceived challenges or barriers that the employee wishes to discuss and agree on the steps to overcome.
- Implications for an employee whose job role has a genuine occupational requirement to be a different gender to which they identify.

Agreement should be reached in conjunction with the employee regarding who progresses any actions. It is important to allow the person to be in control of the timetable and to be flexible in case they wish to delay any part of it.

Time off for transition

Not all people who transition choose to undergo medical or surgical treatment. However, an employee may decide to undergo a number of procedures to support their transition.

The level and nature of treatment may vary considerably depending on the individual concerned. Requests for time off will be dealt with in the same way as other specialist clinical appointments using the [Special Leave Policy](#).

Informing colleagues and patients

An employee's gender transition may or may not be visible. There is no general need or obligation to inform colleagues or patients that a person is transitioning. Sharing such information may be considered appropriate where the professional relationship with that individual was established prior to their transition and is to continue. In the event this is required, written consent from the employee who is transitioning must be obtained and retained in line with General Data Protection Regulations (GDPR).

Gender recognition certificate

The Gender Recognition Act 2004 provides trans people with legal recognition of the gender they identify with. To obtain legal recognition, trans people must go through a defined process.

A Gender Recognition Panel must also be satisfied that someone has, or has had, gender dysphoria. They should also have lived in the gender they identify with throughout the previous 2 years and intend to live in this gender until death.

In practical terms, legal recognition is provided by issuing a Gender Recognition Certificate (GRC). This allows people to get a new birth certificate reflecting their new gender.

The Gender Recognition Act 2004 provides that when someone has a GRC, they must be treated according to the gender they identify with. However, trans people do not need to have a GRC and should not routinely be asked to produce it as evidence of their legal gender. To do so will compromise a trans person's right to privacy. If there is a requirement to see proof of someone's legal gender, for example, as part of recruitment, then their birth certificate is sufficient confirmation.

Name change

If someone changes their name as part of their transition, the manager must be informed. System changes and records should be updated.

There is no legal requirement to amend records that predate someone's transition.

Dress code and uniform

It is important to understand the individual's needs and any changes required to what they wear at work. These changes may be temporary in nature to support a period of treatment or surgery and any symptoms that present.

Consideration should be given to the impact this would have on their job role and working environment. If any necessary protective equipment cannot be worn, adjustments to duties and responsibilities should be discussed, including the timescale for this and any long-term impact.

Toilets and changing facilities

The Equality Act 2010 allows facilities for employees to be provided separately or differently for men and women, such as toilets or changing facilities. This means that when separate male and female toilets or changing facilities are provided, organisations are allowed, for example, to tell men they cannot use female toilets or changing facilities.

If a trans person is not allowed to use their preferred facilities, this could be unlawful discrimination on grounds of gender reassignment. An evidence-based reason must be provided.

The Equality Act 2010 does allow the provision to exclude a trans person from single or separate sex facilities. There may be some limited circumstances when excluding trans people from using separate or single-sex toilets or changing facilities may be lawful. However, this will only be allowed if the exclusion is a proportionate means of achieving a legitimate aim. If a trans person is to be excluded from a single-sex facility alternative, appropriate and safe facilities should be provided.

These kinds of decisions must be made on a case-by-case basis. Managers must balance the needs of the trans person to use this facility against the needs of other members of staff. They should also consider if other staff members will experience any disadvantage if the trans person is allowed to use the facilities. To do this will often require careful and sensitive discussions with all the staff affected, maintaining confidentiality for the trans person.

Dealing with concerns

If any employee has concerns, they can access support and further information in the [Equality, Diversity and Inclusion Policy](#).

Relevant NHSScotland Policies

Within NHSScotland, there are national workforce policies that apply to all staff. These should be used to address instances of discrimination:

- [Bullying and Harassment Policy](#)
- [Grievance Policy](#)
- [Equality, Diversity and Inclusion Policy](#)

Other sources of information

It's important to remember that other workforce policies and guidance may also remain relevant to transitioning employees. For example:

- [Maternity Leave Policy](#)
- [Interim National Menopause and Menstrual Health Policy for NHSScotland DL\(2023\)28](#)