

Gender Recognition

Gender Recognition Act 2004

The Gender Recognition Act 2004 came into effect on 1 April 2005. The Act provides, for the first time in UK law, full legal recognition of transsexual people in their acquired gender. The Act means that people who have taken decisive steps to live fully and permanently in their acquired gender are afforded all the same rights and responsibilities appropriate to that gender.

Until recently, UK law has treated transsexuals as belonging to the sex of their birth, regardless of the fact that individuals may have lived for many years in a gender other than that into which they were born. Even where they had undergone complete gender reassignment treatment and surgical procedures, this did not change their position in law. However, last year, in *A v Chief Constable of West Yorkshire Police*, the House of Lords finally ruled that UK law should recognise transsexuals in their acquired gender.

The Gender Recognition Act 2004 enables transsexual people to apply for 'gender recognition'. Following recognition, transsexual people have the right to marry in their acquired gender and obtain a new birth certificate stating their new sex.

Procedure

In order to qualify for full legal recognition in their acquired gender, individuals must apply to a Gender Recognition Panel, showing that they:

- Have or have had gender dysphoria; or
- Have had gender reassignment surgery; and
- Have lived in the acquired gender for 2 years prior to making the application; and
- Intend to live permanently in the acquired gender.

Following a successful application, transsexual people are issued with a Gender Recognition Certificate and afforded all the rights and responsibilities appropriate to their new gender, including access to state and occupational pensions, as well as employment rights.

Sex Discrimination

Employees must then be treated in precisely the same way as others of the new gender. Importantly, this includes access to facilities;

making it unlawful to prevent a transsexual from using facilities intended for their new gender or to insist that they use their own, separate facilities. It is interesting to note that the new gender status may apply to individuals who have not undergone surgery nor intend to do so in the future *provided that they have obtained a certificate*.

The Sex Discrimination Act 1975 ("SDA") made it unlawful for an employer to discriminate against an employee or job applicant on the grounds of that person's sex, gender reassignment, or because of being married or in a civil partnership. This applies equally to both men and women.

Victimisation and Harassment

The SDA outlaws discrimination against someone who either intends to undergo gender reassignment, is going through the process of gender reassignment or has already gone through it. The SDA also provides individuals with protection from victimisation for asserting a right or making complaints because of discrimination on the basis of their gender reassignment. Similarly, in the same way that individuals suffering from harassment due to their sex, sexuality or race can make such complaints, transsexuals can rely upon the SDA in respect of complaints of harassment.

Disability Discrimination

With respect to disability discrimination, transsexuals can invoke the Disability Discrimination Act 1995 if they have been diagnosed as suffering from gender dysphoria (or a similar recognised gender identity disorder) which is permanent, or likely to persist for more than 12 months. If, for example, a transsexual employee is dismissed because of long term absence on medical grounds whilst undergoing gender reassignment, it may be possible to claim disability discrimination.

Lawful Discrimination

The SDA contains very limited exceptions where it is lawful to discriminate. These include where the employer can show that a Genuine Occupational Qualification ("GOQ") requires that the job is done by someone of a particular gender.

However, once an individual has been issued with a Gender Recognition Certificate under the Gender Recognition Act 2004, it is unlawful to discriminate on grounds that would apply to anyone else of the new acquired gender. So this would mean that a female to male transsexual would only be lawfully discriminated against where it would also be lawful to discriminate against a man, such as restricting the job involving intimate body searching of women only to women applicants, for example.

It is interesting to consider what may happen where an individual employed under a GOQ changes their gender and obtains a Gender Recognition Certificate. In these circumstances, it might potentially be possible for an employer to lawfully dismiss the individual on the grounds that they no longer possess the GOQ of being a particular gender and it is reasonable to dismiss them in all of the circumstances.

The New Legislation in Practice

The requirement to appear before a panel may be seen by some as undesirable, as will the apparent need to "medicalise" the individual rather than accepting their status on a purely social level. For these reasons it will be interesting to see how many people do go through the process of certification.

As with any new legislation, the practical effectiveness of the new Act will depend on its interpretation by individuals, employers and, ultimately, by the courts. In all cases of dispute, it is advisable to seek legal advice at an early stage.

To find out more

If you have any questions or concerns, or require more information in respect of Gender Recognition Act 2004 please contact:

0870 143 0970

Russell Jones & Walker Offices:

[Birmingham](#)

[Bristol](#)

[Cardiff](#)

[London](#)

[Manchester](#)

[Newcastle](#)

[Sheffield](#)

[Wakefield](#)

Associated office:

[Edinburgh](#)

Email enquiries@rjw.co.uk

www.rjw.co.uk

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Prepared by Russell Jones & Walker
Solicitors 2005

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