



scottish trans justice

guide



**Upholding your LEGAL RIGHTS
as a trans person in Scotland**

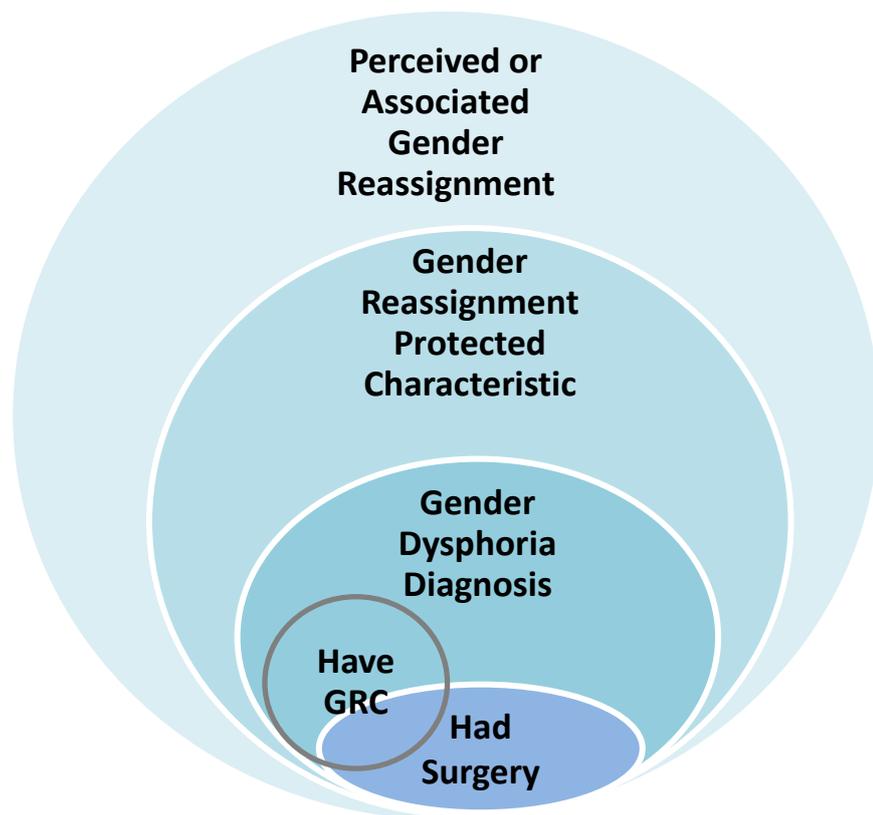
EQUALITY ACT 2010

PROTECTED CHARACTERISTIC OF GENDER REASSIGNMENT

Under the **Equality Act 2010** you count as having the protected characteristic of gender reassignment if you are proposing to undergo, are currently undergoing or have previously undergone **any part** of a process of changing the gender in which you live.

You don't need to have spoken to a doctor and you don't need to take hormones or have any surgery. It's enough to have proposed, for example, that you intend to change your name and title (Ms/Mx/Mr) or the pronouns you use (She/They/He). It is possible to have a non-binary gender identity and count as having the protected characteristic of gender reassignment. However, not all non-binary people are fully covered, unfortunately, because some have no intention to make any physical or social changes to the gender in which they live.

Usefully, a person doesn't have to actually have to be a trans person to take forward a claim of discrimination because of gender reassignment. You might face discrimination due to someone's **perception** of you even if you are not actually a trans person or it might be because of your **association** with a trans friend or family member.



WHAT YOU CAN DO IF YOU EXPERIENCE DISCRIMINATION

If you have experienced discrimination at your workplace or while using a service, then the **Equality Act 2010** is the legislation you should refer to when complaining.

Remember that there are **very short time limits** for taking forward discrimination claims (**3 months** for employment and **6 months** for goods, facilities and services). If you can't get an issue resolved yourself when it occurs, seek advice quickly from the Equality Advisory Support Service, a local Citizens Advice Bureau, your Trade Union or a solicitor.

When the problem occurs, if you feel able to, try stating that how they are treating you is not acceptable under the Equality Act 2010 and say clearly how you want them to treat you. Often the person did not intend to be discriminatory and is willing to change their behaviour. Try to speak calmly and politely even though you may feel angry or upset. It is important not to risk undermining your complaint by behaving aggressively or offensively.

If you don't feel comfortable speaking directly to the person causing you the problem, or you are very upset or angry, then you can ask a friend or a professional to assist you.

If the person causing you the problem refuses to change their behaviour, complain to a manager within the company or organisation. This could be their line manager or the human resources manager if it is a workplace issue or the complaints manager if it is a service provider. Take care to describe the sequence of events clearly to the manager and explain what solution you want.

If you can't get the problem sorted out immediately, make a careful note for yourself of:

- **WHAT** happened
- **WHERE** it happened
- **WHEN** it happened
- **WHO** was involved (including witnesses)
- **WHY** you think it happened

To make a written complaint, follow the process given in your service provider's complaints policy or your employer's grievance policy.

If that still doesn't resolve the problem then you can take your case to:

- The **Scottish Public Services Ombudsman** if it is a complaint about a public body;
- The **Financial Ombudsman Service** if it is a complaint about a bank, building society or other financial services provider in the UK;
- Your local **Sheriff Court** if it is a claim against any provider of goods, facilities or services in Scotland;
- **Employment Tribunals (Scotland)** if it is a claim against an employer.

The Further Information page at the end of this booklet contains the contact details for all of the above organisations and many more.

KEY TIME LIMITS FOR DISCRIMINATION CLAIMS:

EMPLOYMENT

To make a claim in an **Employment Tribunal**, there is usually a time limit of **THREE MONTHS** from the date that the discrimination took place.

GOODS, FACILITIES & SERVICES

To make a claim in the **Sheriff Court**, there is usually a time limit of **SIX MONTHS** from the date that the discrimination took place.

WHAT THE EQUALITY ACT 2010 SAYS IS UNLAWFUL:

DIRECT DISCRIMINATION...

...is when someone is treated less favourably than others because of a protected characteristic.

Alison is undergoing gender reassignment from male to female and wants to attend a local weight loss class. She is told that the other people attending the class would feel uncomfortable if she attended because she is a trans person, so she is turned away. This is gender reassignment direct discrimination.

DISCRIMINATION BY ASSOCIATION...

...is when someone is treated less favourably than others because they are connected in some way (such as a friendship or a family relationship) with another person with a protected characteristic.

Tom's older sibling, Carol, has undergone gender reassignment from male to female. Tom has Asperger's Syndrome and has been attending a local support centre for several months. The manager at the support centre tells Tom that he can no longer attend because he has confused and upset other service users by telling them that his sister used to be his brother. This is gender reassignment discrimination by association because of Tom's association with his trans sibling.

DISCRIMINATION BY PERCEPTION...

...is when someone is treated less favourably as if they have a protected characteristic even though the person doesn't actually have that protected characteristic.

Samantha has a deep voice. She phones up a local charity to join a social group. The receptionist thinks her voice sounds male and refuses to accept her name is Samantha. The receptionist says that the group doesn't accept trans people. Samantha tries to explain that she is not a trans person but the receptionist refuses to send her the group registration details. This is gender reassignment discrimination by perception.

INDIRECT DISCRIMINATION

...is when a rule or policy or way of doing things has a worse impact on people with a protected characteristic than those without, where this cannot be objectively justified.

A university has a blanket ban on changing its record of awards. It therefore refuses to agree to a request from a trans person to change their record and provide a new certificate in their new name. This places the trans person at a disadvantage by forcing them to reveal their gender reassignment history when providing proof of their academic qualifications to prospective employers. This is gender reassignment indirect discrimination.

HARASSMENT

...is unwanted conduct related to a protected characteristic which has the purpose or effect of violating someone's dignity or which creates a hostile, degrading, humiliating or offensive environment.

Alex has told their colleagues at work that they are a non-binary trans person who is on the Gender Identity Clinic waiting list and has started using the title 'Mx' and the pronoun 'they'. One of their colleagues starts making comments that trans people are 'freaky' and 'fake', sneers at Alex and refers to them as 'that he-she' to another colleague. This is gender reassignment harassment.

VICTIMISATION

...is treating someone less favourably because they have taken (or might be taking) action under the Equality Act or because they are supporting somebody who is doing so.

When Jennifer complains to the manager of her local medical practice that one of the members of reception staff has revealed to other patients that Jennifer is a trans woman, she is told she must find another medical practice to use because her complaint has caused a lot of awkwardness. This is victimisation because she complained under the Equality Act about experiencing gender reassignment harassment.



EXAMPLE OF A SUCCESSFUL EMPLOYMENT TRIBUNAL CLAIM

A ferry crew member was awarded £65,000 in compensation after a tribunal ruled that she had been driven out of her job by transphobic taunts from co-workers. She was referred to by her former colleagues as “he, she, it, whatever” and told to use a male changing room. The employment tribunal found that her employer had failed to protect her from “an atmosphere of intimidation and hostility caused by the fact that she was undergoing gender reassignment”. It also found that the senior management team had failed to provide employees with adequate guidelines on dealing with trans workers.

EMPLOYMENT MEDIATION AND CONCILIATION

Mediation is when an independent and impartial third party discusses a problem with you and your employer (or between you and another employee) to try and find a solution after informal discussions haven't resolved an issue. The mediator can talk to both sides separately and/or together. Mediators do not make judgments or determine outcomes – they ask questions to assist the parties to understand the issues and help them to clarify the options for resolving their difference or dispute.

Conciliation is similar to mediation but is normally used when you are entitled to make a claim to an employment tribunal. An employment tribunal claim normally involves a formal hearing taking place with evidence from witnesses, cross examination and legal arguments similar to an ordinary court. Conciliation is a voluntary and confidential process which provides an alternative way to resolve an employment dispute so as to avoid having to go through the normal tribunal hearing process.

The overriding aim of workplace mediation and conciliation is to restore and maintain the employment relationship wherever possible. This means the focus is on working together to go forward, not determining who was right or wrong in the past. However, it is not a replacement for trade union representation nor should it undermine the valuable role of trade union representatives. It is, rather, a complementary process.

You can find out more about mediation by phoning the **ACAS (Advisory, Conciliation and Arbitration Service) helpline** on **0845 47 47 47**. Where there is a complaint about employment rights that could go to a tribunal, ACAS offers help free of charge.

In addition, **Employment Tribunals (Scotland)** offers voluntary and confidential **judicial mediation** in certain types of cases. In the judicial mediation process the mediator is an Employment Judge. Suitable cases are identified, as part of the normal tribunal case management process.



CHANGING YOUR NAME AND GENDER ON IDENTITY DOCUMENTS

You are entitled to change your name at any time you want. You can change your forename and/or surname, add names or rearrange your existing names. You can change your title to Mr, Miss, Mrs, Ms or the new gender neutral Mx or you can stop using a title completely. You can, if you wish, legally have more than one name that you use for separate or the same circumstances, so long as you are not using the different names for fraudulent purposes.

In Scotland there are various ways to change your name. You can simply start using a new name socially without doing any name-change paperwork. However, it is usually easiest to do either a statutory declaration or an unenrolled deed poll so you can formally prove that you have changed your legal name. There is usually no need to pay for a solicitor to do your name and gender changes for your identity documents. You can generate a **free statutory declaration for change of name** at <http://tinyurl.com/statdecgenerator/> and get it **witnessed by a Justice of the Peace** at your local Sheriff Court. Alternatively, you can use an **online deed poll website** and get one or two friends to witness your deed poll at home. You can generate a free deed poll online to print yourself or you can pay around £15 for a more professionally printed version to be posted to you. **Do not enrol your deed poll**. Enrolling it costs over £100 and, rather than providing any benefit, will actually create the problem of your previous and new names being linked together in a publicly accessible archive.

At the same time as changing your name and title, at the start of your gender reassignment process, you can change your gender from male to female or from female to male on all your identity documents and other records except your birth certificate. At the moment, most records do not provide a non-binary gender option. You don't need to have had any hormones or surgery. To change your gender on your **medical records**, ask your GP surgery to contact **Practitioner Services** at **NHS National Services Scotland** to change your **Community Health Index (CHI) number**. To change your **Passport** and/or **Driving Licence**, complete the usual application form and enclose your new photos, proof of your name change and a short **letter from your GP confirming the gender you are now living in permanently**.

To apply for a **UK Gender Recognition Certificate**, which changes the legal gender on your UK birth certificate and provides you with extra privacy protections, you need to be **at least 18 years old**, able to prove you have been already **living in that gender for at least two years** and able to provide medical evidence that you have been **diagnosed with gender dysphoria** by a UK gender reassignment specialist medical professional. You don't need to have had any hormone or surgical treatment to get a gender recognition certificate. It is now possible to get gender recognition while remaining married.

SOME COMPLICATED SITUATIONS

In most situations the law very clearly protects people from being treated differently on grounds of gender reassignment. However there are some situations where the level of protection is more complicated and it may sometimes be lawful to treat trans people differently from other service users.

Sports Competitions

Where deemed necessary for safety or fair competition, sports bodies can require a trans person to have undergone specified physical changes in order to compete as a particular gender. For more info: <http://www.transathlete.com/>

Religious Bodies

There are some complicated but very limited circumstances when religious bodies can treat trans people differently. If they are providing a service on behalf of a public body (such as a homeless hostel) they must not discriminate.

Single Sex Services

A single-sex service can treat a trans person differently (perhaps because the trans person has a non-binary gender or because their physical body is atypical for their social gender) so long as this is proportionate and achieving a legitimate aim (such as increasing privacy and dignity). Single-sex services must respect trans people's gender identities and must not blanket-ban trans people from using their services or facilities. It should be about adapting the service provision if necessary to support appropriate access to the service for the trans person.

TRANSPHOBIC HATE CRIME

The **Offences (Aggravation by Prejudice) (Scotland) Act 2009** created a hate crime statutory aggravation for crimes motivated by malice or ill-will against trans people. The Act defines perceived 'transgender identity' as explicitly including not only transsexual people, but also non-binary gender people and cross-dressing people. Hate crimes can take many different forms, including verbal abuse, vandalism, threatening behaviour and physical or sexual assault.

You can report hate crime directly to **Police Scotland** by phoning **999** in an emergency situation or **101** in a non-emergency situation, by going to your local police station or by using the online hate crime reporting form at:

<https://www.scotland.police.uk/hate-crime/>

If you don't feel confident speaking to the police yourself, then you can contact one of the third party reporting centres listed at:

<http://www.scotland.police.uk/contact-us/hate-crime-third-party-reporting/>

FURTHER INFORMATION

EQUALITY ADVISORY SUPPORT SERVICE (EASS)

<http://www.equalityadvisoryservice.com/>

Freephone: **0808 800 0082**. Text phone: **0808 800 0084**

The EASS helpline has replaced the Equality and Human Rights Commission helpline.

CITIZENS ADVICE BUREAU (CAB)

<http://www.adviceguide.org.uk/scotland.htm/>

Over 250 local CABs in Scotland offer free, confidential, impartial and independent advice by phone, email and face-to-face. Home visits can usually be arranged.

SCOTTISH PUBLIC SERVICES OMBUDSMAN (SPSO)

<http://www.spsso.org.uk/> Freephone: **0800 377 7330**

SPSO handles complaints about public services in Scotland, such as councils, the NHS, housing associations, universities and colleges, prisons and the Scottish Government.

FINANCIAL OMBUDSMAN SERVICE

<http://www.financial-ombudsman.org.uk/> Helpline: **0800 023 4 567**

Free impartial handling of complaints about most UK financial products and services.

ADVISORY, CONCILIATION AND ARBITRATION SERVICE (ACAS)

<http://www.acas.org.uk/> Helpline: **08457 474747**

ACAS provide employment mediation advice and services.

EMPLOYMENT TRIBUNALS (SCOTLAND)

<http://www.employmenttribunals.gov.uk/> Public enquiry line: **0845 795 9775**

How to take an employment discrimination case to tribunal.

SCOTTISH COURTS SERVICE

<http://www.scotcourts.gov.uk/>

How to take a goods, facilities or services discrimination case to the Sheriff Court.

FREE LEGAL SERVICES UNIT

http://www.advocates.org.uk/FLSUwebsite/public_flsu.html

Free legal advice and representation available via the listed advice agencies.

GENDER RECOGNITION PANEL

<http://www.grp.gov.uk> Tel: **0300 1234 503**

How to apply for a gender recognition certificate.

POLICE SCOTLAND

<https://www.scotland.police.uk/hate-crime/>

Emergency: **999**. Non-Emergency: **101**

How to report transphobic hate crime, including third party reporting centres info.



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EQUALITYNETWORK
Lesbian, Gay, Bisexual and Transgender Rights in Scotland



**Scottish Transgender Alliance
Equality Network
30 Bernard Street, Edinburgh, EH6 6PR**

**0131 467 6039
sta@equality-network.org**

**www.scottishtrans.org
facebook.com/scottishtrans.org
@ScottishTrans on twitter**

**Scottish Charity: SC037852
Ltd Company: SC220213**

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